

**STARKEY CONSULTANTS LIMITED T/A MYBUSINESS PARTNERSHIP**  
**STANDARD TERMS AND CONDITIONS**

1. **Validity and acceptance of these Terms and Conditions**

- 1.1. **Starkey Consultants Limited t/a mybusiness partnership** is a private limited company incorporated and registered in England and Wales with company number 03784995 whose registered office is at 9 Kings Barn Lane, Steyning, West Sussex, BN44 3YR (SCL).
- 1.2. These terms and conditions, including the applicable schedules (these “**Terms and Conditions**”), together with the signed Quotation, constitute a binding agreement (“**the Contract**”) between SCL and the Customer for the provision of the Services. In the event of any inconsistency or conflict between those documents, the terms set out in the signed Quotation will prevail over these Terms and Conditions.

2. **Definitions and interpretation**

The following definitions and rules of interpretation apply in these Terms and Conditions.

2.1. Definitions:

**Applicable Laws:** all applicable laws, statutes, regulations and codes from time to time in force.

**Authorised Users:** those employees, agents and independent contractors of the Customer who are authorised by the Customer to use mybusiness cloud and/or mybusiness IT assistance.

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England.

**Business Hours:** the period from 8.30 am to 6.00 pm on any Business Day, unless agreed otherwise by the parties in relation to specified Services.

**Charges:** the charges payable by the Customer for the supply of the Services, as set out in the Quotation or as otherwise agreed in writing between the parties from time to time.

**Commencement Date:** the first day of the calendar month following the date on which the Quotation is signed by the Customer.

**Confidential Information:**

- (a) all information relating to the business, assets, affairs, pricing, customers, clients, suppliers, or plans, intentions, marketing strategies and campaigns or market opportunities of the Disclosing Party;
- (b) all technical or commercial know-how, specifications, inventions, operations, processes, product information, initiatives, designs, trade secrets, software (including source code), information relating to research and/or development work, proposals for services or products and engineering designs and/or development;
- (c) any other information of a confidential or proprietary nature not generally known to the public, whether of a technical, business, or other type, that is disclosed by the Disclosing Party arising out of or in connection with the Contract and which could reasonably have been understood by the Receiving Party to be proprietary or confidential to the Disclosing Party (including information marked as “Confidential” by the Disclosing Party).

**Customer:** the person, company, organisation, business or other legal entity which purchases the Services from SCL, as specified in the Quotation.

**Customer Data:** the data inputted into the Services by the Customer, by Authorised Users, or by SCL on the Customer's behalf.

**Data Protection Laws:** all applicable data protection and privacy legislation in force from time to time in the UK including the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Act (EC Directive) Regulations 2003 (SI 2426/2003).

**Disclosing Party:** a party to the Contract when disclosing Confidential Information.

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

**mybusiness cloud:** the cloud hosting services to be provided to the Customer, as further described in the Quotation and Schedule 1.

**mybusiness IT assistance:** the remote IT support services to be provided to the Customer by SCL, as further described in the Quotation and Schedule 2.

**Quotation:** the written document issued to the Customer by SCL setting out SCL's quotation for the provision of Services (including any Deliverables) to the Customer.

**Receiving Party:** a party to the Contract when receiving Confidential Information.

**Services:** mybusiness cloud, mybusiness IT assistance and/or any other professional services to be supplied to the Customer by SCL under the Contract, as set out in the Quotation or as otherwise agreed in writing between the parties.

**Services Specification:** the descriptions or specifications for the Services to be provided to the Customer under the Contract, as set out in the Quotation or as otherwise agreed in writing between the parties.

**VAT:** value added tax chargeable in the UK.

**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.

- 2.2. The Schedules to these Terms and Conditions form part of the Contract and shall have effect as if set out in full in the body of the Contract. Any reference to these Terms and Conditions or the Contract includes the Schedules to these Terms and Conditions.
- 2.3. Clause, Schedule and paragraph headings shall not affect the interpretation of the Contract.
- 2.4. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 2.5. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 2.6. Words and phrases used in the Contract shall be interpreted in accordance with their ordinary meaning except and to the extent that a particular definition is specified in the Contract.
- 2.7. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 2.8. Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those term
- 2.9. A reference to a statute or statutory provision is a reference to it as replaced, extended or re-enacted from time to time and includes all subordinate legislation made under that legislation or legislative provision.
- 2.10. References to Clauses are to the clauses of the Contract and references to paragraphs are to paragraphs of the relevant Schedule.

2.11. A reference to **writing** or **written** includes email or other electronic means.

### 3. **The Contract**

3.1. In response to an enquiry from a Customer, SCL shall issue a Quotation which, subject to Clause 3.2, shall be effective from its date of issue for the period of time set out in the Quotation. If not accepted by the Customer within the specified period of time, such Quotation shall automatically lapse and be of no effect.

3.2. SCL may, by giving written notice to the Customer at any time up to 3 Business Days before commencement of the Services, increase the Charges payable by the Customer for the Services to reflect any increase in the cost of the Services that is due to:

3.2.1. any factor beyond SCL's control (including without limitation foreign exchange fluctuations, increases in taxes and duties or increases in the prices that SCL has to pay its suppliers for the Services or any component of them);

3.2.2. any request by the Customer to change the delivery date(s), quantities or types of Services ordered, or the Services Specification; or

3.2.3. any delay caused by any instructions of the Customer or failure of the Customer to give SCL adequate or accurate information or instructions.

3.3. Quotations issued by SCL are not legally binding upon either party. A Contract shall take effect and become legally binding on the parties only when the Customer signs the Quotation to confirm their acceptance of it and returns the signed Quotation to SCL or otherwise communicates in writing their acceptance of the Quotation.

3.4. If the Customer wishes to modify any of the Services following commencement of the Contract, such modification can only take place if the parties agree in writing any adjustment to the charges payable to SCL as a result of such modification. Any such modification shall be subject to Clause 14.2.

3.5. Any drawings, descriptive matter or advertising issued by SCL and any illustrations or descriptions of the Services contained in SCL's marketing materials are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract nor have any contractual force.

3.6. These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

3.7. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document of SCL that is inconsistent with these Terms and Conditions.

### 4. **SCL Responsibilities**

- 4.1. SCL shall at all times during the term of the Contract:
  - 4.1.1. provide the Services:
    - 4.1.1.1. in accordance with the Services Specification in all material respects;
    - 4.1.1.2. during Business Hours, unless the parties agree in writing that Services are required outside of Business Hours (including on an urgent or emergency basis) and the Charges payable to SCL for providing the Services on that basis;
    - 4.1.1.3. using reasonable skill, care and diligence;
    - 4.1.1.4. using suitably qualified and experienced personnel; and
    - 4.1.1.5. in compliance with Applicable Laws.
  - 4.1.2. use reasonable endeavours to meet any performance dates or deadlines specified in the Quotation, but any such dates shall be estimates only and time for performance by SCL shall not be of the essence for performance of the Services.
- 4.2. In order to facilitate the provision of mybusiness cloud and/or mybusiness IT assistance, SCL shall undertake such onboarding, commissioning, configuration, system set up, testing and training activities as are specified in the Quotation.
- 4.3. The obligations at clause 4.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to SCL's instructions or modification or alteration of the Services by any party other than SCL or SCL's duly authorised contractors or agents. If the Services do not conform with the foregoing obligations, SCL will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Notwithstanding the foregoing, SCL does not warrant that the Customer's use of the Services will be uninterrupted or error-free.

## 5. **Customer responsibilities**

- 5.1. The Customer shall at all times during the term of the Contract:
  - 5.1.1. cooperate with SCL in all matters relating to the Services;
  - 5.1.2. provide SCL in a timely manner with such access to the Customer's premises, systems, personnel and facilities as is reasonably required by SCL in order to provide the Services;
  - 5.1.3. provide SCL in a timely manner with such information and materials as SCL may reasonably require in order to provide the Services, and ensure that such information is accurate and complete in all material respects;

- 5.1.4. obtain and maintain all necessary licence, permissions and consents (including appropriate software licences) which may be required for the Services before the date on which the Services are to start;
  - 5.1.5. without affecting its other obligations under the Contract, comply with all Applicable Laws in using the Services and with respect to the Customer's activities under the Contract;
  - 5.1.6. inform SCL promptly of any problems with the Customer's receipt of the Services or of any circumstances which come to the Customer's attention which could impede or otherwise affect SCL's performance of the Services, providing as much detail as possible;
  - 5.1.7. take all relevant action to ensure that its own internal security measures meet best industry practice;
  - 5.1.8. ensure that all Authorised Users receive regular training on security matters and cyber malpractice (including but not limited to phishing);
  - 5.1.9. not install any additional applications or services of SCL that are not listed in the Quotation without SCL's prior written consent;
  - 5.1.10. inform SCL of all health and safety and security requirements that apply at any of the Customer's premises; and
  - 5.1.11. comply with any additional responsibilities of the Customer set out in the Quotation.
- 5.2. If SCL's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees or any failure by the Customer to perform any relevant obligation (**Customer Default**) then:
- 5.2.1. without limiting or affecting any other right or remedy available to it, SCL shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations, in each case to the extent the Customer Default prevents or delays SCL's performance of any of its obligations;
  - 5.2.2. SCL shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from SCL's failure or delay to perform any of its obligations as set out in this Clause 5; and
  - 5.2.3. the Customer shall reimburse SCL on written demand for any costs or losses sustained or incurred by SCL arising directly or indirectly from the Customer Default.
- 5.3. Without limiting or affecting any other right or remedy available to it, SCL may suspend or limit the Customer's access to the Services, in whole or in part, without incurring any liability to the Customer if:

- 5.3.1. SCL determines that such action is necessary to prevent disruption or harm to SCL's systems or to respond to any actual or potential security or availability concern;
- 5.3.2. this is necessary to enable SCL to carry out urgent maintenance of or repairs to SCL's systems;
- 5.3.3. the Customer is using the Services in a manner which is unlawful, unauthorised, inappropriate or fraudulent;
- 5.3.4. required to do so by a court order or an order or instruction from a competent administrative authority;
- 5.3.5. the Customer's failure to perform its obligations under the Contract prevents SCL from performing its obligations under the Contract; or
- 5.3.6. the Customer does not pay any Charges due under this Contract within 15 days of the relevant due date, until payment in full has been made by the Customer.

## **6. Charges and payment**

- 6.1. In consideration of the supply of the Services by SCL, the Customer shall pay the Charges in accordance with this Clause 6 and the signed Quotation.
- 6.2. In addition to the Charges, the Customer shall reimburse SCL for:
  - 6.2.1. any expenses reasonably incurred by SCL in connection with the Services; and
  - 6.2.2. the cost to SCL of any materials or services procured by SCL from third parties for the provision of the Services,provided such expenses and costs are set out in the Quotation or are otherwise agreed in writing between the parties.
- 6.3. The Customer shall pay the Charges at the intervals specified in the Quotation. All invoices shall be issued and paid in pounds sterling.
- 6.4. All sums payable under the Contract are exclusive of VAT and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice.
- 6.5. If the Customer fails to pay any undisputed sum which is due to SCL under the Contract by the due date then, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgement. Interest under this Clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, or at 4% a year for any period when that base rate is below 0%.

- 6.6. SCL reserves the right to increase the Charges on an annual basis, with effect from each anniversary of the Commencement Date, to reflect the percentage change in the UK's Retail Price Index in the 12 month period immediately preceding that anniversary.
- 6.7. SCL also the right to increase the Charges from time to time to reflect any increase to SCL in the cost of providing the Services that is due to any factor beyond SCL's control (including without limitation foreign exchange fluctuations, increases in taxes and duties or increases in the prices that SCL has to pay its suppliers for the Services or any component of them).
- 6.8. SCL shall give the Customer written notice of any proposed increase in the Charges in accordance with Clause 6.6 or Clause 6.7 at least 30 days prior to the date on which such increase is due to take effect.

## **7. Intellectual Property Rights**

- 7.1. All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by SCL.
- 7.2. SCL grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence to copy and modify any Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business. The Customer shall not sub-license, assign or otherwise transfer the rights granted by this Clause 7.2.
- 7.3. The Customer grants SCL a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to SCL for the term of the Contract for the purpose of providing the Services to the Customer.

## **8. Confidentiality**

- 8.1. The Receiving Party undertakes that it shall at all times:
  - 8.1.1. keep the Confidential Information secret and confidential;
  - 8.1.2. not use or exploit any Confidential Information for its own benefit or in any way other than the proper performance of its duties under the Contract, unless it has obtained prior written consent from the Disclosing Party to do so;
  - 8.1.3. not directly or indirectly disclose or make available any Confidential Information in whole or in part to any third party, except as expressly permitted by, and in accordance with, the Contract or with the prior written consent of the Disclosing Party; and
  - 8.1.4. apply at least the same security measures and degree of care to the Confidential Information as the Receiving Party applies to its own confidential information, which the Receiving Party warrants as providing adequate protection from unauthorised disclosure, copying or use. In the event a party becomes aware of, or suspects, any loss or unauthorised



disclosure or use of the Disclosing Party's Confidential Information, it shall promptly notify the Disclosing Party.

- 8.2. The Receiving Party may disclose Confidential Information to:
- 8.2.1. its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the Receiving Party's rights or carrying out its obligations under or in connection with the Contract, on the basis that it:
    - 8.2.1.1. informs such persons of the confidential nature of the Confidential Information;
    - 8.2.1.2. ensures that such persons comply with the confidentiality obligations set out in this Clause 8;
    - 8.2.1.3. procures that such persons are subject to obligations of confidentiality at least as extensive and binding upon them as the terms of the Contract are upon the Receiving Party; and
    - 8.2.1.4. shall be liable for the actions or omissions of such persons in relation to the Confidential Information as if they were the actions or omissions of the Receiving Party; and
  - 8.2.2. the minimum extent required by Applicable 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 Disclosing Party as much notice of the disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 8.2.2, it takes into account the reasonable requests of the Disclosing Party in relation to the content of the disclosure.
- 8.3. Notwithstanding the foregoing, the restrictions of this Clause 8 shall not apply to information that:
- 8.3.1. was already in the public domain at the time of its communication to the Receiving Party;
  - 8.3.2. enters the public domain through no fault of the Receiving Party subsequent to the time of its communication to the Receiving Party;
  - 8.3.3. was in the Receiving Party's lawful possession free of any obligation of confidence at the time of its communication to the Receiving Party;
  - 8.3.4. is developed by the Receiving Party independently of and without reference to Confidential Information; or
  - 8.3.5. is lawfully disclosed to the Receiving Party by a third party, provided the Receiving Party does not know of any obligation of confidentiality restricting disclosure by the third party.
- 8.4. SCL acknowledges that the Customer Data is the Confidential Information of the Customer.

8.5. This Clause 8 shall survive termination of the Contract for any reason.

**9. Data protection**

9.1. For the purposes of this Clause 9, the terms **controller, data subject, personal data, personal data breach, processor** and **processing**, shall have the meaning given to them in the Data Protection Laws.

9.2. Both parties will comply with all applicable requirements of the Data Protection Laws. This Clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Laws.

9.3. The parties have determined that, for the purposes of the Data Protection Laws, in so far as the processing of personal data under the Contract is concerned, the Customer is the controller and SCL is the processor of Customer personal data.

9.4. Without prejudice to Clause 9.2, the Customer shall ensure that it has all necessary consents and notices in place to enable lawful transfer of the personal data to SCL for the duration and purposes of the Contract.

9.5. Without prejudice to Clause 9.2, SCL shall, in relation to any personal data processed in connection with the performance by SCL of its obligations under this Contract:

9.5.1. process that Customer Personal Data only on the documented written instructions of the Customer provided to SCL from time to time. The Customer acknowledges that the scope, nature, purpose and duration of the processing and the Customer personal data categories and data subject types are described at Schedule 3;

9.5.2. ensure that it has in place appropriate technical or organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss, damage to or destruction of, the personal data which are 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;

9.5.3. ensure, and procure that all SCL personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

9.5.4. not transfer personal data outside the UK unless the following conditions are fulfilled:

9.5.4.1. appropriate safeguards are in place in relation to the transfer;

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

9.5.4.3. SCL complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any personal data that is transferred; and

- 9.5.4.4. SCL secures written consent from the Customer and complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 9.5.5. assist the Customer, at the Customer's cost, in responding to any data subject access request and in ensuring the Customer's compliance its obligations under the Data Protection Laws with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or other regulators;
- 9.5.6. notify the Customer without undue delay on becoming aware of a personal data breach;
- 9.5.7. at the written direction of the Customer, delete or return to the Customer all Customer personal data on termination or expiry of the Contract, unless SCL is required by Applicable Law to continue to store that Customer personal data (and for these purposes the term "delete" shall mean to put such data beyond use);
- 9.5.8. maintain adequate records, and, on the Customer's request, make available such information as the Customer may reasonably request, and allow for and submit its premises and operations to audits, including inspections, by the Customer or the Customer's designated auditor, to demonstrate its compliance with Applicable Data Protection Laws and this Clause 9.
- 9.6. The Customer acknowledges and consents generally to SCL appointing third party processors of personal data under the Contract. SCL 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 and in either case which SCL confirms reflect and will continue to reflect the requirements of the Data Protection Laws. As between the Customer and SCL, SCL shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Clause 9.
10. **Limitation of liability**
- 10.1. References to liability in this Clause 10 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 10.2. Except as expressly and specifically provided in this agreement, 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 the Contract.
- 10.3. Neither party may benefit from the limitations and exclusions set out in this Clause 10 in respect of any liability arising from its deliberate default.
- 10.4. Nothing in this Clause 10 shall limit the Customer's payment obligations under the Contract.
- 10.5. Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- 10.5.1. death or personal injury caused by negligence;
  - 10.5.2. fraud or fraudulent misrepresentation;
  - 10.5.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 10.6. Subject to Clause 10.4 and Clause 10.5:
- 10.6.1. SCL shall have no liability to the Customer for loss of profits or anticipated profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, damage to or loss of use or corruption of software, data or information, loss of or damage to goodwill or indirect or consequential loss or damage suffered by the Customer;
  - 10.6.2. SCL's total liability to the Customer for all loss or damage arising in connection with the performance or contemplated performance of the Contract shall be limited to 100% of all amounts paid by the Customer under the Contract in the period of 12 months prior to the date on which the relevant claim first arose.

## 11. Termination

- 11.1. Either party may terminate this Contract at any time by giving no less than 90 days prior written notice to the other party, or such other period of notice as may be agreed in writing between the parties.
- 11.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party:
  - 11.2.1. commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within 30 days after being notified in writing to do so;
  - 11.2.2. repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
  - 11.2.3. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; or
  - 11.2.4. suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

11.3. Without affecting any other right or remedy available to it, SCL may terminate the Contract with immediate effect by giving written notice to the Customer if:

11.3.1. the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment; or

11.3.2. there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).

## 12. Consequences of termination

12.1. On termination of the Contract for any reason:

12.1.1. all licences granted under the Contract shall immediately terminate;

12.1.2. the Customer shall immediately pay to SCL all of SCL's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, SCL shall submit an invoice, which shall be payable by the Customer immediately on receipt;

12.1.3. 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;

12.1.4. SCL may destroy or otherwise dispose of any of the Customer Data in its possession unless SCL receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. SCL 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 SCL in returning or disposing of Customer Data.

12.2. Termination of the Contract shall not affect 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 Contract which existed at or before the date of termination.

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

## 13. Force Majeure

13.1. Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly.

#### 14. General

- 14.1. **No partnership or agency:** Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 14.2. **Variation:** No variation of the Contract shall be effective unless it is agreed in writing by the parties (or their authorised representatives).
- 14.3. **Waiver:** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.4. **Severance:** If any provision or part-provision of the Contract 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 the Contract.
- 14.5. **Entire agreement:**
- 14.5.1. This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 14.5.2. Each party acknowledges that in entering into the Contract 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 the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.
- 14.6. **Assignment:**
- 14.6.1. SCL may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract;
- 14.6.2. The Customer shall not assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of SCL.
- 14.7. **Third party rights:** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

14.8. **Notices:**

14.8.1. Any notice required to be given to a party under or in connection with the Contract shall be in writing and shall be sent by email to the authorised representative of that party. Such notice shall be deemed to have been received at the time of transmission of the email.

14.8.2. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

14.9. **Governing law:** The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.

14.10. **Jurisdiction:** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

**SCHEDULE 1 mybusiness cloud**

**1. Provider**

1.1. The mybusiness cloud service will be:

- 1.1.1. provided via Microsoft Azure (<https://azure.microsoft.com/>), or such other third party provider as may be notified to the Customer in the Quotation; and
- 1.1.2. subject to the additional terms and conditions of that provider (which may be amended by the provider from time to time).

**2. Licence and restrictions**

- 2.1. Subject to the Customer paying the Charges, the restrictions set out in this paragraph 2 and the other terms and conditions of the Contract, SCL grants to the Customer a non-exclusive, non-transferable licence, without the right to grant sublicences, to allow Authorised Users to access and use mybusiness cloud during the term of mybusiness cloud (as specified in the Quotation) solely for the Customer's business purposes.
- 2.2. The Customer shall not store, distribute, introduce or transmit through mybusiness cloud any Viruses or any material 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.
- 2.3. The Customer shall not, except to the extent expressly set out in the Contract or as may be allowed by any Applicable Law which is incapable of exclusion by agreement between the parties:
  - 2.3.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit or distribute all or any portion of mybusiness cloud in any form or media or by any means; or
  - 2.3.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of mybusiness cloud; or
  - 2.3.3. access all or any part of mybusiness cloud in order to build a product or service which competes with mybusiness cloud; or
  - 2.3.4. use mybusiness cloud to provide services to third parties; or
  - 2.3.5. subject to clause 14.6.2, transfer, temporarily or permanently, any of its rights under the Contract; or
  - 2.3.6. attempt to obtain, or assist third parties in obtaining, access to mybusiness cloud other than as expressly provided under this paragraph 2.



- 2.4. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, mybusiness cloud and, in the event of any such unauthorised access or use, shall promptly notify SCL.
- 2.5. The rights provided under this paragraph 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

### 3. **Authorised Users**

#### 3.1. In relation to the Authorised Users:

- 3.1.1. the Customer's access to mybusiness cloud shall be limited to the number of individual Authorised Users specified in the Quotation or otherwise agreed in writing between the parties;
- 3.1.2. the Customer shall maintain a written list of current Authorised Users of mybusiness cloud and shall provide such list to SCL as may be reasonably requested by SCL from time to time;
- 3.1.3. the Customer shall ensure that each Authorised User keeps a secure password for their use of mybusiness cloud and that each Authorised User shall keep their password confidential and secure at all times;
- 3.1.4. the Customer acknowledge and agrees that the additional security measure of multifactor authentication is compulsory for all Authorised Users and shall ensure that each Authorised User complies with this measure;
- 3.1.5. SCL may audit the use of mybusiness cloud regarding the name and password for each Authorised User. Such audit may be conducted no more than once per quarter, at SCL's expense and shall be exercised with reasonable prior written notice, in a manner so as to not substantially interfere with the Customer's normal conduct of business;
- 3.1.6. if such audit reveals:
  - 3.1.6.1. that passwords have been provided to individuals who are not Authorised Users, without prejudice to SCL's other rights, the Customer shall promptly disable such passwords and shall not issue any new passwords to such individuals; and/or
  - 3.1.6.2. that the Customer has underpaid the Charges payable to SCL for mybusiness cloud then, without prejudice to SCL's other rights, the Customer shall pay to SCL an amount equal to such underpayment as calculated in accordance with the prices set out in the Quotation within 10 Business Days of the date of the relevant audit.

### 4. **Customer Data**

- 4.1. The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

- 4.2. The Supplier shall follow its archiving procedures for Customer Data as described in mybusiness cloud Backups Policy, as may be amended from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against SCL shall be for SCL to use its best endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by SCL in accordance with its archiving procedure. SCL shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by the Customer or any third party (except those third parties sub-contracted by SCL to perform services related to Customer Data maintenance and back-up for which SCL shall remain fully liable).

## **5. Customer obligations and liability**

- 5.1. The Customer shall at all times while using mybusiness cloud:
- 5.1.1. comply with the procedures relating to mybusiness cloud which may be prescribed by SCL from time to time; and
  - 5.1.2. procure at its cost, install and maintain, and comply with all licensing requirements in respect of all required enabling software and third-party software used via mybusiness cloud. The Customer acknowledges that any failure to do so may impact the Customer's use of mybusiness cloud.
- 5.2. The Customer acknowledges that mybusiness cloud is a shared hosting environment and undertakes to make no use of mybusiness cloud which could be harmful or detrimental to SCL or its other customers.
- 5.3. The Customer shall indemnify SCL against all claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:
- 5.3.1. any failure by the Customer or an Authorised User to comply with its or their obligations in respect of its or their use of mybusiness cloud; or
  - 5.3.2. any cyber attack, ransomware attack, Virus or any other breach of SCL's systems by a third party which is perpetrated through the Customer or an Authorised User.

**Schedule 2 Processing, personal data and data subjects**

**1. Scope**

SCL shall be processing personal data received from the Customer for the purpose of providing the Services to the Customer under this Contract.

**2. Purpose of processing**

Provision of the Services to the Customer.

**3. Duration of the processing**

The duration of the Contract.

**4. Types of personal data**

First name, last name, address, work related contact information, bank details.

**5. Categories of data subject**

Employees or sub-contractors of the Customer