

**TUCO Online Steering Group Agenda
Wednesday 23rd October 2019 at 10:30 am**

**Thames Room, Exhibition & Conference Centre, University of the
West of England, Frenchay Campus, Coldharbour Lane,**

BRISTOL BS16 1QY

1. New Contract

- | | |
|---|----|
| a. Period, Structure & Contract Management | MH |
| b. End User License Agreement (Member & Access) | MH |
| c. Member's Agreement (Member & TUCO) | MH |
| i. Minimum Spend | MH |
| d. Advanced Stock | GC |
| e. Consolidated Billing | MH |
| f. Data dashboards | LP |

2. Development Roadmap

GC

- | | |
|---------------------------------------|--|
| a. Quarter 1 (2020) | |
| i. Improved Ordering Functionality | |
| 1. Product Accreditations | |
| 2. Allergen and nutrition information | |
| 3. Product Images | |
| b. Quarter 2 (2020) | |
| i. Product Accreditations Reporting | |
| ii. PW/TUCO Category Mapping | |
| c. Quarter 3 (2020) | |
| i. Supplier Specials & Promotions | |
| ii. Core & Non-Core Visibility | |

3. Member Feedback

- | | |
|-------------------------|--|
| a. System functionality | |
| i. What works well | |
| ii. Even Better if | |
| b. Implementation | |
| c. Training | |
| d. Support | |

4. Bespoke Project Delivery Manager

5. Any other business

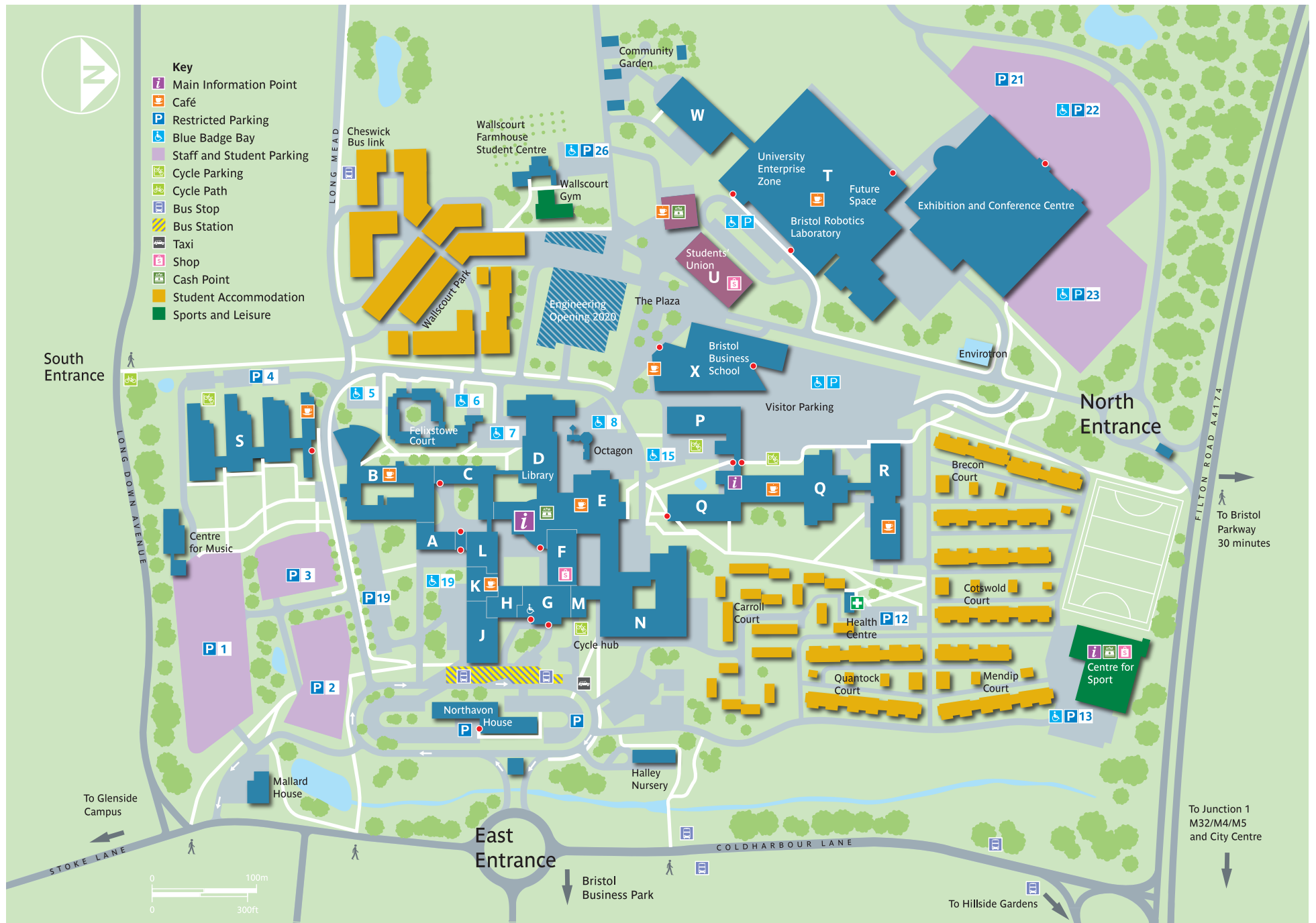
- a. Frequency and location of meetings

Summary & Close

Please Check In to Reception on Arrival

Lunch will be served at 1:00 pm

The meeting will close at approximately 2:30 pm



Frenchay Campus

SAAS ACCESS AGREEMENT

1. Introduction

This SaaS access agreement (**Agreement**) is a legal agreement between you (**You, Your**) and ACCESS UK LIMITED (registration no. 2343760) whose principal place of business is at The Old School, Stratford St Mary, Colchester CO7 6LZ (**We, Us, Our**) for the services (**SaaS**) and any associated documentation (**Documentation**) set out in Your order form or contract (**Order Form**) with Your Reseller. By using the SaaS, You acknowledge acceptance of and agree to comply with the terms of this Agreement.

We grant You access to the SaaS and Documentation on the basis of this Agreement and according to the terms set out in Your agreement with your Reseller.

2. Provision of the SaaS

- 2.1 This Agreement grants You authorisation to access and use the SaaS for the duration of the Term in accordance with this Agreement. In consideration of Us granting you such authorisation, you agree to comply with and be bound by this Agreement.
- 2.2 We shall ensure that Our provision of the SaaS, and You shall ensure that Your use of the SaaS, complies in all respects with all Applicable Laws.
- 2.3 You acknowledge that this Agreement grants authorisation to use the SaaS only (including, to the extent stated in the Order Form, APIs), and does not imply any particular functionality, availability, performance or other characteristics of the SaaS (for which see, where relevant, Your agreement with Your Reseller).

3. Scope of authorised use

- 3.1 We grant You a non-transferable, revocable, non-exclusive authorisation, for the Term, to access and use the SaaS in accordance with this Agreement and Your agreement with the Reseller. For the avoidance of doubt, such authorisation is granted under the UK Computer Misuse Act 1990 and equivalent legislation in Your jurisdiction. Except to the extent that any Software is supplied by Us to be loaded on handheld devices, or where] scripts are served to Your browser software to run on the client side, where the use of such software is governed by a separate limited non-exclusive licence terminating on termination of this Agreement, this Agreement is not a software or copyright licence governed by the Copyrights, Designs and Patents Act 1988 (or equivalent legislation in Your jurisdiction) or otherwise.
- 3.2 Only You may access the SaaS and You may use it solely for Your internal business purposes. Access and use by You means access and use by Your employees, any contract staff who are working for You and any other person working with, or on behalf of, You, but provided that, in each of these cases, the person concerned is accessing and using the SaaS exclusively on Your behalf, for the above purposes and with Your authorisation and provided always that no more than the number of users (each an "**Authorised User**") set out in the Order Form may access and use the SaaS. You shall be responsible for all access to and use of the SaaS by Authorised Users. We reserve the right to monitor Your usage of the SaaS.
- 3.3 You shall not:
 - (a) except as expressly permitted by this Agreement or the Order Form, permit any third party to access or use the SaaS or use the same on behalf of any third party (which

- includes operating any form of facility on behalf of any third party or operating a software bureau or similar service);
- (b) copy, translate, modify, adapt or create derivative works from the SaaS or Our Content;
- (c) create Internet links to the SaaS or frame or mirror any of Our Content on any other server or wireless or Internet-based device;
- (d) attempt to discover or gain access to the source code for the Software or reverse engineer, modify, decrypt, extract, disassemble or decompile the Software.
- (e) attempt to interfere with the proper working of the SaaS and, in particular, must not attempt to circumvent security, usage monitoring, licence control or other protection mechanisms, or tamper with, hack into or otherwise disrupt the SaaS or any associated website, computer system, server, router or any other internet-connected device;
- (f) employ any hardware, software, device or technique to pool connections or reduce the number of devices or users that directly access or use the SaaS (sometimes referred to as 'virtualisation', 'multiplexing' or 'pooling') in order to circumvent any restrictions on scope of authorised use contained in this Agreement;
- (g) obscure, amend or remove any copyright notice, trade mark or other proprietary marking on, or visible during the operation or use of, the SaaS; or
- (h) use or launch any automated system, including, without limitation, "robots", "spiders" or and Screen Scraper;
- (i) use any part of the SaaS to upload, post, email, or transmit viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other software, files or programs that may interrupt, damage, destroy or limit the functionality of any computer software or hardware or network equipment;
- (j) probe, scan, or test the vulnerability of any network or website relating to the SaaS, nor breach the security or authentication measures on such network or website;
- (k) register, operate or otherwise control more than one user account per Authorised User;
- (l) use the SaaS to:
 - (i) upload, store, post, email, transmit or otherwise make available any content that infringes any Intellectual Property Rights or data protection, privacy or other rights of any other person, is (in Our reasonable opinion) defamatory or in breach of any contractual duty or any obligation of confidence, is obscene, sexually explicit, threatening, likely to incite violence or hatred, discriminatory (on any ground), knowingly false or misleading, or that does not comply with all Applicable Laws or is otherwise objectionable or prohibited as set out in Our Acceptable Use Policy published on Our website from time to time;
 - (ii) impersonate any person or entity or otherwise misrepresent Your relationship with any person or entity;
 - (iii) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Customer Data transmitted through the SaaS; engage in any fraudulent activity or further any fraudulent purpose;

- (iv) provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organisation(s) designated by the government of the United Kingdom or any foreign government as a foreign terrorist organisation;
- (v) "stalk" or otherwise harass another person;
- (vi) provide false identity information to gain access to or use the Software or SaaS; and/or
- (vii) attempt to gain unauthorised access to the Software or the SaaS or any related systems or networks,

and shall not permit any Authorised User or other third party to do any of the foregoing. Except in relation to the limited software licence set out in Clause 3.1, these restrictions are absolute and not subject to the exceptions set out in section 296A of the Copyright, Designs and Patents Act 1988.

3.4 You understand that the SaaS may include security components that permit digital materials to be protected, and that use of these materials is subject to usage rules set by Us and/or content providers who provide content to the SaaS. You may not attempt to override or circumvent any of the usage rules embedded into the SaaS. Any unauthorised reproduction, publication, further distribution or public exhibition of Our Content, in whole or in part, is strictly prohibited.

3.5 You acknowledge and agree (notwithstanding any other provision of this Agreement) that Our ability to provide the SaaS Service may be compromised if:

- (a) You do not promptly provide all reasonable assistance, information and decision-making reasonably required by Us from time to time; and
- (b) the Customer Materials are not reliable, accurate and complete in all respects,

and We will have no liability to for delay or failure to provide the SaaS Service to the extent that such delay or failure is the result of Your delay or failure to do so.

4. Administrator, Authorised Users and Customers

- 4.1 You shall designate one contact and one alternate as the responsible party for communication with Us during the term of this Agreement (Your "**System Administrator**"). Your System Administrator shall have the authority to bind You, although another duly authorised representative of You may change Your System Administrator by giving written notice to Us in accordance with clause 14.2.
- 4.2 Your System Administrator may establish accounts for Authorised Users. You are solely responsible for determining the skill, competence, character and other attributes of all Authorised Users.
- 4.3 You shall ensure that each Authorised User shall, as a condition of being granted access to the SaaS, be required by Your System Administrator to acknowledge the obligations on You under this Agreement respecting authorised use (and restrictions on use) of the SaaS and agree to comply with the same. You shall immediately notify Us if You become aware of any breach of the terms of this Agreement or any Policies by any Authorised User.
- 4.4 You shall ensure the security and confidentiality of all log-on identifiers, including usernames and passwords, assigned to, or created by, You or any Authorised User in order to access

or use any SaaS ("**ID**"). You acknowledge and agree that You will be solely responsible for all activities that occur under such ID. You shall promptly notify Us upon becoming aware of any unauthorised access to or use of any SaaS, and provide all reasonable assistance to Us to bring an end to such unauthorised access or use.

4.5 You are responsible for properly configuring and using the SaaS and taking your own steps to maintain appropriate security, protection and backup of the Customer Data and Customer Materials, which may include conducting routine archiving of Customer Data and Customer Materials and the use of encryption technology to protect the Customer Data and Customer Materials from unauthorised access. ID is for Your internal use only and You may not sell, transfer or sublicense any ID to any other entity or person, except that you may disclose ID to Authorised Users in accordance with this Agreement.

4.6 You will be deemed to have taken any action that you permit, assist or facilitate any person or entity to take related to this Agreement, the Customer Data, the Customer Materials or use of the SaaS. You will ensure that all Authorised Users comply with Your obligations under this Agreement and that the terms of any licence or equivalent agreement entered into between You and an Authorised User for the use of the SaaS are consistent with this Agreement. If you become aware of any violation of your obligations under this Agreement by an Authorised User, you will immediately terminate such Authorised User's access to the SaaS.

5. Third party interactions

5.1 We do not endorse any third party or any sites on the Internet that are linked through the SaaS. We provide links and access to third parties only as a matter of convenience, and in no event shall We or Our licensors be responsible for any advice, content, products, or other materials on or available from such companies or sites.

6. Warranties

6.1 You represent and warrant to us that:

- (a) You are authorised to enter into this Agreement and to receive the SaaS as contemplated by this Agreement;
- (b) You own all right, title, and interest in and to the Customer Data and Customer Materials;
- (c) You have all the rights in the Customer Data and Customer Materials necessary to grant the rights contemplated by this Agreement; and
- (d) none of the Customer Data and Customer Materials or the Authorised Users' use of the Customer Data, the Customer Materials, the SaaS will violate the Policies. The Policies are incorporated into this Agreement by reference.

6.2 We warrant that to the best of Our knowledge We have the right to enter into this Agreement and to provide the SaaS as contemplated by this Agreement and;

6.3 We do not control the content posted to or via the SaaS and, in particular, do not control the Customer Data and, as such, We do not make or give any representation or warranty as to the accuracy, completeness, currency, correctness, reliability, integrity, usefulness, quality, fitness for purpose or originality of any of the foregoing content or data. You are solely responsible for the content of the Customer Data and will secure and maintain all rights in Customer Data necessary for us to provide the Software and the SaaS without violating the rights of any third party.

6.4 Except as expressly set out in this Agreement and subject only to clause 9.1, no implied conditions, warranties or other terms, including any implied terms relating to satisfactory quality or fitness for any purpose, will apply to the SaaS



(including any Our Content) or to anything supplied or provided by Us under this Agreement. In particular, We do not warrant that the operation of the SaaS will be uninterrupted, error-free or free of viruses or other malware, or that they will meet Your requirements or will comply with any particular service level agreement or uptime guarantees. Any warranties or other obligation in relation to availability or uptime will be provided in the agreement between You and Your Reseller.

7. Intellectual Property Rights

- 7.1 Except for the rights expressly granted herein, all rights, title and interests to any and all proprietary rights and Intellectual Property Rights in the SaaS including, without limitation, the underlying software, the Software, the Use Data, the Anonymous Data and the Aggregated Data will remain with and be Our exclusive property or that of our licensors.
- 7.2 Except for the rights expressly granted herein, all rights, titles and interests to any and all proprietary rights and intellectual property rights in the Customer Data, will remain with and be Your exclusive property.
- 7.3 You acknowledge and agree that We may derive or create data and information about the use of the SaaS by You and its Users (“**Use Data**”) and We may use and disclose Use Data to its third party service providers in order to improve the SaaS.
- 7.4 You hereby grant to Us a non-exclusive, fully paid, world-wide and irrevocable license to use Customer Data as required to provide the SaaS, and to copy, anonymize, aggregate, process and display Customer Data, to derive anonymous statistical and usage data related to the Service (“**Anonymous Data**”) to compile, combine or incorporate such Anonymous Data with or into other similar data and information available, derived or obtained from other clients, customers, licensees or users of Ours, or otherwise (collectively, Anonymous Data and such compiled, combined or incorporated data and information shall be referred to as “**Aggregate Data**”), to permit Us to provide additional services to Our customers, including the copying, publication, distribution, display, licensing or sale of Aggregate Data and related or similar other statistics or data to third parties pursuant to a separate licensing or services arrangement or licence. We will be the owner of all right, title and interest in and to Anonymous Data and Aggregate Data. Your grant of license to Us to copy, anonymize, aggregate, process, use and display Customer Data and Use Data shall survive the expiry or termination of this Agreement.
- 7.5 We and/or Our licensors shall, as between the parties, remain the owner of all Intellectual Property Rights in Our brands, trade marks and logos, the SaaS (including Our Content but excluding Customer Materials) and the Software. Except as expressly permitted by this Agreement, You may not use any of Our Intellectual Property Rights without Our prior written consent.
- 7.6 You shall promptly bring to Our attention any improper or wrongful use of any of Our Intellectual Property Rights which comes to Your notice. You shall assist Us in taking all steps to defend Our Intellectual Property Rights, but not institute legal proceedings of Your own accord.

8. Indemnities

- 8.1 You shall indemnify Us against all loss or damage that We incur or suffer however arising as a result of or in connection with:
- (a) any Customer Data or Our use and/or possession, in accordance with this Agreement, of any Customer Materials; and/or
 - (b) any claim by a third party as a result of Your use of the Software and/or the SaaS.

9. Exclusions and limitations of liability

- 9.1 Nothing in this Agreement limits or excludes either party's liability:
- (a) for death or personal injury caused by its negligence;
 - (b) for fraudulent misrepresentation or for any other fraudulent act or omission;
 - (c) for any other liability which may not lawfully be excluded or limited.
- 9.2 Subject to clause 9.1, We shall not be liable (whether from breach of contract, tort (including negligence), breach of statutory duty or otherwise) for any: (a) loss of profit; (b) loss of sales, turnover, revenue or business; (c) loss of customers, contracts or opportunity; (d) loss of or damage to reputation or goodwill; (e) loss of anticipated savings; (f) loss or corruption of any software or data; (g) loss of use of hardware, software or data; (h) loss or waste of management or other staff time; or (i) indirect, consequential or special loss; arising out of or relating to this Agreement.
- 9.3 Subject to clause 9.1, We shall not be liable, whether in contract, tort (including negligence), breach of statutory duty, under any indemnity or otherwise, for any loss, damage, expense or liability incurred or sustained as a result of:
- (a) any fault in Your systems that prevents the Software working in or with the Customer System;
 - (b) Your failure to use the SaaS in accordance with its documentation or this Agreement;
 - (c) use of consumables which We have informed You are inappropriate for use with the Software and/or the SaaS;
 - (d) persistent refusal to allow Us access to your systems or relevant data for the purpose of Support;
 - (e) any use of the SaaS except for its normal intended purpose;
 - (f) any adaptation or modification of the Software and/or the SaaS, or integration or combination with any other equipment, software, product or material not supplied by Us, in each case carried out by anyone other than Our or without Our express written consent;
 - (g) any compliance by Us with any design, specification or instructions provided by You or on Your behalf;
 - (h) any Customer Data and/or Customer Materials; or
 - (i) any continued use of a version or release of the SaaS after We have made an alternative version or release of such SaaS available to You, to the extent that any loss or damage suffered by you would have been avoided by the use of such alternative version or release.
- 9.4 Subject to clauses 9.1 and 9.2, Our total liability arising out of or relating to this Agreement or its subject matter and to anything which We have done or not done in connection with the same (whether from breach of contract, tort (including negligence), breach of statutory duty or otherwise) shall be limited to £100. For the avoidance of doubt, any liability for any damages or losses incurred by You that have been caused by or are related to any breach of availability, loss of functionality or any breach of a service level agreement or other uptime guarantee shall be governed by Your agreement with the Reseller and will be subject to any exclusions and limitations therein.

10. Confidentiality

- 10.1 Subject to clause 10.2, each party shall:
- (a) keep confidential all Confidential Information of the other party which it receives in connection with this Agreement;
 - (b) only use such Confidential Information as strictly

necessary for the performance of, or exercise of its rights under, this Agreement;

- (c) not disclose such Confidential Information to any third party (other than its professional advisers, officers, employees, agents, contractors and sub-contractors on a 'need to know' basis as strictly required for the purposes of this Agreement and subject to each such person being bound by an obligation of confidentiality equivalent to this clause 10); and
- (d) promptly, upon request and, in any event, upon termination of this Agreement (for whatever reason), return to the other party all materials (in whatever form) incorporating, embodying or recording any such Confidential Information in its possession or control and, if requested by the other party, certify in writing that it has done so.

10.2 Either party may disclose the other's Confidential Information to the extent required by law or by any court, tribunal, regulator or other authority with competent jurisdiction to order its disclosure (but only to the extent of such requirement).

10.3 You agree that We may refer to You as a client and as a user of the SaaS as applicable in Our marketing and public relations materials.

11. Data Protection

The parties agree to comply with the GDPR Processor Clauses in Schedule 2.

12. Term and termination

12.1 This Agreement shall commence on the Effective Date and shall, unless sooner terminated in accordance with its terms, continue until the termination or expiry of your agreement with Your Reseller

12.2 Either party may terminate this Agreement in respect of an Order Form, at any time, by giving the other written notice if the other:

- (a) materially breaches any term of this Agreement in respect of a Order Form and it is not possible to remedy that breach;
- (b) materially breaches any term of this Agreement in respect of a Order Form and it is possible to remedy that breach, but the other fails to do so within 30 days of being requested in writing to do so; or
- (c) becomes insolvent, makes composition with its creditors, has a receiver or administrator of its undertaking or the whole or a substantial part of its assets appointed, or an is order made, or an effective resolution is passed, for its administration, receivership, liquidation, winding-up or other similar process, or has any distress, execution or other process levied or enforced against the whole or a substantial part of its assets (which is not discharged, paid out, withdrawn or removed within 28 days), or is subject to any proceedings which are equivalent or substantially similar to any of the foregoing under any applicable jurisdiction, or ceases to trade or threatens to do so.

For the avoidance of doubt, termination of the Agreement in respect of an Order Form does not affect any other Order Forms incorporating these terms or the validity of these terms in such Order Forms. For the purposes of this clause 12.2, in order for it to be possible to remedy a breach it must be possible to take steps so as to put the other party into the same position which (save as to the date) it would have been in if the breach had never occurred.

12.3 Without prejudice to clause 12.1, We may, in addition, and

without liability, terminate this Agreement, or alternatively, may suspend Your (or any or all Authorised Users') access to and use of any part of the SaaS or any Support, by giving You written notice, if:

- (a) The Reseller informs us you have not paid the Fees in accordance with your agreement with that Reseller (acknowledging that we are under no obligation to confirm the accuracy of the Reseller's statement);
- (b) You have (or any Authorised User has) misused any part of the SaaS;
- (c) We have a reasonable belief that continued access to or use of the SaaS by You (or any Authorised User) poses a security risk to Us, to other Authorised Users or Our other customers;
- (d) We have a reasonable belief that any registration data supplied by You is untrue, inaccurate, not current or incomplete;
- (e) any provision of clause 3.3 or the Policies is breached; and/or
- (f) You are in persistent or repeated breach of any of Your obligations under this Agreement (whether or not it is the same obligation that is breached and whether or not such breaches are remedied).

13. Consequences of termination

13.1 Upon termination of this Agreement for any reason:

- (a) You shall immediately cease to access, and discontinue all use of, the SaaS;
- (b) unless necessary in order that We may continue to perform Our obligations, We shall cease all access to Your systems and shall return all information, materials, documents and data in Our possession at the date of termination to You within 30 days of the effective date of termination.

13.2 The termination of this Agreement for any reason will not affect:

- (a) any accrued rights or liabilities which either party may have by the time termination takes effect; or
- (b) the coming into force or the continuation in force of any of its provisions that expressly or by implication are intended to come into force or continue in force on or after the termination. Without prejudice to the foregoing, clauses 6, 7, 8, 9, 10, 11, 13 and 14 and Schedule 1 shall survive termination of this Agreement.

14. General

14.1 Neither party shall assign, transfer, charge, hold on trust for another or deal in any other manner with any of its rights or obligations under this Agreement, or purport to do so, or subcontract any or all of its obligations under this Agreement without the prior written consent of the other party, such consent not to be unreasonably delayed or withheld provided that We may transfer or assign this Agreement to any successor in interest in the event of a sale or merger, such transfer or assignment to be effective upon written notice of You.

14.2 All notices and consents relating to this Agreement (but excluding any proceedings or other documents in any legal action) must be in writing. Notices must be sent to the address of the recipient set out in this Agreement, the Order Form or otherwise notified by the relevant party in accordance with this Agreement. Notices shall be sent by hand, by first class recorded delivery or registered post or other form of certified or registered mail (and sent by air mail if posted to or from a place outside the United Kingdom), and shall be treated as having been delivered:



- (a) if sent by hand, when delivered; and
- (b) if sent by certified or registered mail, two days after the date of posting (or, if sent by air mail, seven days after the date of posting).

14.3 Unless the parties expressly agree otherwise in writing, if a party:

- (a) fails to exercise or delays exercising or only exercises partially any right or remedy provided under this Agreement or by law; or
- (b) agrees not to exercise or to delay exercising any right or remedy provided under this Agreement or by law;

then that party shall not be deemed to have waived and shall not be precluded or restricted from further exercising that or any other right or remedy.

14.4 If any provision of this Agreement is held for any reason to be ineffective or unenforceable, this shall not affect the validity or enforceability of any other provision of this Agreement or this Agreement as a whole. If any provision of this Agreement is so found to be ineffective or unenforceable but would be effective or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it effective and enforceable.

14.5 These Terms and Conditions may vary from time to time as published on our website.

14.6 Except to the extent that this Agreement expressly provides otherwise, nothing in this Agreement shall or is intended to create a partnership or joint venture between the parties, constitute one party as agent of the other or give either party authority to make or enter into commitments, assume liabilities or pledge credit on behalf of the other party. Neither

party may act as if it were, or represent (expressly or by implying it) that it is, an agent of the other or has such authority.

14.7 A person who is not a party to this Agreement shall not have any rights under or in connection with it, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

14.8 It is a condition of this Agreement that, in pre-contract negotiations and in the exercise of its rights or the performance of its obligations under this Agreement, each party shall at all times ensure that it complies with the terms of the Bribery Act 2010 and that it does not commit (or procure the commission of) any breach of that Act.

14.9 This Agreement sets out all of the terms that have been agreed between the parties in relation to the subjects covered by it, and supersedes all previous Agreements between the parties relating to such subjects. Provided always that nothing in this clause 14.9 will operate to limit or exclude any liability for fraud or fraudulent misrepresentation, no other representations or terms shall apply or form part of this Agreement and each party acknowledges that it has not been influenced to enter this Agreement by, and shall have no rights or remedies (other than for breach of contract) in respect of, anything the other party has said or done or committed to do, except as expressly recorded in this Agreement.

14.10 This Agreement is governed by English law. Both parties submit to the exclusive jurisdiction of the English courts in relation to any dispute arising out of or in connection with this Agreement or its subject matter, but We are also entitled to apply to any court worldwide for injunctive or other remedies in order to protect or enforce Our Intellectual Property Rights.

SCHEDULE 1

Definitions and interpretation

1. Definitions

In this Agreement, where the context so admits, the following words and expressions shall have the following meanings:

"Acceptable Use Policy" means the acceptable use policy published on Our website, as updated by Us from time to time;

"Aggregate Data" has the meaning given to that term in clause 7.4.

"Anonymous Data" has the meaning given to that term in clause 7.4.

"Applicable Laws" means all national, international and regional laws, statutes, ordinances, rules, regulations, administrative interpretations, orders, injunctions, judgments, directives, decisions, decrees (including all codes of practice and guidance issued by any governmental, regulatory or other competent authority).

"Authorised User" has the meaning set out in clause 3.2;

"Business Day" means each day which is not a Saturday or Sunday or a bank or public holiday in England;

"Confidential Information" means all information (whether written, oral or in some other form) disclosed to or obtained by one party (whether directly or indirectly) from the other (whether before or after the signing of this Agreement), including all information relating to that other's or its Group Members' business, operations, systems, processes, products, trade secrets, know how, contracts, finances, plans, strategies or current, former or prospective clients, customers, partners or suppliers (together with copies made of any of the foregoing) and which information is marked as being confidential or might reasonably be assumed to be confidential, but excluding information which:

- (a) is available to the public other than because of any breach of this Agreement;
- (b) is, when it is supplied, already known to whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others; or
- (c) is independently obtained by whoever it is disclosed to in circumstances in which they are not prevented from disclosing it to others;

"Customer Data" means all data, information and material uploaded to or transmitted through the SaaS by You and/or any Authorised User, other than registration data entered as part of the process of registering as a user of the SaaS;

"Customer Materials" means any material provided or made available by or on behalf of You to Us for the purposes of incorporation into the SaaS for You, including any registration data supplied by You but excluding Customer Data;

"Effective Date" shall be deemed to be the date that You signed the Agreement following execution by both parties.

"Fees" means the fees for the SaaS and Support set out in a

Order Form;

"Group Member" means at the relevant time, in relation to any entity, an entity which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with that entity, where "control" means holding, directly or indirectly, a majority of the voting rights in it, or the power to direct or cause the direction of its management, policies or operations, whether through holding of voting rights, by contract or otherwise;

"Initial Term" means 36 months or such other date specified within an Order Form;

"Intellectual Property Rights" means patents, patentable rights, copyright, design rights, utility models, trade marks (whether or not any of the above are registered), trade names, rights in domain names, rights in inventions, rights in data, database rights, rights in know-how and confidential information, and all other intellectual and industrial property and similar or analogous rights existing under the laws of any country and all pending applications for and right to apply for or register the same (present, future and contingent, and including all renewals, extensions, revivals and all accrued rights of action);

"Our Content" means all data, information and material owned by or licensed to Us or any of Our Group Members and contained within any part of the SaaS, but excluding Customer Data and Customer Materials;

"Policies" means any policy published on Our website from time to time at.

<http://www.theaccessgroup.com/privacy-legal/#>

"Renewal Term" has the meaning set out in clause 12.1;

"Reseller" means the reseller authorised by Us to resell our SaaS services to You;

"SaaS" means the service to be provided by Us consisting of the provision of access to the Software on a software as a service (SaaS) basis which is listed in the Order Form and has been ordered under that Order Form;

"Software" means any software owned by or licensed to Us or any of Our Group Members;;

"Order Form" means the Order Form which incorporates these terms and conditions. For the avoidance of doubt, an order form will be considered to be a Order Form;

"Screen Scraper" means any means of:

- (a) accessing the SaaS through any mechanism not explicitly authorised in the Documentation; or
- (b) using any automated mechanism to access or interact with the SaaS through any interface intended only for interaction by human beings; or
- (c) using any offline reader that accesses the SaaS in a manner that sends more request messages to Our servers in

a given period of time than a single human being can reasonably produce in the same period by using a conventional online web browser.

“**Use Data**” has the meaning given to that term in clause 7.3.

2. Interpretation

2.1 In this Agreement (including the introduction and schedules) unless the context otherwise requires:

- (a) references to a person includes a legal person (such as a limited company) as well as a natural person;
- (b) clause headings are for convenience only and shall not affect the construction of this Agreement;
- (c) references to "**including**" or any similar terms in this Agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words; and
- (d) references to any legislation shall be to that legislation as amended, extended or re-enacted from time to time and to any subordinate provision made under that legislation.

SCHEDULE 2

GDPR PROCESSOR CLAUSES

1 AGREED TERMS

- 1.1 In this Addendum the following words shall have the following meanings:
- 1.2 "Personal Data Breach" means a breach of security leading to the destruction, loss, alteration, unauthorised disclosure of, or access to, personal data.
- 1.3 "Data Protection Legislation" the General Data Protection Regulation (Regulation (EU) 2016/679) (once applicable), Data Protection Act 2018 the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all laws and regulations applicable to the relevant party relating to the processing of personal data under or in relation to the Agreement including, where applicable, the guidance and codes of practice issued by the Information Commissioner or any other applicable supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction.
- 1.4 "personal data", "data subject", "controller", "processor" and "process" shall be interpreted in accordance with applicable Data Protection Legislation.

2 PROCESSOR CLAUSES

- 2.1 In the event that We process Your personal data under the Agreement, the parties record their intention that We are the processor and You are the controller of such personal data. Annex 1 to this Addendum 1 sets out the subject-matter and duration of the processing of Your personal data, the nature and purpose of the processing, the type of personal data and the categories of data subjects. The parties may amend Annex 1 from time to time by written Agreement.
- 2.2 Each party shall comply with its obligations under applicable Data Protection Legislation and You warrant and undertake that You shall not instruct Us to process Your personal data where such processing would be unlawful.
- 2.3 Subject to paragraph 6 below, We shall process Your personal data only in accordance with Your documented instructions and shall not transfer Your Personal Data outside of the European Economic Area without Your consent. For the avoidance of any doubt, any configuration of the service by You shall constitute 'written instructions' for the purposes of this Addendum 1.
- 2.4 We may process Your personal data other than in accordance with Your documented instructions where required to do so by applicable law provided that (unless prohibited by applicable law on important grounds of public interest) We shall notify You of such legal requirement before such processing.
- 2.5 We shall ensure that individuals engaged in the processing of Your personal data under the Agreement are subject to obligations of confidentiality in respect of such personal data.
- 2.6 We shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk involved in processing Your personal data pursuant to the Agreement. The security measures

are set out in Annex 2 to this Addendum and You warrant that You have reviewed such security measures and consider them appropriate in the context of the processing of Your personal data as anticipated by the Agreement.

- 2.7 We may engage such other processors ("Sub Processors") as We consider reasonably appropriate for the processing of Your personal data in accordance with the terms of the Agreement (including in connection with support, maintenance and development, staff augmentation and the use of third party data centres) provided that We shall notify You of the addition or replacement of such Sub Processors and You may, on reasonable grounds, object to a Sub Processor by notifying Us in writing within 5 days of receipt of Our notification, giving reasons for Your objection. The parties shall work together to reach Agreement on the engagement of Sub Processors. We shall require all Sub Processors to enter into an Agreement equivalent effect to the terms contained in paragraphs 2.3 to 2.6 inclusive and We shall remain responsible and liable for Sub Processors' acts and omissions.
- 2.8 In the event that any data subject exercises its rights under applicable Data Protection Legislation against You, We shall respond within undue delay and within 72 hours and shall use reasonable commercial efforts, to assist You in fulfilling Your obligations as controller within 5 days following written request from You provided that We may (a) extend such time period and/or (b) charge You on a time and materials basis in the event that we consider, in our reasonable discretion, that such assistance is onerous, complex, frequent or time consuming.
- 2.9 Upon discovering a Personal Data Breach, We shall notify You without undue delay and within 72 hours and shall assist You to the extent reasonably necessary in connection with notification to the applicable Supervisory Authority and data subjects, taking into account the nature of processing and the information available to Us.
- 2.10 In the event that You consider that the processing of personal data performed pursuant to the Agreement requires a privacy impact assessment to be undertaken, following written request from You, We shall use reasonable commercial endeavours to provide relevant information and assistance to You to facilitate such privacy impact assessment. We may charge You for such assistance on a time and materials basis.
- 2.11 Unless otherwise required by applicable law, following termination or expiry of the Agreement We shall, at Your option, delete or return all Your personal data and all copies thereof to You.
- 2.12 Where requested by You, We shall make available all information necessary to demonstrate Our compliance with the foregoing paragraphs 2.3 to 2.11 inclusive and shall contribute to audits conducted by You or another auditor mandated by You.
- 2.13 In the event that We consider that Your instructions relating to processing of Your personal data under the Agreement infringes Data Protection Legislation We shall inform You and You shall assess your instructions and Data Protection Legislation. We shall not be obliged to process any of Your personal data until You notify Us that Your instructions are non-infringing or amend Your instructions to make them non-infringing and notify Us accordingly.
- 2.14 We reserve the right to amend this Addendum 1 on written notice to You if We consider it reasonably necessary as a result of any changes in law or practice relating to the protection or treatment of personal data.

ANNEX 1 – DETAILS OF PROCESSING

For details of how personal data is processed under this Agreement, please see our "GDPR Portal" at <https://access-support.force.com/Support/s/gdpr-hub>

If you are not already registered on the Access hub you will need to do so. If you have any problems registering please contact SupportCommunity@theaccessgroup.com

ANNEX 2 – SECURITY STANDARDS

We are currently ISO27001 certified and we undertake to maintain this certification for the Initial Term and any Further Term. ISO27001 certification demands best in class controls across:

- Information security policies
- Organization of information security
- Human resource security
- Asset management
- Access control
- Cryptography
- Physical and environmental security
- Operations security
- Communications security
- System acquisition, development and maintenance
- Supplier relationships
- Information security incident management
- Information security aspects of business continuity management
- Compliance; with internal requirements, such as policies, and with external requirements, such as laws

SCHEDULE 3

PROCURE WIZARD SERVICE LEVEL AGREEMENT

ProcureWizard

Service Level Agreement

We're committed to you

We aim for an Uptime Percentage of 100% and have chosen a service partner in Amazon with an achieved level of 99.5% over the last 2 years.



E: info@procurewizard.com W: www.procurewizard.com T: 0131 440 6162

Cloud Computing With Confidence

Why have we chosen Amazon Elastic Compute Cloud (Amazon EC2)

Amazon Elastic Compute Cloud (Amazon EC2) is a web service that provides reliable compute capacity in the cloud.

Elastic – Amazon EC2 enables Procure Wizard to increase or decrease capacity within minutes, not hours or days. Procure Wizard can commission one, hundreds or even thousands of server instances simultaneously. Of course, because this is all controlled with web service APIs, Procure Wizard's application can automatically scale itself up and down depending on its needs.

Reliable – Amazon EC2 offers a highly reliable environment where replacement instances can be rapidly and predictably commissioned. The service runs within Amazon's proven network infrastructure and datacenters. The Amazon EC2 Service Level Agreement commitment all its users is 99.5 % availability for each Amazon EC2 Region.

Secure – Amazon EC2 provides numerous mechanisms for securing Procure Wizard compute resources. Amazon EC2 provides developers with the tools to build failure resilient applications and isolate themselves from common failure scenarios.

Capacity – Amazon EC2's web service interface allows Procure Wizard to obtain and configure capacity with minimal friction. It provides Procure Wizard with complete control of the Procure Wizard computing resources and lets Procure Wizard run on Amazon's proven computing environment. Amazon EC2 reduces the time required to obtain and boot new server instances to minutes, allowing Procure Wizard to quickly scale capacity, both up and down, as Procure Wizard computing requirements change.

Our Commitment to you

We aim for an Uptime Percentage of 100% and have chosen a service partner in Amazon with an achieved level of 99.5% over the last 2 years.



Our commitment to you is that if our Uptime Percentage falls below 99% we will offer a service credit of 10% of your monthly fee.

How does our commitment work in practice?

Service Commitment

Procure Wizard shall provide at least a 99% uptime service availability level (Uptime Service Level). This availability refers to an access point on Procure Wizard hosting provider's backbone network. It does not apply to the portion of the circuit that does not transit the hosting provider's backbone network, as Customer is responsible for its own internet access.

Service Credits

If the Annual Uptime Percentage for a customer drops below 99.5% for the Service Year, that customer is eligible to receive a Service Credit equal to 10% of their monthly fee. To file a claim, a customer does not have to wait 365 days from the day they started using the service or 365 days from their last successful claim. A customer can file a claim any time their Annual Uptime Percentage over the trailing 365 days drops below 99.5%.

We will apply any Service Credits only against future system payments otherwise due from you. Service Credits shall not entitle you to any refund or other payment from Procure Wizard. Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the Procure Wizard Service Agreement, your sole and exclusive remedy for any unavailability or non-performance of the system or other failure by us to provide the system is the receipt of a Service Credit in accordance with the terms of this SLA.

Credit Request and Payment Procedures

To receive a Service Credit, you must submit a request by sending an e-mail message to support@procurewizard.com. To be eligible, the credit request must (i) include, in the body of the e-mail, the dates and times of each incident of Unavailable and affected time of each incident; (ii) include your server request logs that document the errors and corroborate your claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks); and (iii) be received by us within thirty (30) business days of the last reported incident in the SLA claim. If the Annual Uptime Percentage of such request is confirmed by us and is less than 99.5% for the Service Year, then we will issue the Service Credit to you within one month of the request. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.

Definitions

All measurements are performed at five-minute intervals and measure the availability of an availability test page within the Software within 30 seconds. "Service Year" is the preceding 365 days from the date of an SLA claim. "Annual Uptime Percentage" is calculated by subtracting from 100% the percentage of 5 minute periods during the Service Year in which the system was in the state of "Unavailable." If you have been using Procure Wizard for less than 365 days your Service Year is still the preceding 365 days but any days prior to your use of the service will be deemed to have had 100% availability. Any downtime occurring prior to a successful claim cannot be used for future claims. Annual Uptime Percentage measurements exclude downtime resulting directly or indirectly from any Exclusion. "Unavailable" means that all of your running instances have no external connectivity during a five minute period and you are unable to launch replacement instances.

Exclusions

The Service Commitment does not apply to any performance issues: (i) caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of our partner Amazon EC2; (ii) that result from any actions or inactions of you or any third party; (iii) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); (iv) arising from our suspension and termination of your right to use the system in accordance with the Procure Wizard Service Agreement (collectively, the "Exclusions"). If availability is impacted by factors other than those explicitly listed in this agreement, we may issue a Service Credit considering such factors in our sole discretion.

Partner

Procure Wizard reserves the right to change our service partner providing the resulting SLA terms are the same or better than with the existing partner, AmazonEC2.

Round the Clock Support

Live Support

Live Support to the Customer will be available during Procure Wizard's normal business hours which are 9am to 5.30pm Monday to Friday each week except for public holidays. Outwith these times the Customer can use the live support functionality to request a call and the speed of the response will be appropriate to the nature of the request.

Emergency Ordering Procedures

Business continuity can always be achieved in the event of a problem.

Purchasers can telephone orders to their suppliers and quote an emergency purchase order number. This allows suppliers to provide an uninterrupted service by delivering the goods and submitting their online invoice.

Reporting a Problem

The Customer can telephone, email or fax Procure Wizard's Customer Help Desk which is available during Procure Wizard's normal business hours in the event of a problem. Outwith these times the customer can contact the support team at support@procurewizard.com and the speed of the response will be appropriate to the nature of the problem. Procure Wizard's support staff will attempt to solve a problem immediately, or as soon thereafter as possible. When appropriate, Procure Wizard's support staff will give an estimate of how long it will take to resolve and where possible provide a temporary workaround solution until the problem has been resolved. We will keep you advised on the progress of problem resolution.

| Priority | Description | Response Time | Target resolution time |
|------------|---|-------------------------------------|---|
| Priority 1 | The entire Service is "down" and inaccessible. Priority 1 incidents shall be reported by telephone only. | Within Two Normal Business Hours. | Four Normal Business Hours. Continuous effort after initial response |
| Priority 2 | Operation of the Services is severely degraded, or major components of the Service are not operational and work cannot reasonably continue. Priority 2 incidents shall be reported by telephone only. | Within Four Normal Business Hours. | Within one Business Day after initial response. |
| Priority 3 | Certain non-essential features of the Service are impaired while most major components of the Service remain functional. | Within Eight Normal Business Hours. | Within three Business Days after initial response. |
| Priority 4 | Errors that are non disabling or cosmetic and clearly have little or no impact on the normal operation of the Services | Within 24 Normal Business Hours. | At a suitable point of functionality upgrade. |

Parties

- (1) The University Caterers Organisation, a company incorporated and registered in England and Wales with company number 06124779 whose registered office is at 3rd Floor 36 St Ann Street, Manchester M2 7LE (TUCO)
- (2) [INSERT] (Customer)

WHEREAS

- A) TUCO have entered into an agreement with the Provider to make available the Application to its membership
- B) The Customer recognizes that in order to receive the Application they must satisfy the Minimum Spend Requirements

DEFINITIONS

Application: [Description of the TUCO Online software]

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

EULA: the end user license agreement between the Customer and the Provider.

Minimum Duration: [3] calendar years from the commencement of the use of the Application by the Customer.

Minimum Spend Requirements: the sum of [£500,000] per calendar year.

Provider: Access UK Ltd (company number 2343760) whose principal place of business is at The Old School, Stratford St Mary, Colchester CO7 6LZ.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1. DATA PROTECTION

- 1.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 1 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 1, **Applicable Laws** means (for so long as and to the extent that they apply to TUCO) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK.
- 1.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and TUCO is the Processor.
- 1.3 Without prejudice to the generality of clause 1.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to TUCO for the duration and purposes of this agreement.
- 1.4 Without prejudice to the generality of clause 1.1, TUCO shall, in relation to any Personal Data processed in connection with the performance by TUCO of its obligations under this agreement:
 - (a) process that Personal Data only on the documented written instructions of the Customer unless TUCO is required by Applicable Laws to otherwise process that Personal Data. Where TUCO is relying on Applicable Laws as the basis for processing Personal Data, TUCO shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit TUCO from so notifying the Customer;
 - (b) ensure that it has in place appropriate technical and organisational measures 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);

- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - (i) the Customer or TUCO has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) TUCO complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) TUCO complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - (e) assist the Customer, at the Customer'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;
 - (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
 - (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and
 - (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 1
- 1.5 The Customer consents to TUCO appointing the Provider as a third-party processor of Personal Data under this agreement. TUCO confirms that it has entered or (as the case may be) will enter with the Provider into a written agreement substantially on the Provider's standard terms of business which TUCO confirms reflect and will continue to reflect the requirements of the Data Protection Legislation.
- 1.6 For the avoidance of doubt, the Customer agrees that TUCO shall have having unrestricted access to all purchasing information and data within the Application for the duration of the Customer's use of the Application.
- 1.7 Either party may, at any time on not less than 30 days' notice, revise this clause 1 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 agreement).

2. CUSTOMER OBLIGATIONS

- 2.1 The Customer shall at all times observe the provisions of the EULA.
- 2.2 The Customer shall meet the Minimum Spend Requirements.
- 2.3 The Customer shall use the Application for the Minimum Duration.
- 2.4 TUCO regards the good will in the name “TUCO Online”, the information, facilities, software and services relating to the Application or marketing thereof as confidential to TUCO and the Customer hereby agrees that it will use such confidential information solely for the purposes of this agreement and that it shall not disclose, whether directly or indirectly, to any third party such information other than as required to carry out the purposes of this agreement, provided always that this restriction shall not prevent the disclosure or use by the Customer of any information which is or hereafter, through no fault of the Customer, becomes public knowledge or to the extent permitted by law.

3. LIABILITY

- 3.1 The Customer undertakes fully and effectively to indemnify and keep indemnified at all times TUCO against all actions, proceedings, costs, claims, demands, liabilities and expenses whatsoever (including legal and other fees and disbursements) sustained, incurred or paid by TUCO directly or indirectly in respect of any breach by the Customer of any of the provisions of this agreement and / or the EULA.
- 3.2 Without prejudice to the generality of clause 3.1, the Customer acknowledges that its use of the Application is subsidised by TUCO. Accordingly, should it fail to meet the Minimum Spend and / or the Minimum Duration requirements or this agreement is terminated before expiry of the Minimum Duration [it shall immediately pay to TUCO a sum equal to the subsidy paid by TUCO to the Provider for the Customer’s use of the Application.] OR [it shall immediately pay to TUCO a sum equal to the value of the subsidy depreciated on a straight line basis over 3 years]
- 3.3 The Customer acknowledges that the performance or functionality of the Application are matters governed by the EULA and that TUCO has no responsibility in that regard whatsoever. Accordingly, TUCO shall not be liable in contract, tort or otherwise for any direct, indirect or consequential loss or damage sustained by the Customer or others directly or indirectly making use of the Application, including but not

limited to any loss or damage resulting as a consequence of any defects, delays, interruptions or failures in the Application or inaccuracies or errors therein and specifically excludes the same to the extent permitted by the law applicable to this agreement.

- 3.4 Unless otherwise excluded pursuant to the foregoing provisions of this Clause, the liability of TUCO in contract, tort, breach of statutory duty or otherwise for any direct, indirect or consequential loss or damage (excluding death or personal injury) sustained by the Customer or others directly or indirectly making use of or arising in any way from the Application, whether arising as a result of TUCO's negligence, wilful default, misrepresentation or other breach or breaches of its duties or obligations, shall be limited to £10,000.

4. TERM AND TERMINATION

- 4.1 This Agreement shall take effect from the Start Date and shall continue unless terminated by TUCO giving the Customer not less than 2 weeks notice.

- 4.2 Notwithstanding any other provisions herein contained, and without prejudice to any other rights such party serving notice may have, either party may forthwith terminate this agreement by written notice to the other if the other party becomes bankrupt or compounds or makes any arrangement with or for the benefit of its creditors or (being a private limited or a public limited company or equivalent organisation) enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) or has a receiver or manager appointed of the whole or substantially the whole of its undertakings or if any distress or execution shall be threatened or levied upon any equipment and/or software or other property of the party entitled to serve notice hereunder or if the other party is unable to pay its debts in accordance with the law relating to this agreement.

5. FORCE MAJEURE

- 5.1 Neither party shall be liable to the other in any way whatsoever for failure, interruption, delay or any other matters of the nature whatsoever arising out of war, rebellion, civil commotion, strikes, lock outs and industrial disputes; fire, explosion, earthquake, acts of God, flood, drought or bad weather; the failure of or interruption to the Application or problems associated with transmission or access by/to the Application; the unavailability of upgrade material or information for or to update the Application; or the requisitioning or other act or order by any government department, council or other constituted body.

6. NON-SOLICITATION

- 6.1 During the term of this agreement and for a period of 12 months following its termination, the Customer shall not, directly or indirectly, attempt to induce any employee of TUCO to leave the employment of TUCO or to cease to provide his services to TUCO or employ or obtain the services of any person who within 6 months prior to the date of termination was an officer, employee or consultant of TUCO.

7. GENERAL

- 7.1 All notices to or by the respective parties hereto shall be in writing and shall be deemed to have been duly given when delivered by hand, posted by recorded delivery post or sent by facsimile to the party to which such notice is required to be given under this agreement at the address given on the front page of these terms and conditions or to such other address or facsimile number as the respective parties hereto may hereafter specify to the other in writing. Notices delivered by hand or sent by facsimile shall be deemed received the first working day following such delivery or sending. Notices which have been posted as above shall be deemed received on the third working day following posting.
- 7.2 The Customer shall not, without the prior written consent of TUCO, assign or transfer this agreement or any of its rights under this agreement to any other person, firm or company.
- 7.3 Failure or neglect by TUCO to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of TUCO's rights hereunder nor in any way affect the validity of the whole or any part of this agreement nor prejudice TUCO's rights to take subsequent action.
- 7.4 This agreement supersedes any arrangements, understandings, promises or agreements made or existing between the parties prior to the signing of this agreement which constitutes the entire understanding between the parties hereto. Except as otherwise provided herein, no addition, amendment or modification of this agreement shall be effective unless it is in writing and signed by and on behalf of each party by a director or such other duly authorised officer as the case may be.
- 7.5 The headings of the paragraphs of this agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this agreement.
- 7.6 In the event that any or any part of the terms, conditions or provisions contained in this agreement or any schedule attached or adopted as relative hereto shall be determined by any competent authority to be

invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining terms and conditions which shall continue to be valid and enforceable to the fullest extent permitted by law.

7.7 This agreement shall be governed and construed in all respects in accordance with the laws of England and Wales.

| | |
|---|---------------------|
| Signed by [NAME OF DIRECTOR] for and on behalf of TUCO | Director |
| Signed by [NAME & POSITION] for and on behalf of [NAME OF CUSTOMER] | [POSITION] |