



TERMS AND CONDITIONS

Thrive General Terms and Conditions

PART 1 – GENERAL TERMS AND CONDITIONS

This part of the General Terms and Conditions applies to all Products and Services that We sell.

1 INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply in these conditions:

“Additional Terms” means the additional terms that apply specifically to the Services ordered

“Annualised Charges” means the actual charges payable over a period of 12 months immediately preceding the issue giving rise to a claim or, if the Contract has been in force less than 12 months, the average actual monthly charges paid by the Customer multiplied by 12. This liability cap calculation shall only apply to the actual charges (or actual average monthly charges) set out in the Order Confirmation which relates to the affected Services and not all Services provided to You by Thrive under other contracts

“Business Day” means any day other than Saturday or Sunday or a bank or public holiday in England

“Confidential Information” means technical and commercial know-how, specifications, inventions, processes, initiatives and software code which is or are of a confidential nature together with any other confidential information concerning a party’s business, finances, customers, products and services and any other information specified by either party as being confidential in nature

“Contract” has the meaning given in clause 2.2 of Part 1

“Customer” means the person, firm or company receiving the Products and/or Services as identified in the Order Confirmation and a reference to “You” or “Your” shall be construed accordingly

“Data Protection Clauses” means the terms set out in Part 4

“Deliverables” means the deliverables and/or output of the Services as described in the Project Scope

“Delivery Location” means the location set out in the Project Scope or such other location as the parties may agree in writing

“Effective Date” means the date specified in the Order Confirmation

“Estimate” means an illustration of current prices for cloud services supplied by Us to You

“Force Majeure Event” has the meaning given in clause 14.1 of Part 1

“General Terms and Conditions” means the terms and conditions set out in this document

“Initial Term” means the initial term of the Contract as specified in the Order Confirmation or, if no such period is referred to in the Order Confirmation, the relevant period of time set out in the Additional Terms that relates to that Product or Service or if no such period is stated, for a period of seven years

“Intellectual Property Rights” means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

“Licence” means a licence from a manufacturer to use its software

“Thrive” or “Us” or “Our” or “We” means Thrive Operations Limited, a company registered in England & Wales with company number **02698057** and whose registered office number is located at 16-22 Crawley Green Road, Luton, Bedfordshire, LU2 0QX

“Order Confirmation” means our order confirmation document or, in the case of Products sales only, the order acknowledgement from Sage

“Personal Data” means personal data supplied by You to Us pursuant to the Services and as may be described in the relevant Additional Terms and/or Order Confirmation

“Pre-existing Materials” means all documents, information and materials provided by Us relating to the Service which existed prior to the Effective Date, including, data, reports and specifications and any pre-existing materials specified in the Project Scope

“Privacy and Data Protection Requirements” means the Data Protection Act 1998 (until repealed), the Data Protection Directive (95/46/EC) (until repealed) and, from 25 May 2018, the General Data Protection Regulation 2016/679 (“GDPR”) or any equivalent provision which may replace the GDPR following the formal political separation of the United Kingdom of Great Britain and Northern Ireland from the European Union, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations which may be in force from time to time relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction;

“Products” means the products supplied by Us to You as detailed in the Order Confirmation

“Quotation” means the quotation document supplied by Us to You

“Renewal Term” has the meaning given in clause 7 of Part 3

“Project Scope” means Our document detailing the Products and/or Services to be provided to You

“Security Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed

“Service Failure” means any failure, error or defect in the provision of the Services by Us but excluding:

(a) any failure, misconfiguration, error or defect arising from, caused by or contributed to by Your acts or omissions or those of third parties (including other providers of telecommunications, computers or other equipment or services including internet services);

(b) any failure caused by a bug or defect within the equipment; or

(c) any failure, error or defect arising as a result of a Force Majeure Event

“Services” means the services, including (where relevant) the Deliverables, supplied by Us to You as described in the relevant Additional Terms and Order Confirmation

“Service Description” means the service description document that describes the individual Services to be provided under the contract including the priorities and responsibilities of each party and service credit regime

“System” means Your information technology system including hardware, software, operating systems and interfaces (if any)

“Term” has the meaning given to it in clause 7 of Part 3 unless specific Additional Terms apply to the Services in which case “Term” shall have the meaning given to it in those Additional Terms

“VAT” means Value Added Tax chargeable under English law for the time being and any similar additional tax

“Virus” means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices

“Your Equipment” means any equipment, systems, cabling or facilities provided by You and used directly or indirectly in the supply of the Services

1.2 A **“person”** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and a reference to one gender shall include a reference to the other genders.

1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

- 1.5 Any words following the terms **“including”, “include”, “in particular”** or **“by way of example”** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.6 Any reference to **“parties”** is a reference to the parties in this Agreement and a **“party”** shall mean either party as the context permits.
- 1.7 **“Data subject”, “personal data”, “processing”** and **“appropriate technical and organisational measures”** shall bear the meanings given to those terms respectively in the DPA and, from 25 May 2018, the GDPR.

2 CONTRACT TERMS

- 2.1 These General Terms and Conditions set out the basis on which We and You will do business.
- 2.2 Each Order Confirmation will create a separate Contract between You and Us (**“Contract”**) with regard to its subject matter and will incorporate the terms in the following documents:
- 2.2.1 the Quotation (No Quotation will be provided for Cloud services as only an Estimate can be provided for Cloud services);
 - 2.2.2 the Order and Order Confirmation;
 - 2.2.3 the Project Scope;
 - 2.2.4 the relevant Additional Terms for those Services as specified in the Order Confirmation; and
 - 2.2.5 these General Terms and Conditions.
- 2.3 Each purchase order or request for Our Products or Services (or any document of equivalent nature provided by You) shall constitute an offer by You to receive the Products and/or Services. If We choose to accept Your offer then We shall send to You the Order Confirmation at which point the Contract will be formed between You and Us. The date of the Order Confirmation shall be the **“Effective Date”** which is the date the Contract is formed.
- 2.4 Any terms that You seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, shall be excluded from the Contract.
- 2.5 Any error or omission in Our sales literature, quotations, Estimates or other document issued by Us shall be subject to correction without liability on Our part.
- 2.6 You shall be responsible for ensuring the accuracy of the Project Scope and Order Confirmation and for giving all relevant information concerning the Products and/or Services to Us.
- 2.7 If there is a conflict or inconsistency between some or all of the documents which make up the Contract, the order of priority for interpretation shall be as set out in clause 2.2 of Part 1.
- 2.8 The General Terms and Conditions, the Additional Terms, the Order and the Project Scope on their own create no obligation or right on behalf of either party, except where expressly stated otherwise. For a Contract to exist, an Order Confirmation must be provided incorporating the relevant terms in accordance with clause 2.2 of Part 1.

3 CHARGES & PAYMENT

- 3.1 Specific terms regarding payment and charges for the Services are set out in the relevant Additional Terms for those Services. The terms set out in this clause 3 are applicable to all Services unless varied by the Additional Terms which relate to the Services supplied.
- 3.2 You must pay all invoices by the due date for each invoice. We may offer credit for payment and, where We elect to do so, Our standard payment due date will be 30 days from the date of invoice. We do not have to grant credit and can withdraw credit at anytime provided We have given You written notice of this.
- 3.3 If We have not received Your payment of Our charges by the due date:
- 3.3.1 We may suspend the supply of Services in this Contract (and any other contracts that We have with You) until all outstanding invoices are paid;
 - 3.3.2 We may charge interest which shall accrue on such unpaid invoice from the date it became overdue, until payment, at the current rate payable under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended).;
 - 3.3.3 We may immediately cancel any discount offered, should You fail to make payment by 15 days after the due date.
- 3.4 All amounts and fees stated in the Quotation and/or Estimate and/or Order Confirmation for Product and Services are exclusive of VAT which shall be added to Our invoices at the current rate.
- 3.5 If You dispute the validity of any invoice, You shall notify Us in writing within 5 days of receipt of such invoice. You will still be obliged to pay the invoice in accordance with the payment terms set out in clause 3.2. We will work with You to resolve the dispute.
- 3.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

4 INDEMNITIES

- 4.1 You shall indemnify Us against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with Your use of the Products and/or the Services.
- 4.2 Where Thrive is the reseller of licensing Products or Services (for example, off-the-shelf products) which are owned or manufactured by a third party, Thrive gives no warranty that those Products or Services do not infringe any third party's Intellectual Property Rights. We will use commercially reasonable efforts to transfer to You the benefit of any such warranty that We receive from Our licensor, supplier or manufacturer (as the case may be). We cannot exercise any discretion over the type of remedy or the promptness with which that remedy is delivered. We accept no liability for any loss suffered arising from a third party Intellectual Property Right claim including inability to use the Products or Services.
- 4.3 Subject to clause 4.2, where Thrive is the owner or proprietor of the Product and/or Service provided to You, We shall defend You against any substantiated claim that any Intellectual Property Rights forming part of those Products and/or Services infringes any valid third party Intellectual Property Rights, and shall

indemnify You for any amounts awarded against You in judgment or settlement of such claims, provided that:

4.3.1 We are given prompt notice of any such claim;

4.3.2 You provide reasonable co-operation to Us in the defence and settlement of such claim, at Our expense; and

4.3.3 We or Our nominated third parties are given sole authority to defend or settle the claim.

4.4 In the defence or settlement of the claim arising under clause 4.3, We may obtain for You the right to continue using the relevant Products and/or Services, replace or modify the Products and/or Services so that it or they become non-infringing or, if such remedies are not reasonably available, terminate the Contract without liability to You.

4.5 Regarding an infringement claim arising under clause 4.3, We shall have no liability if the alleged infringement is based on:

4.5.1 modification of such Products and/or Services by anyone other than Us;

4.5.2 Your use of the Products and/or Services other than as specified by Us; or

4.5.3 Your use of such Products and/or Services after notice of the alleged or actual infringement from Us or any appropriate authority.

4.6 You will indemnify Us against claims by any third party that data and information provided by You in relation to the Products or Services provided by Us infringe the Intellectual Property Rights of any third party. You are solely responsible for excluding any infringing material.

5 LIABILITY

5.1 This clause 5 sets out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You. This clause must be read in conjunction with the liability clauses contained in the applicable Additional Terms to the relevant Services.

5.2 Except as expressly provided in the Order Confirmation or Additional Terms:

5.2.1 You assume sole responsibility for results obtained from the use of the Products and/or Services by You; and

5.2.2 all warranties, conditions and other terms implied by statute or common law are excluded from the Contract.

5.3 Nothing in this Contract excludes Our liability for:

5.3.1 death or personal injury caused by Our negligence;

5.3.2 fraud or fraudulent misrepresentation; or

5.3.3 any other liability that cannot be excluded as a matter of law.

5.4 Subject to clause 5.3, We shall not be liable whether in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise arising under or in connection with the Contract for any:

- 5.4.1 direct or indirect loss of profit;
- 5.4.2 direct or indirect loss of goodwill;
- 5.4.3 direct or indirect loss of business or contracts;
- 5.4.4 direct or indirect loss of business opportunity;
- 5.4.5 direct or indirect loss of anticipated saving;
- 5.4.6 direct or indirect loss or corruption of data or information; or
- 5.4.7 special, indirect or consequential damages.

5.5 Subject to clauses 5.3 and 5.4, and unless an alternative liability cap is provided in the relevant Order Confirmation or Additional Terms to which the Product and/or Service giving rise to the claim relates, Our total aggregate liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to:

- 5.5.1 where the claim relates to the Products supplied under the Contract, 300% of the charges for those Products giving rise to the claim; or
- 5.5.2 where the claim relates to the Services supplied under the Contract, 125% of the Annualised Charges for the Services giving rise to the claim.

5.6 If the performance of Our obligations under the Contract is prevented or delayed by any act or omission of You, Your agents, subcontractors, consultants or employees, We shall not be liable for any costs, charges or losses sustained or incurred by You that arise directly or indirectly from such prevention or delay.

6 CONFIDENTIALITY

6.1 Except as provided for under clauses 6.2 and 6.3, both parties shall treat all information related to the provision of Services or supply of Products as Confidential Information and shall keep such Confidential Information confidential.

6.2 Clause 6.1 shall not apply to the extent that:

- 6.2.1 the information was in the possession of the disclosing party without obligation of confidentiality prior to its disclosure;
- 6.2.2 such information was obtained from a third party without obligation of confidentiality;
- 6.2.3 such information was already in the public domain at the time of disclosure;
- 6.2.4 such information was independently developed without access to the other party's Confidential Information; or

6.2.5 such information is required to be disclosed by law, by a court of competent jurisdiction or by any regulatory or administrative body.

6.3 Each party may disclose Confidential Information to its personnel directly involved in the provision of the Services or supply of the Products and who need to know the information for that purpose. Each party shall ensure that each of its personnel receiving the information pursuant to this clause 6.3 are aware of and comply with the confidentiality obligation set out in this clause 6.

7 PERSONAL DATA

7.1 If We process any Personal Data In the course of performing the Services, You shall be the data controller and we shall be the data processor of the Personal Data. Where We are the data processor, You and We shall comply with our respective obligations as set out in the Data Protection Clauses.

7.2 Each party warrants to the other that at all times it will process personal data in compliance with the Privacy and Data Protection Requirements.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 Save for any Intellectual Property Rights which are owned by Our suppliers or licensors, and subject to clause 8.2, all Intellectual Property Rights in or arising out of or in connection with the Services, Deliverables and/or Pre-Existing Materials shall be owned by Us. You are granted a temporary, non-transferrable, royalty-free licence to use the Intellectual Property Rights contained in the Pre-Existing Materials and Deliverables strictly for the purpose for which they are provided to You. This licence shall immediately cease when the Contract is terminated or expires. Any Intellectual Property Rights in developments to the Pre-Existing Materials or Deliverables shall vest automatically in Thrive.

8.2 You acknowledge that, where We do not own any of the Pre-Existing Materials, Your use of rights in Pre-existing Materials is conditional on Us obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle Us to license such rights to You.

9 SUSPENSION OF SERVICES AND/OR DELIVERY OF PRODUCTS

9.1 We may suspend the Services and/or delivery of Products immediately:

9.1.1 if You fail, after a further written warning from Us, to pay any amount due under the Contract on the due date for payment;

9.1.2 if You commit a material breach of any of the terms of the Contract and (if such a breach is remediable) fail to remedy that breach within 30 days of You being notified by Us in writing of the breach;

9.1.3 You become subject to any of the events listed in clause 11.2.2 of Part 1;

9.1.4 if in Our reasonable opinion You fail to meet or comply with any term of the Contract, in which case the Services, and/or delivery of Products shall remain suspended until such time as You demonstrate to Our reasonable satisfaction that You have remedied Your breach or non-compliance;

9.1.5 where We become aware or have reasonable suspicions that fraud or illegal misuse has taken place or is likely to take place; or

9.1.6 We are required to do so by law.

9.2 In addition to any specific rights set out in the relevant Additional Terms, on suspension of the Services and/or delivery of Products any outstanding invoices shall become immediately payable.

10 WARRANTIES

10.1 We warrant that the Product or Licences shall conform in all material respects with their description. We will use all reasonable endeavours to transfer to You the benefit of any warranty that We receive from the Products' manufacturer but otherwise give no warranty regarding the Products. The terms and exclusions of the manufacturer's warranty shall apply to any claim made regarding non conformance with the manufacturer's warranty.

10.2 In order to make a valid claim regarding a Product or Deliverable:

10.2.1 You must give Us notice in writing within 20 Business Days of discovery that some or all of the Deliverables do not comply with the warranty set out in clause 10.1 or that there are issues with the Products which give rise to a warranty claim against the manufacturer;

10.2.2 We or the Product manufacturer must be given a reasonable opportunity of examining such Products or Deliverables; and

10.2.3 You must return such Products and/or Deliverables to Our place of business at Our request or return the Products to such third party address as notified to You in writing by Us or the Product's manufacturer.

10.3 We shall not be liable for the Deliverables' failure to comply with the warranty in clause 10.1 if:

10.3.1 You make any further use of such Deliverables after giving Us notice in accordance with clause 10.2.1;

10.3.2 the defect arises because You or Your employees, agents or subcontractors failed to follow the instructions regarding storage, installation, commissioning, use or maintenance of the Deliverables;

10.3.3 You alter or repair such Deliverables without Our prior written consent; or

10.3.4 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

10.4 Where a valid warranty claim is presented and upheld by Us, Our obligations arising under a breach of clause 10.1 shall be limited to repairing or replacing the defective Deliverables or refunding that part of the price that relates to the Deliverables.

10.5 Except as provided in this clause 10, We shall have no liability to You in respect of the Deliverables' failure to comply with the warranty set out in clause 10.1.

10.6 We warrant to You that:

- 10.6.1 the Services shall be provided using reasonable care and skill; and
- 10.6.2 We shall provide the Services to You in accordance with the Project Scope in all material respects.
- 10.7 In order to make a valid claim regarding Services that fail to comply with the warranty in clause 10.6:
 - 10.7.1 You must give Us notice in writing within 20 Business Days of discovery that some or all of the Services do not comply with the warranty set out in clause 10.6; and
 - 10.7.2 You must give Us a reasonable opportunity to investigate the matters giving rise to the claim.
- 10.8 Except as provided in this clause 10, We shall have no liability to You in respect of the Services' failure to comply with the warranty set out in clause 10.6.
- 10.9 We shall not be liable to You for the Service's failure to comply with the warranty at clause 10.6 where the issue with the Services arises because You or Your employees, agents or subcontractors failed to follow Our instructions regarding the Services.
- 10.10 All other warranties that are implied by statute, regulation or by custom and practice are excluded from the Contract.

11 TERM AND TERMINATION

- 11.1 Subject to clause 11.2 and any specific terms set out in the Additional Terms to which the Services relate, You cannot cancel a Contract after the Effective Date unless We consent to such cancellation in writing and a condition of such consent shall be that You indemnify and reimburse Us for all losses (including lost revenue and profit), costs, fees, expenses incurred as a result of such cancellation.
- 11.2 Without prejudice to any other rights or remedies to which both parties may be entitled, either party may terminate this Contract without liability to the other if:
 - 11.2.1 the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - 11.2.2 an order is made or a resolution is passed for the dissolution or winding-up of the other party or an order is made for the appointment of an administrator to manage the affairs, business and property of the other party or such an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice of intention to appoint an administrator is given by the other party or its trustees, officers, directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other party's assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/or manager or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action in consequence of debt in any jurisdiction.
- 11.3 Expiry, termination or cancellation of this Contract shall not automatically result in the expiry, termination or cancellation of any other contracts between You and Us.

12 EFFECT OF TERMINATION

12.1 In addition to any specific rights set out in the relevant Additional Terms, on expiry, termination or cancellation of the Contract for any reason:

12.1.1 any outstanding invoices shall become immediately payable;

12.1.2 any licences or other permissions granted by (or on behalf of) Us shall immediately terminate;

12.1.3 You shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to Us and which are supplied as part of this Contract; and

12.1.4 We may destroy or otherwise dispose of all and any of the data collected from the supply of the Services and the Products, unless We receive no later than 10 Business Days after the expiry of the Contract a written request for its delivery to You in which case:

12.1.4.1 We will deliver the items to You within 30 days of receipt of the written request, provided that You have paid all fees and charges outstanding at termination, cancellation or expiry; and

12.1.4.2 You shall pay all reasonable expenses incurred by Us in returning or disposing of the items.

12.2 The accrued rights of both parties as at expiry, termination or cancellation, or the continuation after expiry, termination or cancellation of any provision expressly stated to survive shall not be affected or prejudiced.

13 NON-SOLICITATION OF EMPLOYEES

13.1 Neither party will solicit, entice away or attempt to entice away from the employment of the other, any person employed or engaged by it in the provision or receipt of the Products and/or Services at any time during the Term and for a further period of 6 months after the termination, cancellation or expiry of the Contract.

13.2 If a party ("**Hiring Party**") becomes aware that a person employed or engaged with the other party is or will be employed or engaged by the Hiring Party, it shall notify the other party in writing of this event immediately.

13.3 The Hiring Party shall be obliged to pay to the other party a sum equal to 25% of the total remuneration of the hired person in the 12 months prior to their leaving date with the other party.

14 FORCE MAJEURE

14.1 We shall have no liability to You under the Contract if We are prevented from or delayed in performing Our obligations under the Contract, or from carrying on Our business, by acts, events, omissions or accidents beyond Our reasonable control, including, strikes, lock-outs or other industrial disputes (whether involving Our workforce or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, fire, flood or storm provided that You are notified of such an event and its expected duration ("**Force Majeure Event**").

- 14.2 We shall give You written notice as soon as reasonably practical on becoming aware of an event in clause 14.1. Such notice shall contain details of the circumstances giving rise to the event of force majeure.
- 14.3 Such delay or failure will not constitute a breach of the Contract and the time for performance of the affected obligations will be suspended for the duration of the Force Majeure Event.
- 14.4 If an event specified in clause 14.1 prevents Us from performing Our obligations under the Contract for a continuous period in excess of 4 weeks or for a total of more than 8 weeks in any 12 month period, either party shall be entitled to terminate the Contract by written notice provided a Force Majeure Event remains subsisting at the time of the notice.

15 ASSIGNMENT

- 15.1 You can assign or transfer this Contract provided that You have sought Our prior written consent which We will not unreasonably withhold, condition or delay.
- 15.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of Our rights or obligations under the Contract. We will notify You of such an event in writing and will ensure that any third party to which the Contract is assigned, transferred or subcontracted will be obliged to continue honouring the terms of the Contract in the form that they were in prior to the assignment, transfer or sub-contract.

16 ADDITIONAL TERMS

- 16.1 The Contract forms the entire agreement between the parties with regard to its subject matter and no other terms, conditions, warranties or statements (unless fraudulent) will apply. Each party acknowledges that in entering into the Contract it does not do so on the basis of, and does not rely on any representation, unless made fraudulently, warranty or other provision not expressly contained in the Contract. Any variation to the Contract must be in writing and signed on behalf of both parties. If a court decides that any part of the Contract cannot be enforced, that particular part of the Contract will not apply, but the rest of the Contract will. A waiver by a party of a breach of any provision shall not be deemed a continuing waiver or a waiver of any subsequent breach of the same or any other provisions. Failure or delay in exercising any right under the Contract shall not prevent the exercise of that or any other right. No person other than a party to this Contract shall have any rights to enforce any terms of this Contract. Nothing in this Contract shall create (or be deemed to create) a partnership or agency between the parties. The language of this Contract (including any notices and correspondence) shall be the English language.
- 16.2 The Contract shall not prevent Us from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.
- 16.3 Where You are a public authority and are under an obligation to comply with the Freedom of Information Act 2000 as amended from time to time, including any related guidance or codes of practice ("FOIA"), We shall provide You with reasonable assistance in meeting any requests for information in relation to this Contract in return for a reasonable fee notified by Us to You within 5 Business Days of receipt of any such written request.

17 NOTICES

- 17.1 Any notice given under the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office or its principal place of business as set out in the Order Confirmation.
- 17.2 Any notice shall be deemed to have been received:
- 17.2.1 if delivered by hand, at the time the notice is left at the proper address; or
 - 17.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.
- 17.3 This clause does not apply to the service of any proceedings or other documents in any legal action.

18 DISPUTE RESOLUTION

- 18.1 We shall attempt to resolve any dispute with You arising in relation to the Contract through negotiation between respective senior staff who have authority to settle such dispute. If the matter is not resolved through negotiations then the procedure set out below will apply.
- 18.2 Before pursuing any other remedies available, if a dispute between You and Us cannot be resolved in accordance with the procedure in clause 18.1 then the dispute shall be referred to mediation in accordance with the Alternative Dispute Resolution (ADR) procedure recommended by the Centre for Effective Dispute Resolution (CEDR) using a mediator acceptable to both You and Us. If either party fails or refuses to participate in the ADR procedure, or if in any event the dispute is not resolved within 60 days after reference to the ADR procedure, legal proceedings may be instituted in accordance with clause 19. The mediation shall be conducted in English in London (unless otherwise agreed by the parties).
- 18.3 This clause 18 shall not apply to any action taken to recover any unpaid invoices or debts due to Us.

19 GOVERNING LAW AND JURISDICTION

- 19.1 This Contract and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. Save as set out in clause 18, both parties irrevocably agree that the courts of England and Wales have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract, its subject matter or formation (including non-contractual disputes or claims).

PART 2 – PRODUCTS & LICENCES

This part applies where We supply Products or Licences to You. It should be read in conjunction with Part 1 of the General Terms and Conditions and any Additional Terms which are identified in the Order Confirmation as applying to the Products and/or Licences.

1 PRODUCTS AND LICENCES

- 1.1 The Products are as described in the Quotation and, if provided, a Project Scope.
- 1.2 To the extent that the Products are to be developed or manufactured in accordance with Your specific requirements supplied by You to Us, You shall indemnify Us 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 Us in connection with any claim made against Us for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with Our use and reliance upon Your requirements or Your contribution to the Project Scope. This clause 1.2 shall survive cancellation or termination of the Contract.
- 1.3 We reserve the right to amend the Project Scope if required by any applicable statutory or regulatory requirements.
- 1.4 You shall comply with the manufacturer's recommendations regarding the Products and software.
- 1.5 If the Product that We provide to You is third party software or contains third party software, You agree that such software is provided to You in accordance with any end user licence agreement made available by the software developer, OEM or software owner or licensor. You must accept the terms of that end user licence agreement before making use of the software. If the software developer, OEM or software owner or licensor terminate the end user licence agreement then Your right to use the software will terminate.

2 DELIVERY OF PRODUCTS

- 2.1 We (or Our nominated third party supplier) shall ensure delivery of the Products to the Delivery Location and that the Products are accompanied by a delivery note which shows all relevant Customer and Thrive reference numbers, the type and quantity of the Products and special storage instructions (if any).
- 2.2 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location.
- 2.3 Any dates quoted for delivery of the Products are approximate only and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Products that is caused by a Force

Majeure Event or Your failure to provide Us with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

2.4 If You fail to accept or take delivery of the Products within 5 Business Days of Us notifying You that the Products are ready for delivery, then except where such failure or delay is caused by a Force Majeure Event or by Our failure to comply with Our obligations under the Contract in respect of the Products, We shall be entitled to:

2.4.1 redeliver the Products to the Delivery Location at such reasonable time as We shall set; and/or

2.4.2 store the Products until delivery takes place and charge You for all related costs and expenses (including insurance) but You must still pay for the Products in accordance with the agreed payment terms.

2.5 We (or Our nominated third party supplier) may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle You to cancel any other instalment.

2.6 Each Product shall be supplied subject to the manufacturer's published specification and shall only be subject to amendment if the parties have agreed to such amendment in the Project Scope. We (or Our suppliers or Product manufacturers) reserve the right to make changes to the Products where necessary to comply with any legal requirements and which do not materially affect quality or performance.

3 TITLE AND RISK

3.1 The risk in the Products and/or Licences shall pass to You on completion of delivery. Where the Products are software owned by third parties or contain software which belongs to or is licensed to a third party, that software is licensed to You in accordance with the terms of the end user licence agreement for that software and you do not take title to it.

3.2 Title to the Products and Licences shall not pass to You until We receive payment in full (in cash or cleared funds) for the Products and/or Licences and any other products that We have supplied to You in respect of which payment has become due.

3.3 Until title has passed to You, You shall:

3.3.1 hold the Products and Licences on a fiduciary basis as Our bailee;

3.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Products and/or Licences and take all reasonable steps to store the Products and/or Licences safely and in such a way that they can be identified as Our property;

- 3.3.3 maintain the Products and/or Licences in satisfactory condition, not mix them with other products and keep them insured against all risks for their full price on Our behalf from the date of delivery;
 - 3.3.4 notify Us immediately if You become subject to any of the events listed in clause 11.2.2 in Part 1; and
 - 3.3.5 give Us such information relating to the Products and/or Licences as We may require from time to time.
- 3.4 If You fail to comply with Your obligations in clause 3.3 of Part 2 or if You become subject to an event described in clause 11.2.2 of Part 1 then We may at Our absolute discretion recover the Products and/or Licences from You and You grant Us permission to enter Your premises or any premises where the Products and/or Licences are located in order to recover them.

4 CHARGES

- 4.1 The charges for the Products shall be set out in Our Quotation. We will raise an invoice for the Products at the point of delivery to Us by the manufacturer or supplier, or at the point of delivery of the Products to You by Us or the manufacturer or supplier (whichever is the sooner).
- 4.2 You must pay for the Products even where You fail to take delivery of the Products.

PART 3 – SERVICES

This part applies where We supply Services to You. It should be read in conjunction with Part 1 of the General Terms and Conditions and any Additional Terms which are identified in the Order Confirmation and Project Scope as applying to the Services.

1 SERVICES

- 1.1 The Services will be provided to You in accordance with the Project Scope subject to these General Terms and Conditions and any Additional Terms to which the Services relate.
- 1.2 Where we resell a third party's (for example CISCO or Microsoft) services, including hosted services, use by You of the services will be subject to the third party's end user terms and conditions (for example the CISCO Universal Cloud Agreement or Microsoft Customer Agreement). These terms will also form part of the Contract between You and Us.
- 1.3 Time shall not be of the essence for the performance of the Services. However, We shall use Our best endeavours to meet any performance dates for the Services specified in the Project Scope. We have no liability for failure to meet performance dates where You have not complied with all of Your obligations and duties set out in the Contract or have failed to meet reasonable deadlines for assistance which We have given to You.
- 1.4 We 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 We shall notify You in any such event.
- 1.5 You are only permitted to use the Services in the ordinary course of Your business. You agree to use the Services only in accordance with the Project Scope.
- 1.6 You shall ensure that all Your Equipment is in good working order and suitable for the purposes for which it is used in relation to the **Services**, particularly where We are required to use, integrate or interface Our Services or Products with Your Equipment.
- 1.7 All Services are provided on a fair-usage basis. Three months after the Services have gone live, we will review the amount of usage of the service and where we deem the level to be in excess of fair-usage we shall seek to agree a Change Variation with you to reflect the actual usage. If we cannot agree a Change Variation with you we reserve the right to terminate the Services with 30 days written notice.

2 SERVICE INTERRUPTIONS

- 2.1 We do not warrant that the **Services** will be fault free or free of interruptions or that they will meet Your requirements. We shall not be liable for any failure to provide the **Services** whether this arises from a technical or other failure to the electronic communication network or information technology

system required for the provision of communications services (whether Your systems or a third parties.) You acknowledge that access to the internet, mobile phone networks and other communication media required for the provision of the **Services** are inherently associated with risk including viruses, malware, data security, and piracy, availability of the services and reliability of transmission. We accept no liability for delays, delivery failures, loss of data or inability to provide the **Services** in part or at all arising from such events.

2.2 We do not warrant or guarantee the performance of the internet, mobile phone networks and other communication media required for the provision of the **Services** or that the transmission of data will be secure or error or virus free or that the internet, mobile phone networks and other communication media will be accessible at all times.

2.3 Without limiting the generality of clauses 2.1 or 2.2 of Part 3:

2.3.1 the **Services** may be subject to limitations, delays and other problems inherent in the use of the internet and other communication networks; and

2.3.2 interruptions may occur if We make service alterations. We will use Our reasonable endeavours to minimise such disruptions and, where practicable, give You as much notice of such alterations as possible.

2.4 If You experience any Service Failure, You shall notify Us via Our helpdesk and We shall use reasonable endeavours to restore Services to You as soon as reasonably practicable.

2.5 Unless otherwise specified in the Additional Terms, We have no responsibility for Your Systems and other resources used by You in relation to the Services. We are not responsible for any interruptions or defect in the Services resulting from Your Systems or Your other resources.

2.6 Where We have agreed to provide Services to You which are subject to an SLA, the terms of the SLA shall not be affected by this clause 2 of Part 3.

3 CHANGE CONTROL

3.1 You may, by giving written notice to Us at any time during the Contract, request a change to the Services.

3.2 We shall, at Our standard rates then in force, prepare for You a written estimate of any increase or decrease in the charges, and of any effect that the requested change would have on the overall supply of the Services to You under the Contract.

3.3 You shall inform Us in writing of whether or not You wish the requested change to be made. The Services shall continue without variation until both You and We have agreed and signed a written agreement specifying, in particular, any changes to the Services and charges.

4 YOUR OBLIGATIONS

4.1 You shall:

- 4.1.1 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 4.1.2 where necessary, comply with any reasonable instruction from Us which relates to Your use of the Services;
- 4.1.3 co-operate with Us in relation to the provision of the Services which may include providing without hindrance, and in a timely manner, security access and access to Your System, data and configuration services;
- 4.1.4 make sure that Your System meets the minimum technical specifications for compatibility with the Services as notified by Us from time to time;
- 4.1.5 make sure Your System is supplied and maintained in a safe condition, in good working order and in a way that complies with all applicable legislation or regulations;
- 4.1.6 comply with all applicable laws and regulations with respect to Your activities under the Contract;
- 4.1.7 carry out all other responsibilities set out in the Contract in a timely and efficient manner; and
- 4.1.8 perform any of the obligations and observe any restrictions imposed on You in any applicable Additional Terms.

4.2 You agree that You will not use the Services in a way which would:

- 4.2.1 materially affect, in Our reasonable opinion, the quality of any electronic communications services or other services provided by Us or any third party;
- 4.2.2 compromise the security of any aspects of the Products or the Services by accessing, storing, distributing or transmitting any viruses, Trojan horses, worms, time- bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware; or
- 4.2.3 do anything which does or could cause a degradation of service to any of Our other customers.

4.3 You shall not:

- 4.3.1 access, store, distribute or transmit any data or materials if their transmission using the Service would constitute a breach of the Contract;
 - 4.3.2 access all or any part of the Services in order to build a product or service which competes with the Services; or
 - 4.3.3 sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party.
- 4.4 We reserve the right, without liability to You, to disable Your access to any data or materials that breach the provisions of this clause 4.

5 SECURITY

- 5.1 Where You are or become aware of any matters which You know, or ought reasonably to be expected to know, constitute a threat to the security of the Services, You will promptly notify Us of such matters in writing.
- 5.2 You shall not access, store, distribute or transmit any Viruses, or any material during the course of Your use of the Services that:
- 5.2.1 are unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 5.2.2 facilitate illegal activity;
 - 5.2.3 depict sexually explicit images;
 - 5.2.4 promote unlawful violence;
 - 5.2.5 are discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 5.2.6 in a manner that are otherwise illegal or cause damage or injury to any person or property;

and We reserve the right, without liability or prejudice to Our other rights to You, to disable Your access to any material that breaches the provisions of this clause.

6 CHARGES AND PAYMENT

- 6.1 Other than for cloud services (in which case only an Estimate will be provided), the charges for the Services shall be as set out in the Quotation and, if provided, the Order Confirmation. Where such charges are on a time and materials basis:

- 6.1.1 the charges shall be calculated in accordance with Our standard daily or hourly fee rates, as set out in the Project Scope or, if no specification is given in the Project Scope, as available from Our sales representatives;
 - 6.1.2 Our standard daily fee rates for each individual person are calculated on the basis of an 8.5 hour day from 9.00 am to 5.30 pm worked on Business Days; and
 - 6.1.3 We shall be entitled to charge You for any expenses reasonably incurred by the individuals whom We engage in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and as required by Us for the performance of the Services, the cost of services provided by third parties and the cost of any materials. Ground travel to customer sites up to 100 miles each way is charged at £95 per day. Ground travel to customer sites in excess of 100 miles will require an overnight stay which is charged at £150 per night. Any exceptional travel costs over and above these amounts such as air fares or ground travel to customer site in excess of 100 miles will be recharged at cost.
- 6.2 We shall raise invoices for the Services annually in advance unless We have agreed an alternative payment structure or payment terms in the Order Confirmation or relevant Additional Terms.
- 6.3 Unless otherwise agreed in the Order Confirmation, Project Scope or relevant Additional Term, We may review and increase Our charges with 30 days' notice to You, provided that such charges cannot be increased more than once in any 12 month period and shall not exceed the percentage increase (if any) of the United Kingdom rate of the retail prices index as published by the Office for National Statistics from time to time. This clause 6.3 of Part 3 shall not apply to third party costs over which We have no control and which may be increased at any time. We do not receive notice of changes in these third party costs so these increases will be passed on to You without notice.
- 6.4 Our charges will be determined on the basis of the Project Scope and the assumptions within that Project Scope. If You require Us to exceed the Project Scope or to change or vary the assumptions (or do work which the assumptions would exclude from the Project Scope) then We reserve the right to increase Our charges to reflect the extra work required. Any such change should be dealt with in accordance with clause 3 of Part 3.
- 6.5 All pricing is based on consumption of the Services on a fair usage basis. After three months of the Services being activated We will review with You the actual usage to determine whether the charges for the Services need to be amended.

7 TERM

- 7.1 Unless specified otherwise in the Project Scope or Order Confirmation, the Services shall commence on the Effective Date. Unless the Contract is cancelled under clause 11.1 of Part 1 or terminated in

accordance with clause 11.2 of Part 1, the Contract shall continue for the Initial Term and, thereafter, the Contract shall automatically renew for successive periods of 12 months (each a **“Renewal Term”**), unless:

7.1.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Term or any Renewal Term, in which case the Contract shall terminate upon the expiry of the applicable Initial Term or Renewal Term; or

7.1.2 otherwise terminated in accordance with the provisions of the Contract

and, in respect of the Services, the Initial Term together with any subsequent Renewal Term shall constitute the **“Term”**.

PART 4 – DATA PROTECTION CLAUSES

This part applies where We supply the Services to You and are the data processor of Personal Data. It should be read in conjunction with Parts 1 and 3 of the General Terms and Conditions and any Additional Terms which are identified in the Order Confirmation as applying to the Services including (where relevant) the Deliverables.

1 DATA PROCESSING

- 1.1 This Part 4 shall only apply if We are a data processor of any Personal Data for the purposes of the Privacy and Data Protection Requirements.
- 1.2 We shall process the Personal Data in compliance with Your documented instructions from time to time unless We are required to do otherwise by law in which case We shall inform You about that legal requirement before processing, unless We are prohibited by law to do so on grounds of public interest.
- 1.3 The parties agree that the subject matter, duration, nature and purpose of processing, the type of Personal Data and the categories of data subject are set out in Part 5.
- 1.4 You shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing and transfer in accordance with the Privacy and Data Protection Requirements.

2 AUDIT

- 2.1 We shall keep at Our normal place of business records relating to the processing of the Personal Data insofar as it is necessary to demonstrate compliance with Our obligations under the Data Protection Clauses (“**Records**”).
- 2.2 We shall permit You, on reasonable notice, to gain access to and take copies of, the Records at Our premises and inspect those Records provided that:
 - 2.2.1 such Records shall only be made available to the extent the same are necessary for Us to discharge Our obligations pursuant to the GDPR (and, in particular, Article 28(3)(h) of the GDPR);
 - 2.2.2 You shall use the Records for no other purpose except the purpose of auditing Our compliance with Our obligations under the Data Protection Clauses only;
 - 2.2.3 You shall carry out such inspection as soon as possible after the Records have been made available to You and then return copies of the same to Us as soon as possible after completion of such inspection; and
 - 2.2.4 You shall exercise Your rights under this clause 2 with as little disturbance to Our business operations as possible.

3 OUR PROCESSING OBLIGATIONS

- 3.1 If We become aware of a Security Breach relating to the Personal Data, then We shall, as soon as reasonably practicable, notify You of the same.
- 3.2 For the purposes of Article 28 of the GDPR (*Processor*) We agree that:
- 3.2.1 We shall not engage another processor unless in accordance with clause 6;
 - 3.2.2 all persons authorised to process the Personal Data have entered into a binding contractual agreement with Us to ensure that the Personal Data remains confidential at all times or are under an appropriate statutory obligation of confidentiality in respect of the Personal Data;
 - 3.2.3 We shall, taking into account the nature of the processing, assist You by appropriate technical and organisational measures, in so far as this is possible, for the fulfilment of Your obligations to respond to requests for exercising the data subject's rights laid down in Chapter III GDPR provided that any costs incurred in relation to such assistance shall be borne exclusively by You;
 - 3.2.4 We shall assist You in ensuring compliance with the obligations pursuant to Articles 32 (*Security of processing*) to Article 36 (*Prior consultation*) of the GDPR taking into account the nature of processing and the information available to Us and provided that any costs incurred in relation to such assistance shall be borne exclusively by You; and
 - 3.2.5 at Your option, We shall delete or return all of the Personal Data to You after the end of the Term, and shall delete existing copies unless any provision of the Privacy and Data Protection Requirements requires storage by Us of the Personal Data.

4 WARRANTIES

- 4.1 Without prejudice to clause 3, We warrant that We will implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.

5 EFFECT OF TERMINATION

- 5.1 On any termination of the Contract for any reason or expiry of the Term We shall:
- 5.1.1 unless notified otherwise by You or required by law, as soon as reasonably practicable cease all processing of the Personal Data; and
 - 5.1.2 as soon as reasonably and commercially practicable, return or destroy (as directed in writing by You) all Personal Data, provided to Us by You in connection with the Contract.

6 SUB-PROCESSING

- 6.1 You give to Us general authorisation to engage Our existing sub-processors as at the Effective Date to process the Personal Data on Our behalf.
- 6.2 We shall not engage any additional processor (or change our existing sub-processors) without Your prior authorisation and without acting in accordance with the provisions of this clause 6.
- 6.3 We will notify You of the identity of any proposed new sub-processor following which You shall either approve or reject the appointment of such sub-processor (and any such approval shall not be unreasonably withheld).
- 6.4 If You reject such appointment under clause 6.3, or We do not receive a response from you within 5 Business Days of Our notice under clause 6.3, We shall not sub-contract any of Our obligations under the Data Protection Clauses to such proposed sub-processor and We reserve the right to terminate the Contract on written notice. If You approve the appointment of such sub-processor under that clause, then before such appointment takes effect, We shall enter into and maintain for the duration of such appointment a written agreement with such sub-processor on terms that are similar to those set out in these Data Protection Clauses.

PART 5
GDPR ARTICLE 28 PARTICULARS

ITEM	DESCRIPTION
Subject Matter	The Services.
Duration	The Term.
Nature and purpose of processing	When providing the Services, We may collect, host and store Personal Data. For example, where we provide back up and disaster recovery services, then We will be the data processor. For all other Services, we may incidentally access Personal Data as part of providing the Services.
Type of data	This will vary depending on the type of data being processed. For example, personal data may include names, contact details, place of work, financial details and technical details. It may also include sensitive personal data such as medical records, religious beliefs and/or political opinions.
Categories of data subjects	This will vary depending on the type of data being processed. For example, data subjects may include Your employees, representatives, customers and/or suppliers.