

Standard Terms and Conditions

Version 2.0 applicable from 1 January 2025

These are the Standard Terms and Conditions on which we supply goods and services to you which, together with the content of the Order Form and those of the supplementary terms and conditions which apply to the goods and services set out in the Order Form, comprise the terms of the contract between us. Please read these terms carefully when you submit your Order Form to us as they will be binding on you.

In the circumstances where the Client is a consumer (being an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession) and such status is clear or has been brought to the attention of Heron IT and is marked on the Order Form, any Services or Equipment delivered to the Client shall be completed with reasonable skill and care and these Standard Terms and Conditions shall be deemed amended in order to ensure that any limitation contained herein is subject to a test of fairness and that these Standard Terms and Conditions comply with all application legislation that applies to consumers, including but not limited to (in each case, as amended):

- (a) Consumer Rights Act 2015;
- (b) Sale of Goods Act 1979;
Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (as per the cancellation notice and guidance set out in Schedule 4);
- (c) Consumer ADR Regulations 2015; and
- (d) Equality Act 2010.

1. Interpretation

1.1. Definitions:

Activation: means making the relevant Service available for use and 'Activated' shall be construed accordingly.

Activation Charges: mean those amounts payable by Client to Heron IT for the connection and Activation of a Service as set out in the relevant Order Form.

Bandwidth: means the rate, in bits (not bytes) per second, at which data packets can be transferred over the Service.

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

Charges: means the charges payable by the Client for the supply of the Services by Heron IT, as set out in the Order Form and as varied from time to time by agreement in accordance with these Terms and Conditions.

Cloud Products: means the Microsoft Cloud Products and the Other Third Party Cloud Products.

Contract: means the contract between the Client and Heron IT for the supply of Equipment and/or Services comprising the Order Form, the terms and conditions in these Terms and Conditions, including the Schedules and Appendices), any quote and any other documents agreed between the Parties in writing.

Contract Date: means the date of the Order Form being the date on which Heron IT accepts the Client's Order and the Parties sign the Order Form and the Client first becomes bound by its obligations to Heron IT.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

Client: the client as identified in the Order Form.

Client Data: means all data, including all text, sound, video or image files and software, and which may include personal data, that is provided to (a) Microsoft by or on behalf of the Client through use of the Microsoft Cloud Products; or (b) the relevant vendor by or on behalf of the Client through use of the Other Third Party Cloud Products.

Client Materials: means all materials, equipment and tools, drawings, specifications and data supplied by the Client to Heron IT.

Client's Premises: means the installation address or addresses, if more than one is agreed by Heron IT, as set out in the Order Form.

Data Protection Legislation: means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and thereafter (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

Distributor: means Heron IT's distributor(s), being as chosen by Heron IT, if applicable.

Equipment: means all and any goods and equipment, including but not limited to all hardware, software, consumables, modems, modem configurations, routers, lines and cabling provided and/or installed by Heron IT in connection with supply of the Services as set out in the Order Form which for the avoidance of doubt at all times remain the property of Heron IT until paid for in full.

Force Majeure Event: has the meaning given to it in Clause 14.1.

Heron IT: means Heron IT, as the Service Provider, both as referred to the Order Form.

Heron IT IPRs: means all Intellectual Property Rights either subsisting in Heron IT Materials (excluding any Client Materials incorporated in them) or otherwise arising out of or in connection with the Services.

Heron IT Materials: means all documentation, materials, hardware, software, modems, modem configurations, routers, voice cards, line cards, equipment and tools, drawings, specifications and data supplied by Heron IT to the Client in connection with supply of the Equipment and/or Services which at all times remain the property of Heron IT.

Intellectual Property Rights: means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Managed Services: means the managed service to be provided to the Client, as described in Schedule 2, but excluding: (a) data restoration; (b) services required to investigate, diagnose and/or provide a remedy in relation to Exception Factors; (c) virus or malware attacks; (d) cyber security or security breaches; (e) data protection compliance; and (f) privacy products or services.

Managed Service Bundle: means the bundled supply of Cloud Products and related Managed Services supplied to the Client under this Contract.

Microsoft Client Agreement: has the meaning set out in Schedule 2.

Microsoft Cloud Products: means the Microsoft cloud products for which Heron IT is the relevant Microsoft partner (as recorded by Microsoft), being: (a) the Transferred Products (if any); and (b) the products purchased by Heron IT for the Client as described in accordance with Schedule 2, including where such products include the NCE Subscription Services, the NCE Subscription Terms as applicable.

Minimum Term: means the minimum term of this Contract, as set out in the Order Form (which shall for the avoidance of doubt commence on the Contract Date), unless Heron IT has brought the Contract to an earlier end in accordance with its rights as set out herein.

NCE: the New Commerce Experience for Microsoft products or services.

NCE Subscription Services: the services and use related to NCE subscription services, including as applicable to Cloud Products.

NCE Subscription Terms: the terms and conditions relating to the provision of the NCE Subscription Services as set out in the Appendix to Schedule 2.

Opening Hours: means 09.00 to 17.30 on any Business Day.

Order: means the order for Equipment and/or Services comprised within the Order Form.

Order Form: means the Order Form/s which sets out the Services and Service Level Arrangements (if applicable) under separate cover and which incorporates the terms and conditions of these Standard Terms and Conditions and this Contract submitted by the Client and accepted by Heron IT.

Other Third Party Cloud Products: means third party cloud products other than Microsoft Cloud Products, supplied under this Contract, but subject to a third party user agreement or terms and conditions between the Client and the third party cloud supplier and as applicable, as described in accordance with Schedule 2, including where such products include the NCE Subscription Services, the NCE Subscription Terms.

Other Third Party Cloud Product Terms: has the meaning given in Schedule 2.

Parties: means the Client and Heron IT being the parties to the Contract as set out in the Order Form.

Recurring Charges: means those amounts including service fees payable by the Client to Heron IT on a recurring basis for provision of the Services as set out in the relevant Order and excludes installation, set-up or other one-off charges.

Renewal Term: means a period of equivalent length to the Minimum Term set out in the Order Form commencing on the day first following the end of the Minimum Term or the previous Renewal Term, as the case may be.

Services: the services, including without limitation any Heron IT Materials, to be provided by Heron IT pursuant to this Contract, as set out in the Order Form.

Service Level Arrangements or SLA: any service level arrangements set out in the Order Form.

Service Provider: means Heron IT as identified in the Order Form.

Subscription Services: a right to use the Cloud Products for a defined term.

Term: means the Minimum Term and, or Renewal Term, as applicable and as the context permits or requires.

Terms and Conditions: means these standard terms and conditions set out in Clause 1 to Clause 15 (inclusive), together with the supplementary terms and conditions set out in Schedule 1 to Schedule 4 (inclusive) and appendices thereto.

Third Party Services: any services, goods, code or software programs written or provided by a third party that provides services to Heron IT and, or Client (as the case may be) and which are used during the provision of the Services, including where the context permits, the applicable Cloud Product providers.

Third Party Terms: any terms and conditions including any licence agreements entered into by Heron IT or Customer relating to Third Party Services, including the Client Agreement and Other Party Third Party Terms as referred to in Schedule 2 and, or the applicable Order Form.

Transferred Products: means Microsoft cloud subscriptions and licenses that were purchased for the Client by another supplier and that, with the Client's authorisation, have been transferred to Heron IT in the Microsoft Cloud Administration Portal (so as to be managed by Heron IT for the Client).

1.1. Interpretation:

1.1.1. A reference to a statute or statutory provision is a reference to it as amended or re-enacted.

1.1.2. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.1.3. Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.1.4. A reference to **writing** or **written** includes e-mail, but not fax.

1.1.5. A reference to a party includes its personal representatives, successors or permitted assigns.

1.1.6. In the event of any conflict or inconsistency between the clauses of these Standard Terms, the Schedules, the Order Form, and the Microsoft Client Agreement / Third Party Terms (including any changes or variations to each), the following order of precedence shall apply (in decreasing order) to the extent of such conflict or inconsistency:

1.1.6.1 the Order Form;

1.1.6.2 the Microsoft Client Agreement / Third Party Terms, to the extent applicable to the Services;

1.1.6.3 the Schedules;

1.1.6.4 the clauses in these Standard Terms.

1.1.7 A 'person' includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.1.8 The headings in this Contract are for convenience only and shall not affect their interpretation.

2. Commencement, term and Basis of Contract

2.1. By signing the Order Form the Client warrants that it is:

2.1.1. using the Equipment and/or Services for business purposes;

2.1.2. not a consumer (unless otherwise agreed in writing by Heron IT); and

2.1.3. legally able and duly authorised to enter into this Contract.

2.2. The Order Form constitutes an offer by the Client to purchase the Equipment and/or Services in accordance with these Terms and Conditions.

2.3. Each Order Form is subject to acceptance by Heron IT in its absolute discretion and, without limiting the foregoing, acceptance shall be subject to any or all of the following:

2.3.1. site survey of the Client's Premises being carried out and acceptable to Heron IT in its absolute discretion;

2.3.2. payment by Client in cleared funds of the deposit (if applicable in accordance with Clause 2.4) set out in the Order Form;

- 2.3.3. the provision by Client of financial and credit information satisfactory to Heron IT; and
- 2.3.4. notification to Heron IT of receipt of all required third party authorisations, licences, consents or approvals, including for finance, and any applicable planning, landlord, access or wayleave consents.

2.4. Heron IT may, at any time, require the Client to pay a deposit and / or to procure that a parent company, related company or connected person guarantees the payment of any Charges due under this Contract, including on account of any expenses reasonably to be incurred in supply of the Services in accordance with Clause 11.10. The Client agrees to enter into and / or procure the execution of any agreement or deed reasonably required for any such purpose. Client deposits shall not attract interest.

2.5. Should the site survey of the Client's Premises prove, in Heron IT's absolute discretion, to be unacceptable, Heron IT reserves the right either to:

- 2.5.1. withdraw its acceptance of the Order Form and refund any deposit paid; or
- 2.5.2. to amend the Services and Charges set out on the Order Form in accordance with Clauses 2.6 and 2.7.

2.6. Amendment to the Order Form shall be agreed between the parties in writing ("**Amendment**") either:

- 2.6.1. as reasonably requested by the Client; or
- 2.6.2. when rendered necessary, in Heron IT's absolute discretion:
 - 2.6.2.1. after the site visit of the Client's Premises or as becomes apparent during surveys that reveal certain equipment or service provision to be unavailable at the Client's Premises or to require amendment; or
 - 2.6.2.2. to acquire or maintain all required third party authorisations, licences, consents or approvals, including for finance, and any applicable planning, landlord, access or wayleave consents necessary for all or any part of the supply of Equipment and/or Services; or
 - 2.6.2.3. to comply with a third party's change control process or change request approval.

2.7. In case of any such Amendment, Heron IT shall be entitled to reasonably revise its Charges for the Services, taking into account the cost of additional time and materials.

2.8. Once a date has been set for Activation of the Services or installation of any Equipment necessary for Activation of the Services, Heron IT will issue an email to the Client's representative stated on the Order Form.

3. **Cancellations**

3.1. The Client has the right to cancel the Contract at any time during the 7 days first following the Contract Date provided always that it shall be liable to pay a cancellation fee, which is currently £500, and shall also reimburse Heron IT's costs incurred in connection with pre-contract site visits or procurement of supplies from subcontractors or third parties and all other set up and administration costs.

3.2. Written notice of the Client's cancellation must be made by email to: enquiries@heronit.co.uk. Notification via telephone or by email to any other address shall not be accepted.

3.3. Heron IT will acknowledge Client's cancellation notice or any cancellation deemed to arise in accordance with Clause 3.4, within five (5) Business Days and notify Client of the cancellation charge and any other final charges outstanding on the Client's account. If Client does not receive acknowledgement within five (5) Business Days, Client must contact Heron IT to confirm that the cancellation request has been received. Client's cancellation shall not be effective until acknowledged by Heron IT.

3.4. If Heron IT is unable to activate a Service due to the act or omission of Client (including but not limited to the provision of incorrect information) Heron IT may treat the Contract as cancelled and levy the charges provided for in Clause 3.1, together with any Charges payable by the Client.

3.5. The Client's right of cancellation lapses after the end of 7 days first following the Contract Date at which point and on which date the Contract cannot be cancelled but continues for the Minimum Term set out in the Order Form and thereafter for repeating Renewal Terms unless and until terminated in accordance with these Terms and Conditions.

4. **Site Visits and Installation**

4.1. Where an appointment is made for Heron IT or its subcontractor to visit the Client's Premises, including for the purposes of a site survey or for installation or Activation, and the visit cannot be successfully completed either:

- 4.1.1. through no fault of Heron IT or its subcontractor; or
- 4.1.2. Heron IT or subcontractor being unable to gain access to the Client's Premises or any part thereof which is necessary for the work; or
- 4.1.3. any act, omission or default of the Client, including any failure to comply with the Client's obligations set out at Clause 9,

Heron IT shall charge the Client an aborted visit charge (which is currently £135.00). Rescheduled appointments following an aborted visit will be subject to new lead-times and will be confirmed by Heron IT to the Client as soon as reasonably practicable.

5. Supply of Equipment

5.1. In any supply of Equipment set out in the Order Form in addition to these Standard Terms and Conditions, the supplementary terms and conditions set out in Schedule 3 shall also apply in the Contract between Heron IT and the Client in relation to that part of the Order.

5.2. In any supply of Equipment under hire or lease terms set out in the Order Form that is not supplied directly to you by a third party supplier (whether arranged by Heron IT or otherwise), in addition to these Standard Terms and Conditions, Supplementary Terms and Conditions provided to you separately and forming part of Standard Terms and Conditions shall also apply in the Contract between Heron IT and the Client in relation to that part of the Order.

6. Supply of Services

6.1. Where the Order Form indicates any Consultancy Services, IT Crisis Support or Support for IT infrastructure to be supplied then, in addition to these Standard Terms and Conditions, the supplementary terms and conditions set out in Schedule 1 shall apply in the Contract between Heron IT and the Client in relation to that part of the Order.

7. Third Party Supplies

7.1. Provided always that it has obtained Heron IT's prior written consent, and subject to these Terms and Conditions and in particular Clauses 7.2 and 7.5, the Client may choose to use and/or install its own or another party's equipment, files, modem or router in association with the Equipment and/or Services supplied.

7.2. The Client hereby indemnifies and will keep Heron IT fully indemnified, against all costs, claims, damages, demands, expenses, losses and liabilities arising out of, or in connection with, any claim by a third party that the Equipment and/or Services (or use or supply of any of them) in any way breaches the third party's rights or causes it loss, damage or claim.

7.3. Any third party equipment is supplied subject to the manufacturer's warranty, if any, and Heron IT provides no warranty for Equipment or any goods that it does not supply.

7.4. Heron IT makes no warranty that a Service will interoperate properly with any equipment not procured from Heron IT in connection with that Service.

7.5. Where Heron IT provides a modem or router for use with a Service, the Client must use that modem or router and no other.

7.6. Heron IT shall procure any Third Party Services required by the Client for the provision of the Services and as more fully set out in Schedule 2 and, or the applicable Order Form. Except as expressly set out in the relevant Third Party Terms, the Services will be provided subject to any Third Party Terms or other terms and conditions relating thereto. Heron IT expressly excludes:

7.1.1 any warranty to the Client that the Third Party Services supplied or licensed under this Contract will operate substantially in accordance with, and perform, the material functions and features as set out in the marketing, sales or other associated documentations; and

7.1.2 any and all liability in relation to the use of such Third Party Services.

7.7. The Client shall remain liable for any and all payments owed to Heron IT throughout this Contract and until the end of the respective licence terms for such Third Party Services notwithstanding termination of the Contract or applicable Order Form (the "**Licence Fees**").

7.8. It is a condition of this Contract that the Client shall accept the relevant Third Party Terms issued by the Third Party where the Client must directly contract with that Third Party as so prescribed by the relevant suppliers of each Third Party Services identified within this Contract and/or in the applicable Order Form. In the event the Client does not enter into or accept the terms of such Third Party Terms (whether directly contracted with Heron IT or the relevant Third Party), Heron IT reserves the right to suspend the provision of the Services until such time as the Client accepts such Third Party Terms.

7.9. The Client shall indemnify Heron IT against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Heron IT in connection with any claim made against Heron IT by a Third Party for actual or alleged breach of such Third Party Terms by the Client.

7.10. The Client acknowledges that it is responsible for ensuring that the Client's hardware, and operating software for such hardware is compatible with the Third Party Services and Heron IT gives no warranty in relation thereto unless agreed otherwise in writing between the Parties in the Order Form.

7.11. The Client acknowledges that all back-up shall be the sole responsibility of the Client unless otherwise expressly agreed to by Heron IT in writing and set out as a service within the relevant Order Form.

- 7.12 The Service Level Arrangements are specific to directly provided Services of Heron IT and do not relate to Third Party Services (of which such Third Party Services will be governed by their own relevant service levels).
- 7.13 Except as expressly provided in this Contract, the Client assumes sole responsibility for results obtained from the use of any Third Party Services and for conclusions drawn from such use. Heron IT shall have no liability for any inaccuracies, errors and/or omissions in any information, instructions or other outputs provided in connection with such Third Party Services or any actions taken by Heron IT at the Client's direction.

8. Repair & Maintenance

8.1. Heron IT provides no guarantee that the Services will work without interruption or will be fault-free. If the Client experiences a fault, it must register and report it to Heron IT as soon as practicable, and Heron IT will use its reasonable endeavours to correct or remedy any faults that are registered and reported. Heron IT's failure to meet the target times will not constitute a material breach of this Contract. Time is not of the essence in relation to this Clause.

8.2. If the Client reports and registers a fault in the Service and Heron IT, in its absolute discretion, finds either that there is no fault or that it has arisen because of Client or third party default, Heron IT may charge the Client its reasonable costs and expenses incurred for any work done to try to find the fault or to repair it.

8.3. Temporary changes may be made to the technical specification of a Service from time to time for operational or technical reasons. If these changes will be materially detrimental to the Service Heron IT will use reasonable endeavours to inform the Client in advance.

8.4. For the purpose of providing new installations, updating facilities and general maintenance, scheduled downtime will occur from time to time and:

8.4.1. Heron IT will use reasonable endeavours to provide reasonable notice of any scheduled maintenance; and

8.4.2. where emergency maintenance is required, Heron IT will give as much notice as is reasonably practicable and will explain why the maintenance is necessary and why short notice has to be given. On rare occasions it may only be possible to give this notification after the emergency maintenance has taken place.

8.5. Where with Heron IT's agreement in accordance with Clause 7.1 above, the Client provides its own equipment, the Client will, at its own cost, be responsible for repairing, maintaining, and replacing any equipment that no longer operates in accordance with its manufacturer's specifications. Where the Client replaces the Equipment, the replacement shall be (i) equivalent to the original's functionality and performance, and (ii) approved by Heron IT in writing. The Client will be responsible, at its own cost, for (i) reconfiguring any replacement of the Equipment to the same or equivalent configuration as the original (if agreed by the parties, such reconfiguration work may be provided by Heron IT as a professional services at its then current standard rates), and (ii) installing such reconfigured replacement in place of the original.

8.6. Heron IT shall not be liable for any impact on the Service caused by the substandard or defective performance or non-availability of the Client's equipment which shall be excluded from Heron IT's service level obligations under this Contract.

8.7. Heron IT shall have no liability or responsibility should the Services fail to comply with the Order Form and/or Service Level Arrangements as a direct result of the Client (including without limitation any of its employees, subcontractors or any of its staff) being in breach of the Contract.

9. Client's obligations

9.1. The Client shall obtain before the Contract Date and maintain at its own cost for the term of the Contract, all necessary authorisations, licences, consents or approvals, including for finance, and any applicable planning, landlord, access or wayleave consents which may be required in connection with supply of the Services.

9.2. The Client hereby grants to Heron IT, its agents, representatives and subcontractors, the right during the term of the Contract:

9.2.1. to install and keep installed the Equipment at each of the Client's Premises;

9.2.2. to enter and re-enter each of the Client's Premises as and when required including any access reasonably required outside of the Client's Opening Hours;

9.2.3. of access at no charge to the Client's information technology, telecommunications and network facilities (including full remote access), computer systems, data and other facilities as reasonably required by Heron IT, its agents, subcontractors and employees; and

9.2.4. in each of cases 9.2.1 to 9.2.3 to:

9.2.4.1. install, test, operate, maintain and remove the Equipment;

9.2.4.2. provide the Services;

9.2.4.3. provide training; and

9.2.4.4. protect and/or safeguard the integrity, operation and functionality of Heron IT's (and neighbouring) networks; and/or (ii) to comply with any and all orders, notices, directives or requests of a competent legal or regulatory authority; and the Client warrants and represents that it is entitled to grant the rights set out in this Clause 9.2.

9.3. The Client shall:

9.3.1. co-operate with Heron IT in all matters relating to the Services;

9.3.2. follow Heron IT's reasonable instructions including ensuring that the Equipment and all other equipment connected to a Service is connected to and used with the Service in accordance with all relevant published instructions and any safety and security procedures notified to the Client;

9.3.3. prepare the Client's Premises, office accommodation, computer systems and/or devices and other facilities for the supply of the Services, in accordance with the reasonable requests of Heron IT, its agents, subcontractors and employees including putting in place, at its own cost and risk, all adequate security and virus checking systems to protect its computer systems, equipment, network elements and data and the Client shall notify Heron IT, its agents, subcontractors and employees of any reasonable regulations to be complied with at any of the Client's Premises;

9.3.4. protect all passwords, employ appropriate security measures and devices including virus checking software and maintain (and ensure that each of its authorised users maintains) the integrity and secrecy of all passwords, log-in details and access codes used for the purposes of accessing or using the Services or any systems, equipment, network elements and data;

9.3.5. provide a safe, secure and suitable environment for storing and installing the Equipment and for working, maintain adequate employer's and public liability insurances, and supply on an ongoing basis, at its cost, all space, power supply, access points, cables, trunking, electricity, air conditioning and any other facility as may be reasonably required by Heron IT, its agents, subcontractors and employees;

9.3.6. keep and maintain all Heron IT Materials at the Client's Premises in safe custody at its own risk, maintain Heron IT Materials in good condition until returned to Heron IT, and not dispose of or use Heron IT Materials other than in accordance with Heron IT's written instructions or authorisation from time to time;

9.3.7. not maintain, service, repair or make any replacement, modification, adjustment or connection to the Equipment save as agreed by Heron IT in writing;

9.3.8. not tamper with, hack, reverse engineer, re-set, copy, adapt, decompile, disassemble or modify any part or all of Heron IT Materials or Equipment or attempt to do any such thing;

9.3.9. not use or access or allow use or access to any Heron IT Materials, Equipment and/or Service supplied under the Order:

9.3.9.1. by any third party; or

9.3.9.2. in connection with the carrying out of any fraudulent, criminal, or any other illegal activity; or

9.3.9.3. to send, knowingly receive, upload, download or use any material which is offensive, abusive, indecent, defamatory, obscene or menacing or in breach of copyright, confidence, privacy or any other rights; or

9.3.9.4. to cause nuisance, annoyance or needless anxiety; or

9.3.9.5. to send or provide or, knowingly receive responses to, any spam or unsolicited advertising or promotional material; or

9.3.9.6. to knowingly or recklessly transmit any electronic material (including viruses) which may cause or is likely to cause detriment or harm in any degree to computer systems owned by Heron IT or other Internet users; or

9.3.9.7. in a manner which restricts or inhibits any other user from using or enjoying Heron IT products or services; or

9.3.9.8. to utilise excessive amounts of bandwidth exceeding the contention ratio guarantee of the product and not including 1:1 services (including repeatedly engaging site-local scripts or similar behaviour); and

in respect of any such illegal, fraudulent or unauthorised use of the Services (set out in Clause 9.3.9.1 to 9.3.9.8 (inclusive)), the Client will notify Heron IT immediately it becomes aware of such. On receipt of such a notice, Heron IT shall use reasonable efforts to prevent such unauthorised use and reserves the right to suspend the Services or any part thereof until such unauthorised use is ceased in accordance with the provisions of Clause 9.4 below;

9.3.10. during the term of this Contract, agree to Heron IT taking steps to cancel transfers to other operators either to protect the Client from slamming or to protect Heron IT's legitimate business interests;

9.3.11. provide and up date, in a timely manner, such information and materials as Heron IT may reasonably require, and ensure that such information is complete and accurate in all material respects including the information contained within the Order Form and the contact details of its authorised representative and onsite and technical contact;

9.3.12. indemnify, and keep Heron IT fully indemnified, against all costs, claims, demands, expenses, and liabilities arising out of, or in connection with, any claim that the Service (or its use) infringes any applicable laws or regulations;

9.3.13. back-up any and all data contained on the Client's computer systems and/or devices prior to the supply of the Services and on an ongoing regular basis in accordance with good industry practice and / or any advice received from Heron IT (if applicable), such back-up to be retained and stored onto a removable medium stored separately from the computer systems and/or devices or backed-up in the cloud, in accordance with good industry practice (including, but not limited to, utilising a reputable cloud back-up supplier). Should such back-up system be arranged by Heron IT and provided by a third party supplier, Heron IT shall not be responsible for advising upon, carrying out or reminding the Client of such back-up and gives no warranty or guarantee as to the service provided by such third party supplier; and

9.3.14. sign and return to Heron IT the job sheet, if applicable, indicating that Heron IT has satisfactorily completed the required Services.

9.4. **Suspension.** Without affecting any other right or remedy available to it, including its rights to claim payment of all Charges irrespective of the suspension and its rights to terminate, Heron IT may suspend provision of Services under this Contract with immediate effect by giving written notice to the Client if Heron IT's performance of its obligations under this Contract or proper working or authorised use of the Equipment is prevented or delayed by any of the events referred to in Clauses 9.4.1 to 9.4.9 below:

- 9.4.1. the Client is in breach of any of its obligations under this Contract; or
- 9.4.2. any circumstance or event exists or is threatened that would otherwise give Heron IT the right to terminate the Contract or Heron IT reasonably believes that the Client is about to become subject to any of them; or
- 9.4.3. the Client makes unreasonable or unnecessary calls for support to Heron IT in respect of matters that can be addressed by Client training or reading information provided in Heron IT Materials and information provided by Heron IT in association with the supply; or
- 9.4.4. a need to avoid loss, damage or disruption being caused to third parties; or
- 9.4.5. any operational or technical reasons including any damage or delay resulting from accident, transportation, neglect or misuse, failures of electrical power, surge of electrical power, lightning damage, water damage or causes other than ordinary use, any fault, failure or change in the electricity supply or telecommunications connections, defects in external or internal cabling at or serving the Client's Premises, and/or other network Heron ITs' telephone service and connections, and/or Host PBX systems; or
- 9.4.6. any regulatory or legal obligation; or
- 9.4.7. delay in the execution of any work of installation, activation, maintenance, repair, replacement, alteration or removal of or to the Equipment howsoever caused; or
- 9.4.8. any unauthorised use of any part of the Services, Equipment or Heron IT Materials (including any of the matters referred to in Clauses 9.3.9.5 to 9.3.9.8 above); or
- 9.4.9. any other default by, act or omission of the Client, its agents, subcontractors, or employees, or third parties, to perform any relevant obligation.

9.5. **Consequences of suspension.** In exercising its right of suspension in accordance with Clause 9.4, Heron IT shall:

- 9.5.1. be entitled to continue to suspend performance of the Services until the relevant event or events described in Clauses 9.4.1 to 9.4.9 inclusive has or have (as the case may be) been remedied, and to rely on the relevant event or events to relieve it from the performance of any of its obligations;
- 9.5.2. not be liable for any costs, charges or losses sustained or incurred by the Client that arise directly or indirectly from such suspension, prevention or delay;
- 9.5.3. be entitled to payment of the Charges during the period of suspension, including any additional costs or losses sustained or incurred by Heron IT arising directly or indirectly from any of the events described in Clauses 9.4.1 to 9.4.9 inclusive;
- 9.5.4. be entitled to recover any additional costs, charges or losses Heron IT sustains or incurs that arise directly or indirectly from such prevention or delay; and
- 9.5.5. lift its suspension or recommence its provision of the Services within a reasonable timescale after:
 - 9.5.5.1. the event or events described in Clauses 9.4.1 to 9.4.9 has or have (as the case may be) been remedied;
 - 9.5.5.2. in case of any unauthorised use of any part of the Services, Equipment or Heron IT Materials (including any of the matters referred to in Clause 9.3.9.5 to 9.3.9.8 above), the Client demonstrates to Heron IT's reasonable satisfaction that appropriate technical, organisational, security or other measures have been put in place to prevent any further unauthorised use; and
 - 9.5.5.3. where required by Heron IT, a re-connection fee of up to £500 is paid and/or the Client pays a security deposit on account of future Charges invoiced of no less than £500.

9.6. Where Heron IT has the right to suspend or terminate the Services under Clause 9.4 and the conditions in which Heron IT is required to lift its suspension or recommence its provision of the Services under Clause 9.5.5 have not been met within twenty (20) Business Days of the date on which Heron IT has received the relevant notice under Clause 9.4, the Contract relating to such Services shall be deemed terminated and the provisions of Clause 13 shall apply.

9.7. The Client shall not, without the prior written consent of Heron IT, at any time from the date of the Contract to the expiry of six months after the termination or expiry of the Contract, solicit or entice away from Heron IT or employ or attempt to employ any person who is, or has been, engaged as an employee or subcontractor of Heron IT that has had any involvement in the relationship between Heron IT and the Client. The Client shall not be in breach of this Clause if it hires an employee or subcontractor of Heron IT as a result of a recruitment campaign not specifically targeted to any employees or subcontractors of Heron IT. Any consent given by Heron IT in accordance with Clause shall be subject to the Client paying to Heron IT on demand a sum equivalent to 15% of the then current annual remuneration of Heron IT's employee or subcontractor or, if higher, 15% of the annual remuneration to be paid by the Client to such employee or subcontractor.

10. Intellectual Property

10.1. Heron IT and its licensors shall retain ownership of all Heron IT IPRs. The Client and its licensors shall retain ownership of all Intellectual Property Rights in the Client Materials (if any).

10.2. All Heron IT Materials are the exclusive property of Heron IT.

10.3. The Client acknowledges that, in respect of any third party Intellectual Property Rights included in Heron IT IPRs, the Client's use of any such Intellectual Property Rights is conditional on Heron IT obtaining a written licence from the relevant licensor on such terms as will entitle it to license such rights to the Client. Heron IT shall use reasonable endeavours to procure such licence. Heron IT shall also grant to the Client, in respect of such of Heron IT IPRs as are owned by it, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to use Heron IT owned Heron IT IPRs and Heron IT Materials

for the purpose of receiving and using the Services in the Client's business during the term of the Contract.

10.4. The Client grants Heron IT a fully paid-up, worldwide, non-exclusive, royalty-free, non-transferable licence to copy and modify the Client Materials for the term of this Contract for the purpose of providing the Services to the Client in accordance with this Contract.

10.5. The Client shall keep Heron IT indemnified in full against any sums awarded by a court against Heron IT as a result of or in connection with any claim brought against Heron IT for infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt or use of the Client Materials by Heron IT.

11. Charges and payment

11.1. Time is of the essence in respect of the Client's payment obligations.

11.2. All Initial Charges, as set out in the Order Form, are due from the Contract Date.

11.3. Subject to the provisions of Clause 11.5, all Recurring Charges, as set out in the Order Form, shall be due immediately on each invoice date which at Heron IT's absolute discretion, can be prepared and dated on delivery of Equipment, or monthly, quarterly or annually ("**Payment Period**") in advance or arrears depending on the circumstances and nature of the supply of Equipment and/or Services ordered. At Heron IT's absolute discretion, a minimum invoice policy may apply if the Client's total monthly invoice is less than £5.00 (excluding VAT).

11.4. Each invoice shall include reasonable supporting information.

11.5. The Client shall arrange payment by direct debit, BACS or payment card to Heron IT's bank account nominated in writing by Heron IT or as stated on the Order Form, or cheque or cash to Heron IT. If requested, the Client shall be required to set up a direct debit authority, in favour of Heron IT's nominated account, on the Contract Date and before Activation, for payment of all Charges.

11.6. Recurring Charges shall accrue daily with effect from the date of Activation and shall be invoiced in advance (excluding call charges which shall be invoiced in arrears) at the frequency specified on the Order Form and shall be payable by direct debit.

11.7. The first instalment of Recurring Charges will be made up of (i) a proportionate charge in respect of the period from the scheduled date of Activation to the end of the month in which Activation is scheduled plus (ii) the full amount due for the next Payment Period beginning on the first Business Day of the month next following the month of the date scheduled for Activation. Payment Periods shall always start on the first Business Day of a month.

11.8. The Client shall ensure that it has sufficient funds available for collection of each direct debit payment and shall not cancel such direct debit instruction or take or fail to take any other action that results in payment failure. Any failure to comply with these provisions may result in suspension of Services under Clause 9.4 and shall incur an additional processing fee of £75 and a re-connection fee in accordance with Clause 9.5.5.3 of up to £500.

11.9. If part or all of the Charges remain unpaid and outstanding Heron IT is entitled to suspend Activation or supply of all Services and the provisions on suspension set out in Clause 9.4 shall apply.

11.10. In addition to the Charges for Equipment and/or Services, Heron IT shall be entitled to charge the Client for any costs and expenses reasonably incurred by Heron IT or its agents, subcontractors or employees in connection with supply of the Services including, but not limited to, the cost of time and materials, necessary air or other travel expenses, hotel accommodation, subsistence and any associated expenses. For the avoidance of doubt, the Client shall be notified of any such expenses prior to such expenses being incurred.

11.11. In respect of the supply of Equipment including hardware, software, and Heron IT Materials:

11.11.1. If requested and set out in the Order Form, Heron IT shall expect full payment in cleared funds before delivery. Otherwise, invoices shall be paid by the Client in full and in cleared funds within the number of Business Days of the invoice date set out in the Order Form;

11.11.2. the price for Equipment shall be the price set out in the Order Form or, if no price is quoted, the price set out in Heron IT's published price list as at the date of delivery. The price of the Equipment is exclusive of all costs and charges of packaging, insurance, transport of the Equipment; and

11.11.3. Heron IT reserves the right to increase the price of the Equipment, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Equipment to Heron IT that is due to:

11.11.3.1. any factor beyond the control of Heron IT (including foreign exchange fluctuations, inflation, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

11.11.3.2. any request by the Client to change the delivery date(s), quantities or types of Equipment ordered, or the Equipment Specification; or

11.11.3.3. any delay caused by any instructions of the Client in respect of the Equipment or failure of the Client to give

Heron IT adequate or accurate information or instructions in respect of the Equipment.

11.12. In respect of the supply of Services:

11.12.1. invoices shall be paid by the Client in full and in cleared funds within the number of Business Days of the invoice date set out in the Order Form;

11.12.2. the price for Services shall be the price set out in the Order Form; and

11.12.3. Heron IT reserves the right to increase the price of the Services, by giving one month's notice in writing to the Client, to reflect any increase in the cost of the Services to Heron IT that is due to:

11.12.3.1. any increase in underlying costs including increases in inflation, taxes and duties, Heron IT costs, and increases in labour and materials costs. The Client is entitled to request from Heron IT in writing reasonable evidence of such increases in underlying costs;

11.12.3.2. any request by the Client to change the Services Specification;

11.12.3.3. additional resources being required in labour or otherwise for the delivery of the Services; or

11.12.3.4. any delay caused by any instructions of the Client in respect of the Services or failure of the Client to give Heron IT adequate or accurate information or instructions in respect of the Equipment.

11.13. All Charges and payments due are stated excluding value added tax or any other applicable government taxes or duties however designated ("**VAT**"), which the Client shall additionally be liable to pay to Heron IT at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

11.14. All amounts due under this Contract shall be paid by the Client to Heron IT in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law) and the Client shall not be entitled to assert any credit, set-off or counterclaim against Heron IT in order to justify withholding payment of any such amount in whole or in part.

11.15. If the Client fails to make any payment due to Heron IT under this Contract by the due date for payment, then, without prejudice to Heron IT's other rights and remedies:

11.15.1. the Client shall pay interest on the overdue amount at the rate of 8% per annum above Barclays Bank PLC's lending base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Client shall pay the interest together with the overdue amount; and

11.15.2. Heron IT may suspend all Services until payment has been made in full.

11.16. For the avoidance of doubt, all deposits or other amounts paid by the Client to Heron IT on account of any supply may be used to pay any outstanding debts owed by the Client to Heron IT in respect of supplies under this Contract or any other contract between the parties.

11.17. Where the Client disputes any amount due under an invoice:

11.17.1. the Client shall notify Heron IT in writing within five (5) Business Days of date of issue of the relevant invoice, such notification to provide a detailed account of why the invoice is disputed, including all calculations;

11.17.2. the undisputed sum shall be payable in accordance with Clause 11.5 and the parties shall act in good faith and use reasonable endeavours to resolve the disputed sum within ten (10) Business Days of notification of the dispute by Client; and

11.17.3. if the dispute is not resolved within the ten (10) Business Day time period, the Heron IT may exercise all rights and remedies at law or hereunder including but not limited to suspension of the Service.

12. Limitation of liability

12.1. Nothing in this Contract shall limit or exclude Heron IT's liability for:

12.1.1. death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;

12.1.2. fraud or fraudulent misrepresentation; and

12.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

12.2. Subject to Clause 12.1, Heron IT shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this Contract for:

12.2.1. loss of profits;

12.2.2. loss of opportunity, sales or business;

12.2.3. loss of agreements or contracts;

12.2.4. loss of anticipated savings;

12.2.5. loss of or corruption of software, data or information;

12.2.6. loss of or damage to goodwill or reputation; and

12.2.7. any indirect, incidental, special or consequential loss or damage,

and for the avoidance of doubt, the losses excluded shall include any arising:

12.2.8. from any circumstance or event listed in Clause 9.4.1 to 9.4.9 inclusive;

12.2.9. from any delay, act, omission or default of the Client or a third party;

12.2.10. under or in connection with use of equipment not supplied or maintained by Heron IT;

12.2.11. under or in connection with accident, neglect, virus or malware attacks, cyber security, security breaches, data protection compliance, privacy products or services, network down-time, misuse, transportations or moving, excessive fluctuations in mains electrical supply, damage caused by equipment not supplied by, or by hardware and/or software not maintained by, Heron IT or any other circumstances beyond the control of Heron IT during the support of hardware and/or software;

12.2.12. under or in connection with the operating environment at the Client's Premises electromagnetic interference, defective operation or any other network Heron IT's equipment and/or Host PBX systems;

12.2.13. Force Majeure Events;

12.2.14. under or in connection with the loss or corruption of data;

12.2.15. under or in connection with the failure or down-time of any third party telecommunications services; and

12.2.16. under or in connection with any amendments to the Client's requirements beyond those stated prior to the Contract Date,

and the Client agrees that (i) the level of the Charges has been calculated on the basis of the above limitations and exclusions; and (ii) it is advised to obtain insurance in respect of any liability excluded by Heron IT hereunder including but not limited to the loss or corruption of data; and (iii) the above exclusions and limitations are reasonable in light of the Charges and Services provided.

12.3. Subject to Clause 12.1, Heron IT's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract shall be limited:

12.3.1. in respect of a proven fault or defect in supplies of Equipment, to the value of the Equipment; and

12.3.2. in respect of supplies of Services to the value of the invoice on which the faulty Services are listed.

12.4. Nothing in this Contract shall be taken as in any way reducing or affecting the Client's general duty to mitigate loss.

12.5. All warranties, conditions and other terms implied by statute or common law including those implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from this Contract.

12.6. This Clause 12 shall survive termination of the Contract.

13. Termination

13.1. Termination of the Contract shall automatically effect termination of any other Contract with the Client unless agreed in writing by Heron IT, in which case a revised Contract shall continue with the Client in respect only of the supplies Heron IT has agreed to continue supplying.

13.2. On termination of this Contract for whatever reason:

13.2.1. Heron IT shall immediately cease provision of the Services;

13.2.2. the Client shall immediately pay to Heron IT all of Heron IT's outstanding unpaid invoices and interest and any further amounts due under this contract including amounts due in accordance with Clauses 13.3 and 13.4, in respect of which Heron IT may submit an invoice, which shall be payable immediately on receipt; and

13.2.3. Heron IT shall apply any credit balance in respect of deposits or other monies held on account not otherwise needed to pay off outstanding unpaid charges, invoices and interest against the final invoice and, if any refund is due, this will be paid by Heron IT by BACS transfer to a nominated bank account supplied in writing by the Client.

13.3. If the Client cancels any part of an Order at any time after the seventh day first following the Contract Date but before installation and/or Activation is completed it shall be liable for payment of the Activation Charges and Recurring Charges for the entire Minimum Term.

13.4. Where, except as provided in Clause 13.3 above, the Contract is terminated by either party or otherwise brought to an end:

13.4.1. all Recurring Charges for the remainder of the Minimum Term or the Renewal Term (as applicable), whether or not yet invoiced, including any charges for line rental and call charges and lost call charges, which shall be estimated for the entire remainder of the Minimum Term or the Renewal Term (as applicable), based on the average amount invoiced for call charges during the term to date or the previous 6 months (whichever is the shorter), shall become payable immediately; and

13.4.2. the Client agrees that the provisions in Clause 13.4.1 above give Heron IT a right to invoice and recover what represents a reasonable pre-estimate of Heron IT's losses and is not onerous or a penalty.

13.5. Without affecting any other right or remedy available to it, Heron IT may terminate this Contract at any time, without liability, by giving the Client no less than 30 days' written notice to expire at any time during the Minimum Term or any Renewal Term as applicable.

13.6. Without affecting any other right or remedy available to it, either party may terminate this Contract with immediate effect by giving written notice to the Client if:

13.6.1. the Client commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;

13.6.2. any required third party authorisations, licences, consents or approvals, including for finance, and any applicable planning, landlord, access or wayleave consents necessary for all or any part of the supply of Equipment and/or Services is withdrawn.

13.6.3. the Client 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 (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

13.6.4. the Client 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 (where a company) 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 the Client;

13.6.5. 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 the Client (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Client with one or more other companies or the solvent reconstruction of the Client;

13.6.6. the Client (being an individual) is the subject of a bankruptcy petition or order;

13.6.7. a creditor or encumbrancer of the Client 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 its assets and such attachment or process is not discharged within 14 days;

13.6.8. 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 Client (being a company);

13.6.9. the holder of a qualifying charge over the assets of the Client (being a company) has become entitled to appoint or has appointed an administrative receiver;

13.6.10. a person becomes entitled to appoint a receiver over the assets of the Client or a receiver is appointed over the assets of the Client;

13.6.11. any event occurs or proceeding is taken with respect to the Client in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 13.6.3 to Clause 13.6.10 (inclusive);

13.6.12. the Client ceases or threatens to cease to carry on all or a substantial part of its business;

13.6.13. the Client (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation; or

13.6.14. the Client's financial position deteriorates to such an extent that in Heron IT's opinion the Client's capability to adequately fulfil its obligations under this Contract has been placed in jeopardy.

13.7. Without affecting any other right or remedy available to it, Heron IT may terminate the Contract with immediate effect by giving written notice to the Client if:

13.7.1. the Client fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or

13.7.2. if required by a legal or regulatory obligation.

13.8. Provided always that it has paid all monies due to Heron IT in full and no supply has been and remains suspended by Heron IT in accordance with Clause 9.4, the Client may terminate this Contract at the end of the applicable Minimum Term or Renewal Term by giving Heron IT:

13.8.1. 30 days' notice, in the event that the Term is renewable on a monthly basis in accordance with this Contract; or

13.8.2. 90 days' written notice in the event that the Term is renewable on a yearly or longer term basis, such notice to expire at the earliest, at the end of the Minimum Term or any applicable Renewal Term.

13.9. On termination of this Contract for whatever reason:

13.9.1. the Client shall return all of Heron IT Materials which have not been fully paid for. If the Client fails to do so, then Heron IT may enter the Client's Premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract; and

13.9.2. the Client shall return all telephone numbers.

13.10. Termination of the Contract shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination; and

13.11. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

14. General

14.1. Force Majeure

14.1.1. For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Heron IT

including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of either party or any other third party), failure of a utility service, communications network or transport 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, epidemic or pandemic or default of Heron ITs or sub-contractors.

14.1.2. Heron IT shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

14.1.3. If the Force Majeure Event prevents Heron IT from supplying any of the Services and/or Equipment under this Contract for more than twenty (20) Business Days, Heron IT shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Client.

14.2. No Partnership

14.2.1. Nothing in these Terms and Conditions is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between Heron IT and Client, nor constitute either as the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other in any way.

14.3. Assignment and other dealings

14.3.1. The Client shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Contract without Heron IT's prior written consent.

14.3.2. Heron IT may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this Contract and may sub-contract or delegate in any manner any or all of its obligations under this Contract to any third party or agent.

14.4. Confidentiality

14.4.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or Heron ITs of the other party, including passwords, logon codes, technical or commercial know-how, specifications, inventions, processes or initiatives, data, materials, technology, computer programs, software, specifications, manuals, business plans, marketing plans or any Intellectual Property Rights which are of a confidential nature, except as permitted by Clause 14.4.2.

14.4.2. Each party may disclose the other party's confidential information:

14.4.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes only of either carrying out the party's obligations or exercising its rights under this Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 14.4; and

14.4.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority provided that, to the extent it is legally permitted to do so, the disclosing party gives the other as much notice of such disclosure as possible.

14.4.3. No party shall use any other party's confidential information for any purpose other than to perform its obligations or to exercise its rights under this Contract.

14.4.4. This Clause 14.4 shall survive termination of the Contract.

14.5. Data Protection

14.5.1. Each Party shall comply with all applicable requirements of the Data Protection Legislation. This Clause 14.5 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

14.5.2. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and Heron IT is the data processor (where Data Controller, Data Processor and Personal Data have the meanings as defined in the Data Protection Legislation).

14.5.3. Without prejudice to the generality of Clause 14.5.1, to the extent that the Services involve the processing of any Personal Data, the Client shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to Heron IT for the duration and purposes of this Contract.

14.5.4. Without prejudice to the generality of Clause 14.5.1, Heron IT shall, in relation to any Personal Data processed in connection with the performance by Heron IT of its obligations under this Contract:

14.5.4.1. process that Personal Data only on the written instructions of the Client unless Heron IT is required by the laws of any member of the European Union or by the laws of the European Union applicable to Heron IT to process Personal Data (Applicable Laws). Where Heron IT is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Heron IT shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Heron IT from so notifying the Client;

14.5.4.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

14.5.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal

Data confidential;

14.5.4.4. not transfer any Personal Data outside of the European Economic Area unless the following conditions are fulfilled:

14.5.4.4.1. the Client or Heron IT has provided appropriate safeguards in relation to the transfer;

14.5.4.4.2. the data subject has enforceable rights and effective legal remedies;

14.5.4.4.3. Heron IT complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

14.5.4.4.4. Heron IT complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

14.5.4.5. assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

14.5.4.6. notify the Client without undue delay on becoming aware of a Personal Data breach;

14.5.4.7. at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and

14.5.4.8. maintain complete and accurate records and information to demonstrate its compliance with this Clause 14.5.

14.5.5. Either Party may, at any time on not less than 30 days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

14.5.6. From time to time Heron IT may contact the Client about products and services from Heron IT and its business partners. The Client may opt-out of receiving mailings by contacting Heron IT at enquiries@heronit.co.uk.

14.5.7. Heron IT may with the prior written approval of Client (i) identify the Client as its Client, (ii) use the Client's name, logo and other identifying information or image in connection with emails, communications, and proposals to other prospective Clients, and (iii) disclose the terms of this Contract as may be required by law.

14.6. Client Data

14.6.1. Subject to Clause 14.6.2, Heron IT may collect, use, transfer, disclose, and otherwise process the Client Data as required in its performance of this Contract.

14.6.2. Heron IT will only access the Client Data and disclose the Client Data to law enforcement or government authorities to the extent required by law. If a request for Client Data is made by a law enforcement agency or government authority (directly or through Microsoft or the relevant third party supplier where applicable), Heron IT will redirect the request to the Client or if redirection is not permitted or feasible in the available time frame and unless legally prohibited from doing so, Heron IT will notify the Client of the request as soon as practically possible.

14.6.3. The Client will, as and to the extent required by law, notify individual users of the Managed Service Bundle or Cloud Products (as applicable), 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 Client's responsibility to obtain consent from individual users to the potential for disclosure under this Clause.

14.6.4. The Client consents to Microsoft providing Heron IT and the Distributor with Client Data and information that the Client provides to Microsoft for the purposes of Heron IT and the Distributor ordering, provisioning and administering the Microsoft Cloud Products.

14.6.5. The Client consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this Contract. The Client may choose to provide personal information to Microsoft on behalf of third parties (including the Client's contacts, resellers, distributors, administrators, and employees) as part of this Contract. The Client will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.

14.6.6. Additional privacy and security details are contained in the Microsoft Client Agreement and agreements with relevant third party suppliers, where applicable. The commitments made in the Microsoft Client Agreement and agreements with relevant third party suppliers, where applicable, only apply to the Microsoft Cloud Products purchased under this Contract or to products purchased under this Contract from the relevant third party supplier, and not to any services or products provided by Heron IT.

14.7. Entire agreement

14.7.1. This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter and the Client confirms that it has not entered into this Contract on the basis of or relying on the same.

14.7.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.

14.8. Variation

14.8.1. Heron IT shall notify the Client of any proposed variations to the terms of this Contract with any applicable monthly invoice. No other variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives). If a variation is not acceptable to the Client, it shall be deemed to give notice to terminate in accordance with the applicable notice period set out in Clause 13.8, such notice commencing on the date of Heron IT's

notice of the proposed variations.

14.8.2. If the Client asks Heron IT to make any change to the Order, it must confirm its request in writing within a reasonable timeframe. Heron IT can in its absolute discretion refuse the request. Where Heron IT is willing to meet the request, it will accommodate it as soon as practicable provided always that, at Heron IT's absolute discretion, it shall assess and levy a reasonable administrative charge to cover its costs in doing so.

14.9. Waiver

14.9.1. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

14.9.1.1. waive that or any other right or remedy; or

14.9.1.2. prevent or restrict the further exercise of that or any other right or remedy.

14.9.2. Unless specifically provided otherwise, rights arising under these Terms and Conditions are cumulative and do not exclude rights provided otherwise by law.

14.10. Severance

14.10.1. If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of this Contract.

14.10.2. If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

14.11. Notices

14.11.1. Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this Clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or email.

14.11.2. Written notice by the Client of cancellation or termination must be made by email to: enquiries@heronit.co.uk. Notification via telephone or by email to any other address will not be accepted.

14.11.3. Notices by Heron IT to Client may be made by email to the primary Client representative stated on the Order or registered with Heron IT if updated since time of Order.

14.11.4. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 14.11.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second (2nd) Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one (1) Business Day after transmission.

14.11.5. The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

14.12. Third party rights.

14.12.1. No one other than a party to this Contract shall have any right to enforce any of its terms.

14.13. Mediation

14.13.1. In the event of a dispute between the Parties arising out of or in connection with these Terms and Conditions, the Parties agree to engage in mediation moderated by an independent mediator in an effort to resolve such a dispute prior to the initiation of any formal legal proceedings.

14.13.2. Costs arising in connection with the operation of Clause 14.13.1 shall be split equally between the Parties.

14.14. Counterparts

14.14.1. This Contract and any Order Form incorporated within it may be executed in any number of counterparts each of which when executed and delivered shall be an original but all the counterparts together shall constitute one and the same instrument.

14.15. Complaints

14.15.1. If you wish to make a complaint, please refer to our Complaints Procedure at the web-address: www.heronit.co.uk/complaints.

15. Governing Law and Jurisdiction

15.1. This 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.

15.2. Each party irrevocably agrees that the English courts shall have exclusive jurisdiction to settle any dispute or claim

arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

Consultancy and Support Services – Schedule 1

1. INTERPRETATION:

- 1.1 **Deliverables:** all products and materials developed by Heron IT in relation to the Project in any media, including computer programs, data, diagrams, reports and specifications (including drafts).
- 1.2 **Project Manager:** means the person appointed by Heron IT to oversee and manage the Project.
- 1.3 **Project Milestone:** a date by which a part of the Project is estimated to be completed, as set out in the Project Plan.
- 1.4 **Project Plan:** the detailed plan describing the Project and setting out the estimated timetable (including Project Milestones) and responsibilities of each of the parties for, or in connection with, the provision of the Services by Heron IT in accordance with the Contract.

2. HERON IT'S OBLIGATIONS AND RIGHTS

- 2.1 Heron IT shall supply the Services to the Client from the Contract Date in accordance with this Contract.
- 2.2 Heron IT may subcontract the provision of all or any part of the Services to third parties.
- 2.3 Heron IT shall use reasonable endeavours to manage and complete the Project, and to deliver the Deliverables to the Client, in accordance in all material respects with the Project Plan.
- 2.4 Heron IT shall use reasonable endeavours to meet the performance dates specified in the Project Plan, but any such times and dates (whether for delivery, installation, Activation and /or performance, or otherwise) shall be estimates only and time shall not be of the essence of the Contract.
- 2.5 In supply and Activation of the Services, including the delivery of IT Crisis Support, Heron IT shall:
- (a) perform the Services:
 - (i) with reasonable care and skill; and
 - (ii) during Opening Hours;
 - (b) use reasonable endeavours to perform and supply the Services in accordance with the applicable service description, subject to any service levels being target service levels only;
 - (c) comply with all applicable laws, statutes and regulations from time to time in force and observe all reasonable health and safety rules and regulations and security requirements that reasonably apply at any of the Client's Premises and have been previously communicated to Heron IT, provided that Heron IT shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Heron IT shall notify the Client in any such event and shall not be liable under this Contract if, as a result of needing to comply with any such law or requirement, it is rendered in breach of any of its other obligations under this Contract;
 - (d) take reasonable care of all Client Materials in its possession and make them available for collection by the Client on reasonable notice and request, provided always that Heron IT may destroy the Client Materials if the Client fails to collect the Client Materials within a reasonable period after termination of this Contract;
 - (e) not be liable for:
 - (i) temporary loss or disruption to other telecommunications services;
 - (ii) any defect or default in the Services, or any part of them, that is attributable to elements that are not provided by it

but by other third parties and/or manufacturers (such as but not limited to access circuits, modems, routers, installation);

(iii) on the delivery of IT Crisis Support, any further device or system errors or failures that develop, appear or become known after the commencement of Heron IT's delivery of Services, save for in the case of gross misconduct or gross negligence of Heron IT;

(iv) issues resulting from the Client's use of infrastructure (including Infrastructure as a Service (IaaS) / Platform as a Service (PaaS) / Software as a Service (SaaS)), networks, devices, internet connections, software or services where the relevant infrastructure, network, device, software or service is not included in the Managed IT Environment;

(v) the failure or poor performance of the Client's power source and/or power supply;

(vi) any changes or modifications made to the Client's operating system, environment or equipment except where made or approved by Heron IT;

(vii) device failures, where any rectification work or rebuild shall be subject to the prior agreement of Heron IT (at its sole discretion) and in such circumstances shall agree to use its reasonable endeavours (but no guarantee) to resolve such device failure. Any such work shall be quoted and invoiced to the Client separately;

(viii) the Client not acting on a recommendation from Heron IT (given in writing) that additions, changes or updates to the Managed IT Environment are required;

(ix) any virus or malware attacks, cyber security or security breaches, data protection compliance issues, nor privacy products or services;

(x) unexpected or inappropriate (in Heron IT's professional and reasonable opinion, taking into account industry best practice) or unauthorised (by Client's IT policy) software or application downloaded, saved or located on a user's device;

(xi) any new software or application downloaded, saved or located on a user's device or Client's system not advised to Heron IT in advance and on reasonable notice, unless otherwise agreed in writing by Heron IT;

(xii) any third party act, omission or circumstance which results in unavailability of all or any section of the Managed IT Environment, whether malicious or not (other than where the third party is a subcontractor engaged by Heron IT) or any unauthorised access to the Managed IT Environment; or

(xiii) a Force Majeure Event.

2.6 Heron IT shall appoint the Project Manager who shall have authority to contractually bind Heron IT on all matters relating to the Project. Heron IT shall use reasonable endeavours to ensure that the same person acts as the Project Manager throughout the Project, but may replace him or her from time to time where reasonably necessary in the interests of Heron IT's business.

3. CLIENT'S OBLIGATIONS

3.1 The Client shall:

(a) co-operate with Heron IT in all matters relating to the Project and appoint the Client's Project Manager, who shall have the authority to contractually bind the Client on matters relating to the Project;

(b) provide in a timely manner such access to the Client's premises and data, and such office accommodation and other facilities, as is requested by Heron IT;

(c) provide in a timely manner such information as Heron IT may request, and ensure that such information is accurate in all material respects; and

(d) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services.

4. CHANGE CONTROL

4.1 The Client's Project Manager and Heron IT's Project Manager shall meet at a reasonable agreed time, during business hours, to discuss matters relating to the Project. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

4.2 If either party requests a change to the scope or execution of the Services, Heron IT shall, within a reasonable time, provide a written estimate to the Client of:

- (a) the likely time required to implement the change;
- (b) any variations to Heron IT's charges arising from the change;
- (c) the likely effect of the change on the Project Plan; and
- (d) any other impact of the change on the terms of the Contract.

4.3 If Heron IT requests a change to the scope of the Services, the Client shall not unreasonably withhold or delay consent to it.

4.4 If the Client wishes Heron IT to proceed with the change, the Heron IT has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

Managed Service Bundle – Schedule 2

A. Heron IT is an authorized reseller of certain Microsoft and Other Third Party Cloud Products and provides managed services to support its clients' use of cloud services.

B. Heron IT and the Client have agreed that Heron IT will supply the Client with the Managed Service Bundle in accordance with this Contract.

C. Microsoft Cloud Products are supplied to the Client subject to the applicable Microsoft Client Agreement, which is a direct agreement between Microsoft and the Client and the NCE Subscription Terms. Other Third Party Cloud Products are supplied to the Client subject to the applicable third party cloud agreement or terms and conditions ("Other **Third Party Terms**", which is between the applicable third party and the Client and, as applicable to Cloud Products, including as applicable the NCE Subscription Terms.

D. The Client acknowledges and accepts that where the Cloud Products are provided by Microsoft or a Third Party, any representations or warranties regarding the use of the Products are set out in the Client Agreement and/or applicable Third Party Terms. Heron IT has no responsibility for the suitability, availability, functionality or otherwise regarding the Managed Service Bundle and Cloud Products.

E. Interpretation:

Exception Factors: means the factors described in Paragraph 5 of this Schedule 2.

Incident: means an issue in respect of the Managed IT Environment or an issue that the Client is experiencing in accessing or using the Managed IT Environment.

Managed IT Environment: means the client's IT environment or specified part of it that is managed by Heron IT under the Managed Service, but excluding: (a) equipment that is not covered by warranty; (b) all or any part of any home networks; (c) equipment which is primarily for personal use (not for business purposes); and (e) hardware and software installed without the knowledge of Heron IT.

System Uptime: is a measure of system reliability, expressed as the percentage of time that a system has been working and available and is subject, at all times, to the Exception Factors.

F. This Contract includes:

1. Bundled Supply – inclusions

(Supplied in accordance with this Contract)

Microsoft 365 and other Microsoft Cloud Products	As set out in the Order Form.
Additional Microsoft subscriptions and licenses	<p>The Client authorises Heron IT to purchase additional Microsoft subscriptions and additional licenses for the Client:</p> <ul style="list-style-type: none">- as requested in writing by Client; or- following the Client's written acceptance of a quote or proposal from Heron IT; or- as required to provision additional users or additional requirements. <p>The Client acknowledges that the Managed Service Bundle will cover all additional Microsoft subscriptions and licenses given that this is a bundled supply.</p>

Other Third Party Cloud Products (non-Microsoft)	As set out in the Order Form and subject to the applicable Third Party Terms set out in the Order Form.
Additional third party subscriptions and licenses	The Client authorizes Heron IT to purchase additional third party subscriptions and additional licenses for the Client: <ul style="list-style-type: none"> - as requested in writing by Client; or - following the Client's written acceptance of a quote or proposal from Heron IT.
	The Client acknowledges that the Managed Service Bundle will cover all additional third party subscriptions and licences given that this is a bundled supply.

Managed Services

- IT operations management including performance monitoring
- Application support
- Maintenance and Optimization
- Security Services
- Dedicated account management

The Managed Service is extended automatically to cover additional subscriptions and licenses to use other Microsoft Cloud Products and Other Third Party Cloud Products.

2. **Basis of supply**

A. Microsoft Cloud Products

Basis of Supply – Microsoft Client Agreement	<p>All Microsoft Cloud Products are supplied subject to this Contract and the applicable Microsoft Client Agreement. The Microsoft Client Agreement is an agreement between Microsoft and the Client.</p> <p>Client Agreement: The Microsoft Client Agreement is a direct agreement between the Client and Microsoft and it is a condition of Cloud Solution Provider Program that the Client enters into this agreement, which is available at: https://www.microsoft.com/licensing/docs/customeragreement and which may be updated from time to time any such updates shall continue to form part of the Client Agreement.</p> <p>The Client acknowledges receipt of the current Microsoft Client Agreement from Heron IT and by purchasing Microsoft Cloud Products from Heron IT the Client confirms its acceptance of the Microsoft Client Agreement, which the Client confirms it has read and acknowledges its terms. If required by Heron IT, the Client will confirm its acceptance of the Microsoft Client Agreement in writing. If Heron IT agree to or accept the Microsoft Client Agreement on behalf of the Client and in accordance with a request by the Client, Heron IT shall be acting as agent and shall have no responsibility, obligation nor liability to the Client or Microsoft, nor be a party to the Microsoft Client Agreement.</p> <p>The Client acknowledges that Heron IT is not permitted to revise</p>
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	the Microsoft Client Agreement in any way.
Subscription Renewals	If Microsoft updates the Microsoft Client Agreement will apply as above and the Client must accept the new Microsoft Client Agreement at or before renewal of their subscription. The updated Microsoft Client Agreement (if any) will be made available to the Client prior to the subscription renewal and by permitting the subscription to renew, the Client is deemed to have accepted the updated Microsoft Client Agreement.

B. Other Third Party Cloud Products

Basis of supply (non-Microsoft) and Other Third Party Terms	<p>Supplied subject to the applicable third party cloud agreement or terms and conditions or Other Third Party Terms, which applies between the third party and the Client.</p> <p>The relevant third party cloud agreements or terms and conditions shall be made available to the Client and by purchasing Other Third Party Cloud Products the Client</p>
	<p>confirms its acceptance of the relevant third party cloud agreements or terms and conditions, which the Client confirms it has read and acknowledges its terms. If required by Heron IT, the Client will confirm its acceptance of the relevant Other Third Party Terms, including third party cloud agreements or terms and conditions in writing.</p> <p>If Heron IT agree to or accept Other Third Party Terms, including a third party cloud agreement or terms and conditions on behalf of the Client and in accordance with a request by the Client, Heron IT shall be acting as agent and shall have no responsibility, obligation nor liability to the Client or the third party, nor be a party to the relevant third party cloud agreement or terms and conditions.</p>

3. Pricing and payment

Pricing	As set out in the Order Form.
Price increases	<p>Pricing may be increased by Heron IT for the next renewal term, on 30 days written notice in writing to the Client, or on written notification at any time if pricing of Microsoft Cloud Products and Other Third Party Cloud Products is increased (or the basis of pricing is changed) by Microsoft or the relevant third party supplier.</p> <p>Pricing will increase in line with increases in the number of subscriptions and licenses included in the Managed IT Environment and any other changes to the Managed IT Environment.</p>

4. Term

Term:	<p>As set out in the Order Form being an Initial term of 12 months or 3 years from the Contract Date .</p> <p>On expiration of the initial term or any subsequent renewal term, this Contract will automatically renew for the renewal term as set out in the Order Form unless a party provides written notice to the other party in accordance with the Order Form that it does not wish the Contract to renew in which case the Contract will terminate on expiration of the initial term or renewal term as applicable and as specified in the Order Form.</p>
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Service requests

The Client may make service requests in respect of any Incident.

Service request logging procedure	<p>Email to support@heronit.co.uk</p> <p>Telephone call to 01473 350444</p>
Telephone request hours	9am to 5.30 Monday to Friday excluding Public Holidays
Client obligations	Accurate description of issue and number of workers affected.

Scope of Agreement

- 1.1 Heron IT will provide the Managed Service Bundle to the Client:
 - (a) with reasonable skill and care; and
 - (b) in accordance with:
 - i. this Contract;
 - ii. currently accepted principles and practices applicable to the provision of the Managed Service;
 - iii. all applicable laws; and
 - iv. the reasonable instructions of the Client.

2 Change Control

2.1 Changes to the Managed IT Environment automatically include all additional Cloud Products purchased under this Contract following the Contract Date.

2.2 Changes to the Managed IT Environment will be controlled by email or other written communication between the parties. Where a change to the Managed IT Environment requires a change to the pricing for the Managed Service, that pricing change will be notified by Heron IT to the Client in writing and will be implemented and charged to the Client accordingly unless the Client notifies Heron IT within 5 Business Days following the notification being issued to the Client.

3 Out of scope

3.1 Where services that are out of scope or expressly excluded from Managed Services, then should they be provided by Heron IT (solely at its own discretion), the services will be charged at Heron IT's standard hourly rates.

4 Client responsibilities

4.1 The Client is responsible for:

- (a) Maintaining secure and private passwords; and
- (b) Physical security and safety of working environment.

5 Exception Factors

5.1 Heron IT has no obligation to address or remedy an Incident and shall take no responsibility for any assessment or agreed target System Uptime where the Incident has arisen due to any of the following Exception Factors:

- (a) issues resulting from the Client's use of infrastructure (including IaaS/PaaS), networks, devices, internet connections, software or services where the relevant infrastructure, network, device, software or service is not included in the Managed IT Environment;
- (b) the failure or poor performance of the Client's power source and/or power supply;
- (c) any changes or modifications made to the Client's operating system, environment or equipment except where made or approved by Heron IT;
- (d) device failures, where any rectification work or rebuild shall be subject to the prior agreement of Heron IT (at its sole discretion) and in such circumstances shall agree to use its reasonable endeavours (but no guarantee) to resolve such device failure. Any such work shall be quoted and invoiced to the Client separately;
- (e) the Client not acting on a recommendation from Heron IT (given in writing) that additions, changes or updates to the Managed IT Environment are required in order for the System Uptime continue to be met;
- (f) any virus or malware attacks, cyber security or security breaches, data protection compliance issues, nor privacy products or services;

- (g) and absence of antivirus, antimalware or cyber security products, services, applications, software or programmes that are known of by Heron IT and available, but which Heron IT has not recommended, provided to the Client or added to the Managed IT Environment;
- (h) unexpected or inappropriate (in Heron IT's professional and reasonable opinion, taking into account industry best practice) or unauthorised (by Client's IT policy) software or application downloaded, saved or located on a user's device;
- (i) any new software or application downloaded, saved or located on a user's device or Client's system not advised to Heron IT in advance and on reasonable notice, unless otherwise agreed in writing by Heron IT;
- (j) any third party act, omission or circumstance which results in unavailability of all or any section of the Managed IT Environment, whether malicious or not (other than where the third party is a subcontractor engaged by Heron IT) or any unauthorised access to the Managed IT Environment;
- (k) in respect of System Uptime, any time period for which restoration, backup and maintenance functions will be performed;
- (l) in respect of System Uptime, during planned maintenance: Planned maintenance is maintenance on all or any part of the Managed IT Environment for which Heron IT provides a minimum of one weeks' notice in writing to the Client. To be scheduled at times to minimize impact to the Client; or
- (m) a Force Majeure Event.

6 Microsoft Client Account

6.1 For the purposes of this Contract, the Client is responsible for all activity in any Microsoft portal customer account between the Client and Microsoft, including without limitation, all subscriptions and licenses of Microsoft Cloud Products.

6.2 Heron IT has no obligation, under this Contract, to supervise or in any way monitor the Client's requests for subscriptions or additional licenses to Microsoft Cloud Products, or the suitability of the Client's subscriptions.

7 Microsoft Cloud Products - Administrator Access

7.1 The Client acknowledges and agrees that:

- (a) once this Contract is signed by both parties, the Client will receive a link from Heron IT at which the Client will confirm Heron IT as being its supplier of the Microsoft Cloud Products (unless this has already occurred);
- (b) Heron IT and the Distributor will (following confirmation by the Client under (a) above, unless this has already occurred):
 - i. be the primary administrator of the Microsoft Cloud Products for the Client for the term of this Contract; and
 - ii. have administrative privileges and access to Client Data;
- (c) the Client may at any time request additional administrator privileges from Heron IT; and
- (d) the Client can, at its sole discretion and at any time during the term of this Contract, terminate Heron IT's and the Distributor's administrative privileges. The Client appoints Heron IT and the Distributor as its agent for the purposes of interfacing with and providing instructions to Microsoft for the purposes of this Contract.

7.2 The Client shall:

- (a) allow Heron IT or its designated subcontractors and third parties, necessary admin access to the Client's relevant servers and networking systems from a user account dedicated to Heron IT for the duration of the Contract;
- (b) where a Microsoft Cloud service is deployed / utilised within the Services (Azure, Enterprise Mobility Suite or Office365) Heron IT will be assigned to the cloud subscription/s as the Claiming Partner of Record (CPOR) and/or Digital Partner of Record (DPOR) and/or Transacting Partner of Record (TPOR) and/or Partner Admin Link (PAL) (as applicable) and/or given Delegated Administration Privileges (DAP) and/or Granular Delegated Admin Privileges (GDAP) and/or Admin on Behalf of (AOBO) (as applicable) for the Term. For the avoidance of doubt, in the event Microsoft adds to,

updates and/or replaces any of the foregoing designations, this Clause 7.2(b) will apply to any such added, updated and/or replaced designations from time to time;

(c) in respect of any Microsoft funded services (if applicable), sign and deliver the Microsoft Proof of Execution (“**POE**”) within seven (7) days of the date of issue by Microsoft. In the event that the Client does not return the POE within the seven (7) days’ notice period, Heron IT may be entitled to charge the Client the amounts directly and the Client shall follow the payment terms in this Contract.

8 Subscriptions to Microsoft Cloud Products

8.1 Nothing in this Contract alters the rights and obligations of the Client or Microsoft under any agreement between Microsoft and the Client (**Microsoft Cloud Agreement and, or Client Agreement**) which is accepted by the Client in respect of all Microsoft Cloud Products.

The Client acknowledges and agrees that Microsoft may send direct communications to the Client related to the terms of the Microsoft Cloud Agreement or the operation or delivery of the Microsoft Cloud Products subject to compliance with the Data Protection Legislation.

- 8.2 For all Consumption Subscriptions (“**Consumption Subscriptions**”), the Client agrees and acknowledges that:
- (a) Heron IT shall send to the Client automatic monthly use reports based on the Client’s monthly usage of the relevant Other Third Party Service in accordance with the requirements set out in the applicable Order Form
In the event that the Client’s use of the Subscription Services proves to be greater than the use reported, the Client shall reimburse Heron IT in full for any claims from its third parties, including Microsoft, in respect of the Client’s use of the Subscription Services;
 - (b) any adjustments or revisions to its monthly use report must be provided by the Client within seven (7) days of the original invoice date together with a detailed explanation of the adjustment or revision;
 - (c) Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions can be cancelled in accordance with the Order Form, Other Third Party Terms or Customer Agreement and any usage before a transfer to another provider is in effect will be billed in the next scheduled invoice date;
 - (d) Consumption Subscriptions may be subject to a cap. It will be billed at the next billing cycle including all usage from the prior month. Pricing will be based on the pricing effective during the current billing cycle except when prices decrease or increase. The unit price for the applicable Other Third Party Service sold on a Consumption basis may change during the subscription period;
 - (e) where applicable, it shall pay all such usage and is responsible for monitoring its Consumption needs. For the avoidance of doubt, this includes payment for all such usage where the Client has knowingly or unknowingly subscribed to such Consumption Subscriptions. Any licences initiated or activated in error will still be charged to the Client; and
 - (f) for the avoidance of doubt, if the Client utilises the applicable Other Third Party Services in excess of any cap, the Client shall pay to Heron IT the Fees and other expenses in accordance with its actual use.

9 Support for Microsoft Cloud Products

9.1 Heron IT is the Client's point of contact for the Client for all operational and technical support questions related to the Microsoft Cloud Products. Heron IT's support policies, support hours, incident response time and service levels are as described in this Contract.

9.2 If the Client considers that it has a claim under the Microsoft Cloud Agreement (being the service level commitments made by Microsoft to the Client in respect of the Microsoft Cloud Products), the Client must notify Heron IT in order for the matter to be escalated to and reviewed by Microsoft.

9.3 The Client acknowledges that Heron IT cannot remedy, and has no obligation to seek to remedy, any defect or purported defect in the Microsoft Cloud Products that may be identified by the Client and that the remedy (if any) that the Client may have in relation to such defects is contained in and subject to the Client's applicable Microsoft Cloud Agreement.

10 Adjustments to Cloud Product subscriptions

10.1 The Client may increase its subscriptions to Cloud Products during the term of this Contract by requesting Heron IT to make an adjustment (or where applicable by making an adjustment itself). These adjustments will result in increased subscription costs and so an increase in the bundled price payable under this Contract.

11 Pricing and payment

11.1 Where specified in this Contract, Heron IT may charge at its standard hourly rates for any additional services provided, which are outside of the Managed Service Bundle.

12 Warranty position for Microsoft Cloud Products

12.1 Heron IT will use reasonable endeavors to assist the Client to deal with Microsoft on any warranty claims in respect of the Microsoft Cloud Products, whether under the Microsoft Cloud Agreement or otherwise.

12.2 Subject to Paragraph 10 and Paragraph 13.1 of this Schedule 2, Heron IT has no obligations in respect of defects, support requirements or otherwise for the Microsoft Cloud Products including without limitation that in the event of any defect or failure of the Microsoft Cloud Products. Heron IT has no obligation to provide any interim hardware, software, other equipment or remedial service.

13 Warranty by Heron IT

13.1 Heron IT warrants that the Managed Service will be provided with due care and skill by people that have the requisite skills, expertise and competency.

13.2 With the exception of the warranty given under Paragraph 13.1 of this Schedule 2, 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.

14 Consequences of termination

14.1 On termination of a subscription for Microsoft Cloud Products, the Client will have 30 days to migrate any Client Data to either a new subscription or some other service.

**APPENDIX TO SCHEDULE 2
NCE SUBSCRIPTION TERMS**

1. NCE Subscription

1.1 Where the Services include the provision of NCE (“**NCE Subscription Services**”), the NCE Subscription Services shall be provided in accordance with and governed by the Order Form and these terms (which are hereinafter referred to as the “**NCE Subscription Terms**”).

1.2 The following definitions in this paragraph 1.2 apply in these NCE Subscription Terms.

Cap: is the total monthly volume of Microsoft services which the Client is permitted to use.

Minimum Users: the minimum users as provisioned from time to time.

Online Service: any of the Microsoft-hosted online services subscribed to by Client.

Subscription(s): the purchase of a Subscription Service.

Third Party Distributor: the third party who sells the Product(s) to the Client or Heron IT (as the case may be).

1.3 Except as defined in these NCE Subscription Terms, capitalised terms shall have the meanings given to them in the Contract.

1.4 To the extent applicable to the NCE Subscription Services, in the event of conflict with the terms of these NCE Subscription Terms and the Contract, the provisions in these NCE Subscription Terms shall take precedence and in the event of a conflict with the terms of these NCE Subscription Terms and a Order Form, the provisions of the Order Form shall take precedence over these NCE Subscription Terms.

2. Service Provision

2.1 By submitting an order for NCE Subscription Services, the Client (i) represents that any subscription commitments and requirements disclosed are complete and accurate in all respects; (ii) agrees to pay Heron IT for all orders it submits for Cloud Products and the Subscription Services; (iii) agrees to the terms of the Contract and the Order Form.

2.2 By placing an order with Heron IT, the Client represents and warrants that the Client has accepted the Customer Contract.

2.3 Once an order for a Subscription Services has been accepted by Heron IT:

(a) Subscriptions shall continue for the duration of the applicable Term unless terminated in compliance with the Order Form or Clause 13 of the Contract; and/or

(b) where this relates to an annual or multi-year fixed term subscription, adjustments may only be made to increase the Minimum Commitment and not decrease (excluding monthly commit) below any current Minimum Commitment provisioned as more fully set out in the Contract, these NCE Subscription Terms and the Order Form (as applicable to the NCE Subscription Services).

3. Client's obligations

The Client agrees and acknowledges to adhere to the terms of the Client Contract which govern the use of the Subscription Services and the Online Services.

4. Fees

4.1 Fixed Term Subscriptions.

(a) Cloud Products sold under fixed term Subscriptions are sold for a term as specified in the Order Form. The Order Form shall specify if such Subscriptions are to be billed on a monthly or annual basis.

(b) Any subsequent adjustments to annual Subscriptions (e.g. adding users) made mid-billing cycle will be invoiced and paid at the time of placing the order.

(c) Any subsequent adjustments to monthly Subscriptions (e.g. adding users) made mid-billing cycle will be calculated and post-billed at the subsequent invoice.

4.2 For the avoidance of doubt, Heron IT may increase any fees related to the Subscription Services in line with any increases imposed upon Heron IT by Microsoft or Third Party Distributor. For the avoidance of doubt: (i) the prices for Cloud Products may change without notice; and (ii) Heron IT will not be required to provide any prior notice before the effectiveness of a decrease or increase in Product Fees that relates to a currency fluctuation event.

4.3 Heron IT may change credit or payment terms for unfilled orders if, in Heron IT's reasonable opinion, the Client's financial condition, previous payment record, or relationship with Heron IT merits such change.

5. **Intellectual Property Rights**

5.1 The Client acquires only such limited rights to use the Cloud Products as is explicitly described in the Customer Contract. Any use by the Client of these rights beyond the scope permitted by the Customer Contract shall constitute a material breach hereof.

5.2 Heron IT is not liable for defects in, or delays related to the Cloud Products.

5.3 For the avoidance of doubt, if a claim for infringement concerns the Product, the separate terms and conditions of the Customer Contract shall apply and is a separate action between the Client and Microsoft.

6. **Cancellation**

6.1 Subject to paragraph 6.2, where the Client has procured Cloud Products or Online Services from Heron IT, the Client may cancel the applicable order in line with the terms set out by Microsoft if the Client notifies Heron IT within twenty four (24) hours of placing the initial order for the applicable Microsoft Cloud Products or Online Services. For such notice to cancel to be effective, it must be received by Heron IT within the hours of 9am – 4pm (GMT) on a Business Day.

6.2 The Client acknowledges and accepts that any cancellation pursuant to paragraph 6.1 will only be accepted if submitted by Heron IT within Microsoft's designated cancellation period for the applicable Online Service or Product and is approved by Microsoft and/or the Third Party Distributor (if applicable) and is in accordance with any other requirements of Microsoft and/or Third Party Distributor (if applicable) at the time of cancellation. If cancellation is approved by Microsoft and/or Third Party Distributor, then the order will be cancelled.

6.3 Depending on the service or product being cancelled, if and to the extent any credit of the purchase price (in full or pro-rata) is issued by Microsoft or the Third Party Distributor (if applicable) to Heron IT, on receipt of the same, Heron IT will pass on any such credit to the Client less any Microsoft and/or Third Party Distributor handling fee as a proportion of the value of any order submitted and approved after the designated period for the relevant Product or Online Service. Heron IT is not liable to the Client if Microsoft and/or Third Party Distributor do not issue a credit.

7. **Limitation of liability**

7.1 For the avoidance of doubt, the terms set out in the Customer Contract govern the rights and responsibilities of the Client and Microsoft in relation to the use of the Subscription Services and Online Services and Heron IT excludes any and all liability in relation to the use of the Cloud Products. All other services which fall outside the Subscription Services and Online Services are governed by the terms of the Contract and shall take precedence over the terms of the Customer Contract should any conflict arise over the use of such services.

7.2 Notwithstanding anything, to the contrary in the Contract, the Client shall indemnify Heron IT from and against any claims, including but not limited to claim for licence fees that directly or indirectly arise from the Client's use of the Subscription Services or reporting under the Contract.

8. **Term & Termination**

8.1 Subject to paragraph 2.3, fixed term Subscriptions for Cloud Products will automatically renew at the end of the applicable Subscription term for a term equal to the initial Subscription term, unless the Client gives at least thirty (30) days' prior written notice in the case of monthly terms, and ninety (90) days' prior written notice in the case of annual or multi-annual terms, of non-renewal. Such notice to expire at the next renewal date.

8.2 The Client's perpetual licences and licences granted on a subscription basis will continue for the duration of the subscription period(s) set out in the Order Form notwithstanding termination of the Contract, subject to the terms of these NCE Subscription Terms and the Contract (as applicable). Unless otherwise specified in the applicable the Order Form (as applicable to the NCE Subscription Services), the Client shall remain liable for any and all payments due in respect of the licences until the end of the respective subscription period.

8.3 Termination of the licences will not affect any other Services provided under these NCE Subscription Terms or the Contract.

8.4 Heron IT shall not be liable whatsoever to the Client following any termination or suspension of the Subscription Services for legal, regulatory or any other reason reasons by Microsoft or the Third Party Distributor.

8.5 Heron IT may terminate the NCE Subscription Services immediately on giving written notice to the Client if:

- (a) payment of any amount due from the Client under these NCE Subscription Terms is overdue by ten (10) Business Days or more provided that Heron IT has given the Client ten (10) days' written notice of such failure to pay;
- (b) upon termination by Microsoft or the Third Party Distributor of the licence(s); and/or
- (c) in accordance with the Customer Contract.

8.6 On termination of the Contract for any reason, in addition as provided in the Contract:

- (a) for metered Cloud Products billed periodically based on usage, the Client must immediately pay for unpaid usage as of the termination date; and
- (b) if Microsoft is in breach, and the Client is entitled, the Client will receive a credit for any Subscription Services fees, including amounts paid in advance for unused consumption for any usage period after the termination date.

Equipment and Software Sales – Schedule 3

A. Definitions and Interpretation

A.1 The following are the standard terms and conditions under which Heron IT sells computer hardware, licences computer software and supplies related services. These Terms and Conditions shall, unless otherwise expressly stated in writing, apply to the subject matter of any agreement in respect thereof.

A.2 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

“Acceptance Certificate” means a document to be used in conjunction with the supply of Equipment to be signed by the Client on delivery indicating their acceptance of that delivery; and

“Supplier” means any supplier of Equipment or Services to Heron IT.

B. Equipment Specifications

B.1 Heron IT shall use reasonable endeavours to advise the Client of variations to Equipment specifications following formal notification to Heron IT of such variations by Heron IT.

B.2 Where changes to Equipment specifications significantly alter the price or fitness for purpose of the Equipment Heron IT and the Client shall agree upon such changes in writing or arrange for the supply of alternative Equipment.

B.3 Changes to Equipment specifications shall not provide grounds for cancellation of Client orders unless such cancellation is agreed to in writing by Heron IT and the Client.

C. Hardware and Software Equipment

C.1 Equipment shall be supplied by Heron IT on the terms and conditions of use for such Equipment as defined by Heron ITs at the time of delivery.

C.2 Heron IT gives no warranty to the Client in respect of Equipment that is purchased by Heron IT from a Supplier for resale to the Client but shall take reasonable steps to assist Client in pursuing warranty claims against the relevant Supplier.

C.3 Unless otherwise specified in the Contract, Heron IT shall only deliver non-modifiable and executable run-time versions of Software.

C.4 The Client must comply with the terms of Heron IT's software licenses.

D. Delivery and Acceptance

D.1 Unless it is agreed otherwise delivery shall be to the Client's address as specified in the Contract.

D.2 Heron IT shall not be liable for any shortfalls in delivery or variation from Equipment specification on delivery unless a claim in writing is made by the Client within three (3) Business Days of delivery.

D.3 In circumstances where Heron IT has attempted to physically deliver Equipment to the Client and the Client is unable or unwilling to accept such delivery, the Client will be charged for the cost of the failed delivery in addition to any and all subsequent attempts. If the Client is unable to accept delivery, a new date shall be set by mutual agreement of the parties. If the Client is unwilling to accept delivery, the parties shall seek to vary the Contract as appropriate by mutual agreement.

D.4 Where the necessity for such has been agreed in advance and not otherwise the Client shall sign Heron IT's Acceptance Certificate stating on signature any defects or exclusions.

D.5 Acceptance of a delivery requiring an Acceptance Certificate is deemed to occur on the signing of the Certificate on the date of delivery, which date shall be recorded on the Certificate.

D.6 Heron IT shall on the signing of the Acceptance Certificate be entitled to invoice the Client.

D.7 If, as a result of defects or exclusions in a delivery of Equipment or the provision of Services, the Client does not sign a required Acceptance Certificate, further work may be agreed between the parties to remedy such defects. Heron IT shall use all reasonable endeavours to undertake such work without delay.

D.8 If, as a result of defects or exclusions in a delivery of Equipment or the provision of Services, the Client does not sign a required Acceptance Certificate and subsequently uses the Hardware or Software or the results of Services provided without prior Contract as to any remedial work on the part of Heron IT then the Client is deemed to have accepted the same.

D.9 Unless previous arrangements have been made for collection of the Goods by or on behalf of the Client Heron IT will arrange for transportation and delivery of the Goods at Heron IT's risk or at the carrier's risk to the Client's normal place of business which unless otherwise stated shall be free of charge. Where delivery is to a place other than the Client's normal

business address then Heron IT will normally charge for delivery. Upon receipt of notice of collection Heron IT will make the Goods available for collection by the Client and his carrier as specified in such notice. Risk or loss or damage of any kind to the Goods shall pass Ex-Works to the Client upon delivery to or to a carrier on behalf of the Client.

D.10 Heron IT will use reasonable commercial endeavours to supply the Goods by any time or date agreed with the Client but time of delivery or collection as the case maybe shall not be of the essence of any contract for the supply of Goods. Any date specified in a Quotation for delivery or collection is approximate only and in the event of Heron IT's failure to supply and deliver or make available for collection the Goods on or before such date for any reason Heron IT shall not be liable for any loss or damage suffered by the Client as a result nor shall this constitute a breach or repudiation of the Contract

D.11 Heron IT shall at its sole discretion be entitled to supply the Goods by instalments and to make available the Goods for delivery or collection as the case may be in such instalments. Each instalment shall be deemed to be the subject of a separate contract and in particular delay in supply of an instalment shall not affect the balance of the Contract in question nor entitle the Client to terminate the same.

D.12 In relation to goods other than business machines and business network systems the Client shall examine the Goods forthwith following delivery or collection of the Goods as the case may be and within 48 hours thereof the Client shall notify Heron IT in writing of any defects in the Goods together with details of the defects and shall notify Heron IT of any short or over delivery. The Client shall permit all such defective Goods to be inspected by Heron IT. In the absence of the receipt of such notice by Heron IT it shall be discharged from all responsibility and liability in respect of all defects which have occurred during transportation.

D.13 In relation to business machines and business network systems Heron IT shall test the Goods at its premises before supply to the Client. In addition Heron IT shall test the Goods at the Client's premises after installation. Unless otherwise agreed in writing the testing of the Goods shall be at no charge to the Client.

D.14 Heron IT shall at its sole discretion be entitled to charge the Client for installation of Goods at the Client's premises.

D.15 The Client shall prepare the area of installation for the goods and provide access to the location and to any services or facilities that maybe required to install the Goods. Where the same has not been prepared or provided or Heron IT is prevented from carrying out installation at the pre-arranged date and time through no fault of Heron IT, Heron IT shall be entitled to charge for same.

E. Warranty

E.1 Subject to these Terms and Conditions and in respect of Equipment which is directly produced by Heron IT or Services provided directly by Heron IT, the only warranty given by Heron IT to the Client is that Heron IT shall in accordance with normally accepted professional standards make good as quickly as is reasonably possible and at its own expense any defects identified on any relevant Acceptance Certificate or which develops during a period of five (5) Business Days after delivery of the Equipment or performance of the Services.

E.2 Heron IT does not warrant that the Equipment are free from minor errors not materially affecting performance. Such errors shall not be rectified in the absence of a prior written agreement to the contrary.

E.3 The undertaking given in this Paragraph shall not apply if the Equipment has been altered by any party other than Heron IT or has been operated or run on any platform or in any environment inappropriate for the Equipment.

F. Inspection and testing of Equipment

F.1 Heron IT shall:

F.1.1 test and inspect the Equipment on delivery to ensure that it complies with the requirements of the Contract; and

F.1.2 if so requested by the Client, give the Client reasonable advance notice of such tests (which the Client shall be entitled to attend).

G. Return of Equipment

G.1 The return of Equipment shall be at the sole discretion of Heron IT but in any circumstance where Heron IT agrees to accept return of Equipment for any reason then the Client shall:

G.1.1 advise Heron IT within three (3) Business Days from the date of delivery of Equipment by Heron IT of the reason(s) for the return of Equipment;

G.1.2 obtain a returns advice from Heron IT prior to any return of Equipment;

G.1.3 complete and return to Heron IT the returns advice to arrive at Heron IT within three (3) Business Days from the date of delivery of Equipment by Heron IT;

G.1.4 properly pack the Equipment in the original packing where possible and include a detailed packing list;

G.1.5 return the Equipment in the condition in which they were received to arrive at Heron IT within five (5) Business Days from the date of delivery of Equipment by Heron IT;

G.1.6 take no action to effect any warranties that may cover the Equipment; and

G.1.7 retain all original manufacturer's packaging and return this to Heron IT intact and sealed with the Equipment.

G.2 Heron IT shall be entitled to levy to the Client a reasonable administration charge amounting to no more than the cost of return delivery and the staff time spent on handling the return in respect of return of Equipment and the Client shall pay the same to Heron IT within ten (10) Business Days of invoice.

H. Title and Risk

H.1 Risk of loss or damage in respect of any tangible item shall pass to the Client on delivery or collection of the item by the Client or his agent.

H.2 The legal and beneficial ownership of Equipment and/or associated material supplied as part of Equipment and/or Services shall remain with Heron IT until payment in full in respect of all such Equipment and associated material supplied as part of Equipment and/or Services has been received by Heron IT in accordance with the terms of the Contract.

H.3 Until such payment is received in full Heron IT may without prejudice to any of its rights recover or resell any of the Equipment and/or associated material and may enter upon the Client's premises by its servants or agents for that purpose.

H.4 Where a licence shall be granted by a Supplier and/or Heron IT to the Client then the Client shall not have the benefit of the licence until payment in full has been received by Heron IT.

I. Payment

I.1 The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall, in the absence of a written explanation from the Client that has been duly accepted by Heron IT, render the Client in material breach of the Contract.

I.2 Invoices shall be paid by the Client in full and in cleared funds within the number of Business Days of the invoice date set out in the Order Form;

I.3 If payment of any invoice is otherwise due it shall become automatically due immediately on the commencement of any act or proceeding in which the Client's solvency is involved.

J. Client's Obligations

J.1 During the continuance of the Contract the Client shall:

J.1.1 provide, free of charge, reasonable usage of machine time, communications, stationery, media, suitable working accommodation and access deemed necessary by Heron IT to fulfil the Contract and shall provide an appropriate environment or platform to enable Heron IT to provide the Services or test run any Equipment and, in particular, the Client warrants to Heron IT that the Client shall provide an environment capable of receiving the Services or Equipment;

J.1.2 furnish Heron IT promptly upon receipt of a request such information as Heron IT may reasonably require for the provision of the Services;

J.1.3 nominate prior to the provision of any of the Services under the Contract an authorised representative to be its prime point of contact with Heron IT during the continuance of the Contract;

J.1.4 ensure the accuracy and validity of all data and technical information provided to Heron IT;

J.1.5 allow Heron IT reasonable access to its employees for the purpose of investigation and discussion in connection with the Contract and ensure that its employees cooperate fully with Heron IT in relation to the provision of the Services;

J.1.6 provide free and safe access to the Location as is necessary by Heron IT to comply with its obligations under the Contract; and

J.1.7 ensure that equipment provided by Heron IT for the purpose and provision of the Contract shall not be modified, changed or removed without prior written permission of Heron IT. Where such equipment is modified, changed or removed then the cost of restoring or replacing the equipment shall be recovered from the Client.

J.2 Heron IT and the Client shall indemnify each other and keep each other fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by negligent act or omission, wilful misconduct or breach of contract by the other, its employees or agents.

K. Performance

K.1 Heron IT shall use its reasonable endeavours to comply with any day or dates for despatch or delivery of Equipment and for the supply of Services as stated in the Contract. Unless the Contract contains express provisions to the contrary, such dates shall constitute only statements of expectation and shall not be binding. If Heron IT, having used its reasonable endeavours fails to despatch or deliver the Equipment, or to supply or complete the Services by such date or dates whether or not binding, such failure shall not constitute a breach of the Contract. The Client shall not be entitled to treat the Contract as thereby repudiated or to rescind it or any ancillary Contract in whole or in part or claim compensation for such failure or for any consequential loss or damage resulting therefrom.

K.2 When expedited delivery is agreed to by Heron IT and the Client and necessitates overtime or other additional costs, the Client shall reimburse Heron IT for the amount of such overtime payment or other costs and shall pay the same in full

and in cleared funds within the number of Business Days of the invoice date set out in the Order Form.

K.3 If performance of the Contract is suspended at the request of or delayed through default of the Client including, but without prejudice to the generality of the foregoing, incomplete or incorrect instructions, or refusal to accept delivery of the Equipment or Services for a period of twenty (20) Business Days, Heron IT shall be entitled to payment at the then prevailing rates for the Services already performed, Equipment supplied or ordered and any other additional costs thereby incurred and the Client shall pay such sums in full and in cleared funds within the number of Business Days of the invoice date set out in the Order Form.

L. Intellectual Property Indemnity

L.1 Heron IT shall indemnify and hold the Client and its employees from and against all loss and damage and cost and expense resulting from or arising out of any threatened or actual infringement of patents, copyright, registered designs or other intellectual property rights belonging to any party provided that the Client shall:

L.1.1 notify Heron IT in writing of any allegation or infringement;

L.1.2 make no admission without Heron IT's consent; and

L.1.3 at Heron IT's request allow Heron IT to conduct and/or settle all negotiations in or prior to litigation and give Heron IT all reasonable assistance in respect thereof.

Right for Consumers to end our engagement within 14 days – Schedule 4

You have the right to end our engagement at any time. If you are a consumer, The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (the **Regulations**) give you an additional legal right to cancel our engagement within 14 days without giving any reason. This means that if you change your mind during that period or for any other reason you decide you do not want to continue with our engagement, you can notify us of your decision to cancel the contract and receive a refund.

Your legal right to cancel our engagement ends after 14 days from the day on which the contract between us is concluded, which is the day you sign the Order Form and / or Standard Terms and Conditions, or are otherwise deemed to agree to its terms.

To cancel our engagement, you must inform us of your decision to cancel this engagement by a clear statement (e.g. a letter sent by post or e-mail). You may contact us by post using the details set out in the Order Form and / or Standard Terms and Conditions, or by emailing enquiries@heronit.co.uk.

To cancel your engagement under the Regulations, you must send your communication concerning your exercise of the right to cancel to us before the cancellation period has expired. You may use the attached model cancellation form, but it is not obligatory. If you requested us to begin the performance of the service during the cancellation period, you shall pay us an amount which is in proportion to what has been performed until you have communicated to us your cancellation, in comparison with the full coverage of our engagement. In most cases, we would expect this to be the fees we have incurred (calculated at our standard hourly rates) up until the time you communicate to us your cancellation.

If you did not request us to begin performance, you will receive a full refund of the price you have paid (if any) for our services. We will refund you using the method by which you originally paid for the services, and you will not incur any fees as a result of the refund. We will process the refund due to you as soon as possible and, in any case, within 14 days after the day on which we are informed about your decision to cancel this contract.

Cancellation Notice

To: Heron IT Limited

Email: enquiries@heronit.co.uk

I/We* hereby give notice that I/We* cancel my/our* contract for the supply of the following service:

[insert brief description of services]

Ordered on: *[insert date of initial instruction]*

Name(s):.....

Address:.....

Signature(s):

Date: