



DATED

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**END USER LICENCE AGREEMENT**

between

**CLEARPEOPLE LIMITED**

and

**[PARTY 2]**



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This agreement is dated [DATE] 2018

## Parties

- (1) **CLEARPEOPLE LIMITED** incorporated and registered in England and Wales with company number 04643620 whose registered office is at The Aircraft Factory, 1000 Cambridge Grove, London W6 0LE (**Supplier**)
- (2) [FULL COMPANY NAME] incorporated and registered in [PLACE OF INCORPORATION] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Customer**)

## BACKGROUND

- (A) The Supplier has developed and provides a service consisting of internet access to application software for the purpose of empowering enterprise users and teams to efficiently and easily engage and collaborate with each other across the Microsoft 365 ecosystem.
- (B) The Customer wishes to use the Supplier's service in its business operations.
- (C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.

## Agreed terms

### 1. Interpretation

The definitions and rules of interpretation in this clause apply in this agreement.

#### 1.1 Definitions:

**Authorised Users:** those employees and independent contractors of the Customer who are entitled to use the Software under this agreement, as further described in clause 3.2 **Error! Reference source not found.**

**Business Day:** any day which is not a Saturday, Sunday or public holiday in the UK.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 10.6 or clause 10.7.

**Configuration Services:** the configuration and related work referred to in clause 2, to be performed by the Supplier to configure the Software so that the Software conforms with the Software Specification.

**Customer Data:** the data inputted into the information fields of the Software by the Customer, by Authorised Users, or by the Supplier on the Customer's behalf.

**Data Protection Legislation:** up to but excluding 25 May 2018, the Data Protection Act 1998 and thereafter (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

**Effective Date:** the date of this agreement.

**Fees:** the Software licence fees payable to the Supplier, as described in Schedule 1.

**Installation Guide:** an installation guide to the configuration of the will only be provided by the Supplier to the Customer where specifically agreed and where the installation does not follow standard installation processes and configuration.

**Maintenance and Support:** any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Software, as well as any other support provided to the Customer under this agreement, all as described in Schedule 3.

**Normal Business Hours:** 9.00 am to 5.30 pm local UK time, each Business Day.

**Service Level Arrangements:** the service level arrangements set out in Schedule 4.

**Services:** the Configuration Services and/or Maintenance and Support as applicable, given the context in which the term **Services** is used.



**Software:** the Supplier's proprietary software in machine-readable object code form only as described in Schedule 2, including any error corrections, updates, upgrades, modifications and enhancements to it provided to the Customer under this agreement.

**Software Specification:** the functionality and performance specifications for the Software, as set out in Schedule 2.

**Virus:** 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.

- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.8 A reference to **writing** or **written** does not include e-mail.
- 1.9 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.10 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.11 If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.
- 1.12 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.13 Any words following the terms including, include, in particular, for 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.

## **2. Configuration Services**

- 2.1 Subject to the Customer completing its installation requirements as set out in the Installation Guide, the Supplier will make the Software available to the Customer by setting up an account for the Customer and providing to the Customer login details for that account as soon as practicable following the Effective Date (the "**Configuration Services**").

## **3. Maintenance and Support**

- 3.1 The Supplier shall perform the Maintenance and Support services. The Service Level Arrangements shall apply with effect from the start of the month after the Configuration Services have been completed.

### **3.2 In relation to Authorised Users:**

- (a) the Customer's access to the Software shall be limited to **[NUMBER]** individual Authorised Users, being employees or independent contractors of the Customer;



- (b) the Supplier may audit the the number of Authorised Users. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and shall be exercised with reasonable prior notice, in a manner so as to not substantially interfere with Customer's normal conduct of business; and
- (c) if such audit reveals that the number of users is greater than the number of Authorised Users the number of Authorised Users shall be deemed to have been increased and the Fees shall be increased with effect from the beginning of the following month by an amount calculated in in accordance with Schedule 1 (*Fees*).

### 3.3 In relation to the Software:

- (a) the Supplier hereby grants to the Customer on and subject to the terms and conditions of this agreement a non-exclusive, non-transferable licence to allow Authorised Users to access the Software and to use the Software solely for the Customer's business purposes;
- (b) the Customer shall not store, distribute or transmit any Virus, or any material through the Software that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;
- (c) the rights provided under this clause 3.3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer;
- (d) the Customer shall not:
  - (i) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in this agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or
  - (iii) use the Software to provide services to third parties; or
  - (iv) subject to clause 20.1, transfer, temporarily or permanently, any of its rights under this agreement, or
  - (v) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this clause 3.3(d); and
- (e) the Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify the Supplier promptly of any such unauthorised access or use.

## 4. Customer Data

- 4.1 The Customer shall own all rights, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of such Customer Data.
- 4.2 The Supplier shall follow its archiving procedures for Customer Data as described in Schedule 2. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in Schedule 2. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which the Supplier shall remain fully liable under clause 4.7).
- 4.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.



- 4.4 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the data controller and the Supplier is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).
- 4.5 Without prejudice to the generality of clause 4.3, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.
- 4.6 Without prejudice to the generality of clause 4.3, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- (a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (**Applicable Laws**). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, 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) 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 the Supplier has provided appropriate safeguards in relation to the transfer;
    - (ii) the data subject has enforceable rights and effective legal remedies;
    - (iii) the Supplier 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) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data.
  - (d) 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;
  - (e) notify the Customer without undue delay on becoming aware of a Personal Data breach;
  - (f) 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
  - (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 4 and allow for audits by the Customer or the Customer's designated auditor.
- 4.7 The Customer consents to the Supplier appointing cloud service providers as a third-party processor of Personal Data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business.
- 4.8 As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 4.



4.9 Either party may, at any time on not less than 30 days' notice, revise this clause 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

## 5. Supplier's obligations

5.1 The Supplier undertakes that the Software will perform substantially in accordance with the Software Specification and that the Services will be performed with reasonable skill and care.

5.2 The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to the Supplier's instructions or modification or alteration of the Software by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Software does not conform with the foregoing undertaking, Supplier will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1. Notwithstanding the foregoing, Supplier does not warrant that the Customer's use of the Software and the Services will be uninterrupted or error-free.

5.3 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services which are similar to those provided under this agreement.

## 6. Customer's obligations

The Customer shall:

- (a) provide the Supplier with:
  - (i) all necessary co-operation in relation to this agreement; and
  - (ii) all necessary access to such information as may be required by the Supplier;  
in order to render the Services, including but not limited to Customer Data, security access information and software interfaces to the Customer's other business applications;
- (b) provide such personnel assistance as may be reasonably requested by the Supplier from time to time.
- (c) without affecting its other obligations under this agreement, comply with all applicable laws and regulations with respect to its activities under this agreement; and
- (d) carry out all other Customer responsibilities set out in this agreement or in any of the Schedules in a timely and efficient manner.

## 7. Charges and payment

7.1 In consideration of the services provided under this agreement the Customer shall pay the Fees.

7.2 The Customer shall reimburse the Supplier for all actual, reasonable travel expenses including, but not limited to, airfare, hotel and meals incurred by the Supplier in performance of the Services.

7.3 All amounts and fees stated or referred to in this agreement are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

7.4 The Supplier shall, unless otherwise agreed, invoice the Customer monthly as of the last day of each month for all Services performed by the Supplier during that month. Each invoice is due and payable 30 days after the invoice date. If the Supplier has not received payment within five days after the due date, and without prejudice to any other rights and remedies of the Supplier:

- (a) the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Bank of England from time to time (but at 3% a year for any period when that base rate is below 0%), commencing on the due date and continuing until fully paid, whether before or after judgment.



## **8. Subcontractors**

8.1 The Supplier may hire other companies to provide limited services on its behalf, such as Customer support. Any such subcontractors will be permitted to obtain and use Customer Data only to deliver the services that it has been retained provide. The Company shall remain responsible for our subcontractors' compliance with the obligations set forth in this Agreement.

## **9. Proprietary rights**

9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software and the Services. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or any related documentation.

9.2 The Supplier confirms that it has all the rights in relation to the Software that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.

## **10. Confidentiality**

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party; or
- (b) was in the other party's lawful possession before the disclosure; or
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or

10.2 Subject to clause 10.4, each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.

10.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

10.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

10.6 The Customer acknowledges that the Software, the results of any performance tests of the Software and the Services constitute the Supplier's Confidential Information.

10.7 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

10.8 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

10.9 The above provisions of this clause 10 shall survive termination of this agreement, however arising.

## **11. Indemnity**

11.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software or Services, provided that:

- (a) the Customer is given prompt notice of any such claim;





- (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - (c) the Customer is given sole authority to defend or settle the claim.
- 11.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Software infringes any United Kingdom patent effective as of the Effective Date, copyright, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in final or unappealed judgment or settlement of such claims, provided that:
  - (a) the Supplier is given prompt notice of any such claim;
  - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
  - (c) the Supplier is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of the claim, the Supplier may obtain for the Customer the right to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate this agreement without liability to the Customer. The Supplier shall have no liability if the alleged infringement is based on:
  - (a) a modification of the Software by anyone other than the Supplier; or
  - (b) the Customer's use of the Software in a manner contrary to the instructions given to the Customer by the Supplier; or
  - (c) the Customer's use of the Software after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 11.4 The foregoing and clause 12.5(b) state the Customer's sole and exclusive rights and remedies, and the Supplier's entire obligations and liability, for patent, copyright, database or right of confidentiality infringement.
- 12. Limitation of liability**
- 12.1 This clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
  - (a) arising under or in connection with this agreement;
  - (b) in respect of any use made by the Customer of the Services and the Software; and
  - (c) in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 12.2 Except as expressly and specifically provided in this agreement:
  - (a) the Customer assumes sole responsibility for results obtained from the use of the Software and the Services by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction; and
  - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement.
- 12.3 Nothing in this agreement excludes the liability of the Supplier:
  - (a) for death or personal injury caused by the Supplier's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 12.4 The Service Level Arrangements state the Customer's full and exclusive right and remedy, and the Supplier's only obligation and liability in respect of, the performance and/or availability of the Service, or their non-performance and non-availability.
- 12.5 Subject to clause 12.3 and clause 12.4:



- (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under this agreement; and
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 11.2), tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the Fees price paid for the Services during the 12 months preceding the date on which the claim arose.

### **13. Term and termination**

13.1 This agreement shall commence on the Effective Date and shall continue for the period of 24 months, unless otherwise terminated as provided in this clause 13. After 24 months, this agreement shall automatically renew for yearly periods, unless either party notifies the other, in writing, at least 90 days before the end of the then current term.

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

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(c) to clause 13.2(i) (inclusive); of



- (k) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this agreement, a written request, in accordance with clause 4.6(f), for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

**14. Export**

14.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (Export Control Laws), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

14.2 Each party undertakes:

- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out in clause 14.1; and
- (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

**15. Force majeure**

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network or the internet, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for six months, the party not affected may terminate this agreement by giving 30 days' written notice to the other party.

**16. Waiver**

16.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

16.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

**17. Rights and remedies**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.



## **18. Severance**

- 18.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 18.2 If any provision or part-provision of this agreement is deemed deleted, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **19. Entire agreement**

- 19.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.
- 19.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.
- 19.4 Nothing in this clause shall limit or exclude any liability for fraud.

## **20. Assignment**

- 20.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under this agreement.
- 20.2 The Supplier may at any time assign, transfer, charge, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under this agreement.

## **21. No partnership or agency**

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **22. Variation**

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **23. Third party rights**

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

## **24. Notices**

- 24.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes.
- 24.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

## **25. Governing law**

This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.



**26. Jurisdiction**

The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.



## Schedule 1 Fees

### 1. The Fees

£[AMOUNT] for [NUMBER] Authorised Users.

### 2. Additional Authorised Users

2.1 The Customer shall have the ability to create and grant access to additional individual Authorised Users in excess of the number stated in clause 3.2(a). The Customer shall be charged by the Supplier in increments of [NUMBER] Authorised Users (**Additional Licence Increment**) for an additional Fee of £[AMOUNT] per Additional Licence Increment.

Any additional Authorised Users requested by the Customer shall be requested in writing. The Supplier shall evaluate such requests and respond to the Customer with approval or disapproval of the request, together with a quote for any additional set-up or ongoing costs to the Customer for creating and granting access to such additional Authorised Users. On Customer acceptance of such approval and quotation, the Supplier shall provide access based on a mutually agreeable schedule.



## Schedule 2    Software

### Group Explorer (“GX”)

GX is a cloud-based software application that enables Authorised Users to search for and then engage with groups within Microsoft Office 365. As a cloud-based application the software is accessed by the Authorised User’s from a web browser and may be accessed from multiple devices. GX enables the Authorised User to find group collaboration areas with the use of one search tool. Authorised Users can search by group or group member and/or filter by types of groups (such as Teams, Yammer and Office 365 Groups) and groups that they do or do not belong to.



### Schedule 3 Maintenance and Support

#### 1. Maintenance and updates

- 1.1 Maintenance includes all regularly scheduled error corrections, software updates and those upgrades limited to improvements to features described in the Software Specification.
- 1.2 The Supplier may from time to time provide enhancement or improvements to the features/functionality of the Software which may include patches, bug fixes, updates and other modifications (**Updates**). Updates may modify or delete certain features and/or functionalities of the Software. You agree that the Supplier has no obligation to provide any Updates, or continue to provide or enable any particular features and/or functionalities of the Software to you. You further agree that all Updates will be deemed to constitute an integral part of the Software, and subject to the terms and conditions of this Agreement.
- 1.3 The Supplier shall maintain technical support on the two most current releases of the Software but in no circumstance any longer than six months where a newer version has been provided.

#### 2. Technical support services

- 2.1 The Supplier shall provide the Customer with technical support services. On or around the Effective Date the Customer shall notify the Supplier of a customer support representative who shall be authorised to contact the Supplier for technical support services (**CSR**). The Customer may change the CSR by providing notice to the Supplier. The Supplier shall provide technical support services only to the specified CSR. The Supplier shall provide the Supplier support engineers (**SSEs**) and the SSEs shall handle support calls from the Customer's CSRs. The Supplier shall use reasonable endeavours to provide continuity of SSEs.
- 2.2 The Supplier shall issue customer identification numbers (**CINs**) to the CSR, which will allow the CSR to access Supplier technical support. Supplier technical support shall accept web form-based incident submittal from CSRs with valid CINs 24 hours a day, seven days a week. The Supplier technical support call centre shall accept calls for English language support during Normal Business Hours within Business Days. The Supplier shall use reasonable endeavours to process support requests, issue trouble ticket tracking numbers if necessary, determine the source of the problem and respond to the Customer. The Supplier technical support call centre shall respond to all support requests from CSRs with valid CINs within the time periods specified below, according to priority.
- 2.3 The named CSR and Supplier technical support shall jointly determine the priority of any defect, using one of following priorities:

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 and with Customer co-operation.
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 two Business Days after initial response.
Priority 3	Certain non-essential features of the Service are impaired while most major components of the Service remain functional.	Within 12 Normal Business Hours.	Within seven Business Days after initial response.





<b>Priority 4</b>	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.	Next release of Software.
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## Schedule 4 Service Level Arrangements

### 1. Service availability

The Supplier shall provide at least a [99.5%] uptime service availability level (**Uptime Service Level**). This availability refers to an access point on the Supplier 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 the Customer is responsible for its own internet access. Availability does not include Maintenance Events as described in paragraph **Error! Reference source not found.** of Schedule 3, Customer-caused or third party-caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted by the Supplier to perform the Services), or outages or disruptions attributable in whole or in part to force majeure events within the meaning of clause 15.

### 2. Availability measurement

All measurements are performed at [five-minute] intervals and measure the availability of an availability test page within the Software within 30 seconds. Availability measurement begins on the first day of the first calendar month, beginning not less than 30 days after Customer acceptance of all of the Deliverables delivered to the Customer during the Configuration Services pursuant to clause 2. Availability measurement shall be carried out by the Supplier and is based on the monthly average percentage availability, calculated at the end of each calendar month as the total actual uptime minutes divided by total possible uptime minutes in the month. The Supplier shall keep and shall send to the Customer, on request, full records of its availability measurement activities under this agreement.

### 3. Service credits

- 3.1 If availability falls below the Uptime Service Level (as defined in paragraph 1 of Schedule 4) in a given calendar month (**Service Delivery Failure**), the Supplier shall credit the Customer's account by an amount calculated as the product of the total cumulative downtime (expressed as a percentage of the total possible uptime minutes in the month concerned) and the total Fees owed for that month (**Service Credit**).
- 3.2 A Service Credit shall not be payable unless the Customer requests it within 40 Business Days of the service-affecting event(s). The maximum Service Credit allowable in a given month is limited to an amount equal to the total Fees owed by the Customer for that month.
- 3.3 The Customer acknowledges and agrees that the terms of this Schedule 4 relating to Service Credits constitute a genuine pre-estimate of the loss or damage that the Customer would suffer as a result of the Supplier's Service Delivery Failure and are not intended to operate as a penalty for the Supplier's non-performance.



Signed by [DIRECTOR NAME]            )  
for and on behalf of                 )  
CLEARPEOPLE LIMITED                )

Signed by [DIRECTOR NAME]            )  
for and on behalf of                 )  
[COMPANY NAME]                        )