



# MASTER SERVICES AGREEMENT

For Valto Managed Services

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VERSION 1.0

Valto Limited

## CONTENTS

1.	Definitions and Interpretation .....	3
2.	Ordering Services .....	9
3.	Service provision .....	10
4.	Customer Data .....	11
5.	Customer obligations .....	12
6.	Valto's obligations.....	14
7.	Security .....	15
8.	Warranties .....	15
9.	IT Partners, EULAs and other Third Party Agreements .....	16
10.	Invoicing and Payment .....	17
11	Change control .....	18
12	Service review and governance .....	19
13	Proprietary rights.....	19
14	Domain names.....	20
15	Confidentiality .....	20
16	Term, Renewal and Cancellation Charges .....	22
17	Suspension.....	22
18	Limitation of liability.....	23
19	Termination .....	24
20	Exit assistance.....	26
21	Force majeure.....	26
22	Audit .....	27
23	Non-Solicitation .....	27
25	Publicity .....	28
26	Insurance .....	28
27	Severance .....	28
28	Entire agreement and variation .....	28
29	Assignment .....	28
30	No partnership or agency .....	28
31	Third party rights .....	29
32	Rights and remedies .....	29
33	Anti-Bribery .....	29
34	Notices.....	29
35	Dispute resolution .....	29
36	Governing law and jurisdiction.....	30

## 1. Definitions and Interpretation

1.1 In this master services agreement for Valto managed services (this “MSA”), the following definitions and rules of interpretation shall apply.

**Acceptable Use Policy:** Valto’s policy concerning the use of the Managed Services, as notified to the Customer and as Valto may update from time to time in accordance with its terms.

**Activation Date:** means the date from which Valto considers that the Managed Services are ready for activation.

**Assets:** any Customer-site Equipment, Software or Intellectual Property Rights used by Valto exclusively for the delivery of the Managed Services to the Customer.

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

**Cancellation Charge:** an amount equal to:

(i) if the cancellation takes effect after the later of the Contract Start Date and the Activation Date, the Fees that would otherwise have been payable from the date the Managed Service is cancelled to the date such Managed Service was scheduled to expire in accordance with the Contract; and

(ii) if the cancellation takes effect before the later of the Contract Start Date and the Activation Date, any non-recurring charges payable pursuant to clause 11.6 plus 25% of the other Fees payable during the Initial Term,

plus in each case any other amounts specified as payable as part of the Cancellation Charge in the Work Order.

**Change Control Procedure:** the procedures set out in clause 11.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a party or its employees, consultants, officers, representatives, advisers, agents or sub-contractors involved in the provision or receipt of the Services (together, its **Representatives**) to the other party or that party’s Representatives in connection with the Contract which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Contract:** the agreement between Valto and the Customer comprising this MSA and the Work Order.

**Contract Start Date:** the date specified as such in the Work Order.

**Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.



**Customer Account Team:** the individuals appointed by the Customer from time to time who shall serve as Valto's primary contacts for Valto's activities under this MSA. The initial members of the Customer Account Team are listed in the Work Order.

**Customer Data:** any information that is provided by or on behalf of the Customer to Valto as part of the Customer's use of the Services, including any information derived from such information.

**Customer Personal Data:** any personal data comprised in the Customer Data.

**Customer Site:** any premises occupied by the Customer at which it receives the Managed Services.

**Customer-site Equipment:** any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively by Valto as part of the Managed Services.

**Customer's Operating Environment:** the Customer's computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Services and which interfaces with Valto's System in order for the Customer to receive the Services, but excluding the Customer-site Equipment.

**Customer's Project Manager:** the member of the Customer Account Team appointed in accordance with [clause 9\(c\)](#). The Customer's Project Manager at the Effective Date is set out in the Work Order.

**Customer Software:** has the meaning given to that term in the definition of Software.

**Designated Representative:** has the meaning given in clause 35.

**Disaster Recovery Plan:** the plans maintained by Valto containing the actions to be taken, the resources to be used and the procedures to be followed to support recovery in the event of a disaster affecting the Managed Services.

**Dispute:** has the meaning given in clause 35.

**Dispute Notice:** has the meaning given in clause 35.

**Dispute Resolution Procedure:** the procedure described in clause 35.

**Documentation:** the solution documentation made available to the Customer by Valto from time to time which may set out any additional description of the Managed Services and/or contain the user instructions for the Managed Services.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

**Excused Outage:** means any outage, unavailability, delay or other degradation of Service related to, associated with or caused by: Planned maintenance events; any service not supported by a Valto Hardware component; any third party plugin or ancillary equipment not supplied by Valto; a Customer application running on a server

(virtual or physical) which is not supported by Valto; the Customer actions or inactions or those of any third party excluding any sub-contractor or IT Partner of Valto directly involved in the performance, operation or maintenance of the Customer's Managed Service.

**Exit Plan:** has the meaning given in clause 20, as such exit plan is updated and amended by the parties from time to time in writing.

**Fees:** the fees payable to Valto by the Customer in respect of the Services, whether one-off or recurring, as set out in the Work Order in respect of the Initial Term, and thereafter as revised by the Supplier prior to each Renewal Term in accordance with clause 18.

**Force Majeure Event:** has the meaning given in clause 21.

**Good Industry Practice:** the standards that fall within the upper quartile for the provision of business-critical managed services substantially similar or identical to the Managed Services, having regard to factors such as the nature and size of the parties, the Service Level Arrangements, the term, the pricing structure and any other relevant factors.

**Hardware:** all physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by Valto to deliver the Managed Services to the Customer.

**Incident:** any Vulnerability, Virus or security incident which:

- a) may affect the Assets;
- b) may affect Valto's network and information systems such that it could potentially affect the Customer or the Assets; or
- c) is reported to the Supplier by the Customer.

**Initial Term:** the initial term of the Contract specified in the Work Order, measured from the later of the Contract Start Date and the Activation Date.

**Initial Work Order:** the first document entitled "Work Order" issued by Valto in response to the Customer's request for Managed Services, setting out at least a high level description of the Managed Services to be provided by Valto, and the corresponding Fees payable by the Customer.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and 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.

**IT Partner:** a third party used by either party in the provision of a Managed Service.

**Maintenance:** any error corrections, updates and upgrades that Valto may provide or perform with respect to the Managed Services, as well as any other support or training services to be provided to the Customer under the Contract as set out in the SLA.

**Maintenance Contract:** Hardware or Software support contracts held on supported devices and supplied by the manufacturer or recognised vendor support partner.

**Managed Services:** the managed services to be provided to the Customer by Valto, as set out in the Work Order.

**Managed Services Specification:** the specification for the Managed Services as set out in the Work Order and the Documentation.

**Mitigate:** the taking of such reasonable steps that would be taken by a prudent supplier in accordance with Good Industry Practice to mitigate against the Incident in question, which may include (in the case of a Vulnerability) coding changes, but could also include specification changes (for example, removal of affected protocols or functionality in their entirety), provided these are approved by the Customer in writing in advance, and the terms **Mitigated** and **Mitigation** shall be construed accordingly.

**Monthly Meetings:** has the meaning given in clause 12.

**Normal Business Hours:** 8.30 am to 5.00 pm local UK time on Business Days.

**Permitted Purpose:** has the meaning given in clause 15.2.

**Pre-Existing IPR:** has the meaning given in clause 13.

**Regulatory Requirement:** has the meaning given in clause 19.7.

**Renewal Term:** a period of 12 months from the expiry of the Initial Term or the previous Renewal Term, as the case may be.

**Replacement Supplier:** any entity with which the Customer contracts (or proposes to contract) to provide services similar to all or any of the Managed Services and Maintenance upon the expiry or termination of all or any part of this agreement for any reason.

**Representatives:** has the meaning given to that term in the definition of Confidential Information.

**Review Meeting:** has the meaning given in clause 13.

**Service Level Arrangement or SLA:** the service level arrangements applicable to the Managed Services, if any, attached to the Work Order.

**Services:** the Set-up Services, the Managed Services, the Maintenance and the Transition Services.

**Set-up Services:** the due diligence, configuration and related work referred to in clause 2.2, to be performed by Valto to set up the Managed Services.

**Software:** any software used by Valto (or any of its sub-contractors) to provide the Managed Services to the Customer whether owned by a third party (**Third Party Software:** ), by the Customer (**Customer Software:** ) or by Valto (**Valto Software:** ).



**Special Conditions:** means the special conditions as set out in the Work Order.

**Statement of Work:** means the detailed activities, timetable dependencies and sequence of events which Valto shall perform, or procure the performance of, when delivering the Set-up Services.

**Supplementary Work Order:** any document issued by Valto and entitled "Work Order" which, notwithstanding that it may be a separate document and/or delivered at a later date, supplements an Initial Work Order and, once accepted by the Customer in accordance with clause 2.2 forms part of the Work Order.

**Term:** the Initial Term and each Renewal Term.

**Third Party Software:** has the meaning given to that term in the definition of Software.

**Transferring Contracts:** the third-party contracts (including licences to Third-Party Software) that Valto reasonably considers necessary to enable the transition of the Managed Services to the Customer or any Replacement Supplier on expiry or termination of all or any part of the Contract for any reason.

**Transition Services:** the services to be provided Valto to implement the Exit Plan.

**Tupe:** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014.

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

**Valto: means** Valto Limited incorporated and registered in England and Wales with company number 10625574 whose registered office is at 10 Watergate Row, Chester, CH1 2LD and any successor assignee thereof.

**Valto Account Team:** the individuals appointed by Valto from time to time who shall serve as the Customer's primary contacts for the Customer's activities under this MSA. The initial members of Valto's Account Team are listed in the Work Order.

**Valto Software:** has the meaning given to that term in the definition of Software.

**Valto's Success Manager:** the member of Valto's Account Team appointed in accordance with clause 12. Valto's Success Manager at the Effective Date is listed in the Work Order.

**Valto's System:** the information and communications technology system to be used by Valto (or any of its sub-contractors) in performing the Services, including the Hardware, the Software, the Customer-site Equipment and communications links between the Hardware and the Customer-site Equipment and the Customer's Operating Environment.

**Virus:** includes any malicious code, Trojan, worm and virus, lock, authorisation key or similar device that impairs or could impair the operation of the Software or the Managed Services.

**Vulnerability:** a weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term **Vulnerabilities** shall be construed accordingly.

**Work Order:** collectively, the Initial Work Order and any Supplementary Work Order, and all documents scheduled or attached to them.

**Work Product:** all deliverables and all other reports, documents, materials, techniques, ideas, concepts, trade marks, know-how, algorithms, software, computer code, routines or sub-routines, specifications, plans, notes, drawings, designs, pictures, images, text, audiovisual works, inventions, data, information and other items, expressions, works of authorship or work product of any kind that are authored, produced, created, conceived, collected, developed, discovered or made by Valto (or any of its sub-contractors) in connection with the Services or which relate in any manner to the Services or which result from any work performed by Valto (or any of its sub-contractors) for the Customer, including any and all Intellectual Property Rights therein.

Clause, Schedule and paragraph headings shall not affect the interpretation of this MSA.

- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.  
A reference to **writing** or **written** includes faxes but not e-mail.
- 1.9 Any phrase introduced by the words **including**, **includes**, **in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.10 References to clauses and Schedules are to the clauses and schedules of this agreement. References to paragraphs are to paragraphs of the relevant Schedule.
- 1.11 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assignees.
- 1.12 If there is an inconsistency between any of the provisions of this MSA and the Work Order, the latter shall prevail.



## **2. Ordering Services**

- 2.1 In response to a request by the Customer, Valto will prepare and send to the Customer the Initial Work Order. If the Customer wishes to contract with Valto to provide Managed Services set out in that Initial Work Order, it will indicate its acceptance of the Initial Work Order by signing it and returning a signed copy to Valto, whereupon the Contract will come into existence.
- 2.2 Depending on the nature of the Managed Services, the Customer recognises that it may be necessary for Valto to perform Set-up Services in which case Valto will provide to the Customer a Statement of Work. Valto and the Customer shall sign the Statement of Work when it is agreed and the signed Statement of Work shall form part of the Work Order and part of the Contract in respect of the relevant Managed Services.
- 2.3 Valto shall use reasonable endeavours to meet the performance dates set out in the Statement of Work, but any such dates shall be estimates only, and time shall not be of the essence of the Contract.
- 2.4 Upon completion of the Set-up Services Valto shall prepare and send to the Customer a Supplementary Work Order setting out further detail on how the Managed Services will be provided. The Customer may request reasonable changes to the Supplementary Work Order and Valto will use reasonable efforts to accommodate such changes within the scope of the Fees set out in the Initial Work Order, failing which Valto and the Customer will agree such changes to the Managed Services and the corresponding Fees as may be required to give effect to the Customer's request. The Customer can accept a Supplementary Work Order in writing, by email or via the post that Valto proceed with providing the Managed Services, and in the absence of a written indication to the contrary will be deemed to have accepted a Supplementary Work Order 5 days after Valto sends it to the Customer. Once accepted, a Supplementary Work order forms part of the Work Order and part of the Contract in respect of the relevant Managed Services.
- 2.5 Following acceptance of the Work Order (including, where applicable, any Statement of Work and Supplementary Work Order), Valto will provide the Customer with a provisional Activation Date for each of the ordered Managed Services. Valto will use reasonable efforts to begin delivering the relevant Managed Services by such provisional Activation Date, subject to payment by the Customer of any Fees which are payable in advance and the Customer's compliance with the terms of the Contract. Time shall not be of the essence in this regard and the Customer acknowledges that the actual Activation Date may differ.
- 2.6 If Valto has agreed with the Customer that any Fees will be payable in arrears, the delivery of the Managed Services is subject to credit approval at the beginning of the Term.
- 2.7 Valto does not expect that any of the Customer's workers or employees, or those of its other current or former suppliers, will transfer to Valto under TUPE by virtue of this Contract. The Customer must disclose to Valto, before Valto becomes obliged to provide the Managed Services, sufficient information about any such workers or employees who will so transfer so as to enable Valto to assess the likely costs of making such workers or employees redundant. If any such worker or employee who the Customer has not disclosed to Valto as transferring nevertheless is able to show that his or her contract of employment has transferred to Valto under TUPE as a result

of the Contract, the Customer will indemnify Valto for its actual losses resulting from a claim brought by such undisclosed workers or employees, including reasonable legal fees, provided that Valto must not settle or otherwise dispose of such a claim without the Customer's prior written consent.

- 2.8 The Customer acknowledges that Valto provides, and prices, the Services only on the basis of this MSA and agreed Work Orders. No other terms will apply, regardless of the form or timing of delivery.

### **3. Service provision**

- 3.1 Valto shall provide the Managed Services from the Activation Date until expiry or termination of the Contract for any reason.

- 3.2 Any applicable Service Level Arrangements shall apply with effect from the Activation Date.

- 3.3 The Customer shall not store, distribute or transmit through the Managed Services any material that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images; and/or
- (d) promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity.

- 3.4 The Customer shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).

- 3.5 The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by Valto in writing. This includes informing Valto promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, Valto shall work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Managed Services).

- 3.6 The Customer shall not provide the Managed Services directly or indirectly to third parties.

- 3.7 Valto reserves the right to:

- (a) modify Valto's System, its network, system configurations or routing configuration; or
- (b) modify or replace any Hardware or Software in its network or in equipment used to deliver any Service over its network,

provided that this has no adverse effect on Valto's obligations under the Contract and its provision of the Services or the Service Level Arrangements. If such changes will have an adverse effect Valto shall notify the Customer and the parties shall follow the Change Control Procedure.

- 3.8 If a Managed Service to be delivered by Valto is no longer readily available or is in short supply at the agreed time of delivery, Valto may substitute another product in its place. The substituted product will have equivalent or better performance and function and will be provided at no additional cost to the Customer.

Time shall not be of the essence in respect of the delivery of the Managed Services.

#### 4. Customer Data

- 4.1 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 or rights under the Data Protection Legislation.
- 4.2 The parties acknowledge that:
- (a) if Valto processes any personal data on the Customer's behalf when performing its obligations under the Contract, the Customer is the controller and Valto is the processor for the purposes of the Data Protection Legislation.
  - (b) the personal data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and the Supplier's other obligations under the Contract.
- 4.3 Without prejudice to the generality of clause 4.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Valto for the duration and purposes of the Contract so that Valto may lawfully use, process and transfer the personal data in accordance with the Contract on the Customer's behalf.
- 4.4 Without prejudice to the generality of clause 4.1, Valto shall, in relation to any personal data processed in connection with the performance by Valto of its obligations under the Contract:
- (a) process that personal data only on the documented written instructions of the Customer unless Valto is required by the laws of any member of the European Union or by the laws of the European Union applicable to Valto and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where Valto is relying on Applicable Laws as the basis for processing personal data, Valto shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Valto from so notifying the Customer;
  - (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Valto, 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 EEA unless the following conditions are fulfilled:
    - (i) the Customer or Valto has provided appropriate safeguards in relation to the transfer;

- (ii) the data subject has enforceable rights and effective legal remedies;
  - (iii) Valto 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) Valto 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 Contract 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 immediately inform the Customer if, in the opinion of Valto, an instruction infringes the Data Protection Legislation.
- 4.5 The Customer consents to Valto appointing Datto as a third-party processor of personal data under this agreement. Valto confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 4 and in either case which Valto confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Valto, Valto shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 4.
- 4.6 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 part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- 4.7 Valto shall follow its archiving and security procedures for Customer Data, including those set out in clause 7.
- 4.8 Valto shall promptly notify the Customer in writing of any actual or suspected loss or damage to the Customer Data. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for Valto to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest backup of such Customer Data. Valto shall not be responsible for any loss, destruction, alteration or unauthorised access to or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by Valto to perform services related to Customer Data maintenance and back-up). This clause 4.8 is without prejudice to the generality of clause 4.1.

## **5. Customer obligations**

To assist Valto fulfil its obligations under the Contract, the Customer will:

- 5.1.1 provide Valto promptly with any information and assistance it may reasonably require from time to time;

- 5.1.2 afford Valto full and safe access to the Customer Site(s) and the Customer Site Equipment during Normal Business Hours;
  - 5.1.3 provide at the relevant Customer Site(s) all suitable computer hardware, software and telecommunications equipment (other than those specified to be provided by Valto in the Work Order);
  - 5.1.4 where applicable, install the correct management agents for the Customer's Operating Environment, or if Valto installs management agents as part of the Managed Services, not interfere with such management agents;
  - 5.1.5 provide Valto with copies of all policies that Valto is expected to observe at the Customer Sites;
  - 5.1.6 provide such personnel assistance, including the Customer Account Team and other Customer personnel as may be reasonably requested by Valto from time to time. The Customer Account Team shall initially consist of the personnel listed in the Work Order. Valto shall use reasonable endeavours to ensure continuity of its personnel assigned to the Contract.
  - 5.1.7 appoint the Customer's Project Manager, who shall have authority to contractually bind the Customer on all matters relating to the Contract. The Customer shall use all reasonable endeavours to ensure continuity of the Customer's Project Manager, but has the right to replace them from time to time where reasonably necessary in the interests of the Customer's business.
  - 5.1.8 comply with all applicable laws and regulations with respect to its activities under the Contract;
  - 5.1.9 carry out its responsibilities to Valto in a timely and efficient manner. In default of such obligation, Valto may adjust any timetable or delivery schedule as reasonably necessary;
  - 5.1.10 use, and procure that its officers, employees, workers and subcontractors use, the Managed Services only in accordance with the Acceptable Use Policy;
  - 5.1.11 ensure that the Managed Services are not used to receive, transmit, host or otherwise process any material and/or communication (other than entirely unsolicited inbound communications) that is menacing, of a junk-mail or spam-like nature, illegal, obscene, threatening, defamatory, discriminatory, actionable, or in violation of (or which would place Valto in violation of) any rules, regulations or laws to which the use of the Managed Services are subject, or infringe the Intellectual Property Rights of Valto or any third party;
  - 5.1.12 inform Valto of any new applications and or services brought onto the Managed Services and ensure that such applications or services are licensed and compliant;
  - 5.1.13 where relevant, properly train, supervise and manage its personnel in the use and application of the Managed Services; and
  - 5.1.14 implement effective and appropriate backup and other procedures for the protection of its data where backup and restore services are not part of the Managed Services.
- 5.2 Additionally, and notwithstanding the above, Valto will not be responsible for any failure to provide the Managed Services unless Valto has met or observed the following requirements:

- 5.2.1 all Customer hardware and software configurations to be supported by Valto have been installed by Valto or have been reviewed by both parties and agreed that the solution presented is both suitable for purpose and within the ability of both parties to sustain;
  - 5.2.2 the Customer has assumed responsibility for the purchase of associated hardware and software Maintenance Contracts. Where any related Maintenance Contract has been arranged directly with an IT Partner by the Customer, the Customer shall be responsible for advising that IT Partner that Valto will be managing the Customer's systems from the applicable start date and, to the extent required, procuring for Valto a right to use the services provided under such Maintenance Contract;
  - 5.2.3 the Customer has ensured that the performance or operation of any Customer installed applications have no direct impact upon Valto's ability to deliver the agreed Service Levels; and
  - 5.2.4 the Customer has advised Valto of its internal procedures of internal escalation and systems maintenance.
- 5.3 If the Customer wishes to make any alterations, additions, or maintenance that will or may impact upon Valto's ability to deliver the Managed Services, then the Customer will inform Valto in writing of such works prior to their commencement.
- 5.4 In the event that the Customer, or any third party who is not a sub-contractor of Valto, omits or commits anything that prevents or delays Valto from undertaking or complying with any of its obligations under the Contract, then Valto shall notify the Customer as soon as possible and Valto will have no liability in respect to any delay in the provision of the Managed Service that results from such act or omission.
- 5.5 Valto may charge the Customer for any additional reasonable costs and expenses properly incurred by Valto caused by variation in the Customer's instructions, any failure on the part of the Customer to provide instructions in a reasonable and timely manner, or other failure to comply with this clause 5.
- 6. Valto's obligations**
- 6.1 Valto undertakes that the Services will be performed with all reasonable skill and care and in accordance with Good Industry Practice and substantially in accordance with the Managed Services Specification and the Contract.
- 6.2 The undertaking in clause 6.1 shall not apply to the extent of any non-conformance that is caused by use of the Managed Services contrary to the Valto's instructions.
- 6.3 If the Services do not conform with the undertaking in clause 6.1, Valto shall, 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. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking in clause 6.1.
- 6.4 Notwithstanding the foregoing, Valto does not warrant that the Customer's use of the Managed Services shall be uninterrupted or error-free.
- 6.5 Valto shall not be liable for any delay in or failure of performance caused by:
- (a) the Customer's failure to provide Valto with adequate instructions for performance or otherwise relating to the Services;
  - (b) the Customer's acts or omissions, or those of its agents, subcontractors, consultants or employees;

- (c) acts or omissions of third parties (unless directed by Valto);
  - (d) a Force Majeure Event.
- 6.6 Nothing in this Contract shall prevent Valto from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services that are similar to those provided under this Contract.

## **7. Security**

- 7.1 Valto shall ensure at all times that appropriate safety and security systems, policies and procedures are maintained and enforced to prevent unauthorised access or damage to, and to ensure the business continuity of, any and all Services, Valto's System and related networks or resources and the Customer Data, in accordance with Good Industry Practice, including an incident management process which shall enable Valto, as a minimum, to discover and assess Incidents, and to prioritise those Incidents, sufficient to meet its reporting obligations under clause 7.4(a);
- 7.2 Valto shall ensure that Valto's System is designed, maintained and upgraded at all times so as to Mitigate against Incidents. The parties agree that if Incidents are detected or discovered, each of them shall co-operate with the other to Mitigate the Incident and, particularly if the Incident causes or threatens the loss of operational efficiency, loss or corruption of Customer Data, or the reduced management of risks posed to the security of the Assets, Valto's System, or the Customer's Operating Environment, the parties shall assist each other to mitigate any losses and restore the Services to their original operating and security efficiency. The costs of complying with this clause 7.2 shall be apportioned between the parties on a pro rata basis according to fault.
- 7.3 The Customer shall promptly inform Valto if it suspects or uncovers any Incident and, subject to the cost allocations in clause 7.2, shall use all commercially reasonable endeavours to promptly mitigate such Incident.
- Valto shall:
- (a) notify the Customer immediately it becomes aware of any Incident and respond without delay to all queries and requests for information from the Customer about any Incident, whether discovered by Valto or the Customer, in particular bearing in mind the extent of any reporting obligations the Customer may have under the Network and Information Systems Regulations 2018 (NIS Regulations) and Data Protection Legislation and that the Customer may be required to comply with statutory or other regulatory timescales;
  - (b) promptly cooperate with any request for information made in respect of:
    - (i) any Incident;
    - (ii) any of the policies referred to in clause 7.1; or
    - (iii) any requests for information, or inspection, made by a regulator with competent jurisdiction over the Customer (including in connection with the NIS Regulations or Data Protection Legislation, if applicable).

## **8. Warranties**

- The Customer warrants, represents and undertakes that:
- (a) it has the full capacity and authority to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Customer;

- (b) it has the authority to grant any rights to be granted to Valto under the Contract, including the right to provide the Software and Hardware to Valto as indicated in the Contract and for the same to be used in the provision of the Services and otherwise in connection with the Contract;
- (c) it shall comply with and use the Services in accordance with the terms of the Contract and all applicable laws, and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws or in breach of the Acceptable Use Policy;
- (d) it owns or has obtained valid licences, consents, permissions and rights to use, and where necessary to license to Valto, any materials reasonably necessary for the fulfilment of all its obligations under the Contract, including any third-party licences and consents in respect of any Customer Software; and
- (e) Valto's possession and use in accordance with the Contract of any materials (including third-party materials supplied by the Customer to Valto) shall not cause Valto to infringe the rights, including any Intellectual Property Rights, of any third party.

8.2 Valto warrants, represents and undertakes that:

- (a) it has the full capacity and authority to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of Valto;
- (b) it owns, or has obtained valid licences, consents, permissions and rights to enable Valto to comply with this Contract and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under the Contract including for the Customer's use and receipt of the Services, and Valto shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached;
- (c) it shall comply with all applicable laws and regulations in performing its obligations under the Contract;
- (d) the Customer's possession and use in accordance with the Contract of any materials (including third-party materials) supplied by Valto to the Customer shall not cause the Customer to infringe the rights, including any Intellectual Property Rights, of any third party; and
- (e) all personnel and sub-contractors used by Valto in the performance of the Contract are adequately skilled and experienced for the activities they are required to perform.

## **9. IT Partners, EULAs and other Third Party Agreements**

9.1 The Customer may contract directly with an IT Partner for provision of software or services related to the Managed Services. Unless managing such contracts falls within the scope of the Managed Services, the Customer will (as against Valto) be solely responsible for all matters arising out of such contracts.

9.2 Where Valto provides to the Customer access to or use of third party Software in the course of providing the Managed Services, the Customer agrees to comply with the terms of the relevant end user licence agreements applicable to such Software. Where required by an upstream supplier of such Software, the Customer agrees to provide to such upstream supplier sufficient access to relevant systems and records to allow such upstream supplier to verify compliance with such end user licence agreements.

9.3 The Customer shall licence or procure a licence for the use of any software, programs and/or applications used by the Customer and not supplied by Valto (including the



Customer's Operating Environment). These may or may not be indirectly related to the Managed Services.

## **10. Invoicing and Payment**

- 10.1 Until the Contract comes into existence, all Fees are subject to change without prior notice. Valto will notify the Customer of any changes to Fees set out in a draft Work Order before such Work Order comes into effect.
- 10.2 The Customer acknowledges that the Fees chargeable in respect of certain Managed Services (for example, Azure, cloud backup) are based on the Customer's actual usage, and that the level of usage of such Managed Services is controlled by the Customer. The Customer therefore agrees in respect of such Managed Services to pay such Fees as the Customer may incur as a result of its actual usage, without the requirement for any additional purchase order. The Customer further acknowledges that fees charged by the upstream suppliers of certain Managed Services will vary from time to time during the Term. The Customer therefore agrees that Valto may vary the Fees to reflect such changes in upstream fees. Valto will use reasonable endeavours to provide reasonable notice of such variations.
- 10.3 Valto will invoice the Customer for its Fees monthly in advance as specified in the Work Order and unless the Work Order specifies otherwise, provided that in respect of the Managed Services of the type referred to in clause 12,2 Valto will invoice monthly in arrears.
- 10.4 If the Work Order provides that the Fees or any part of the Fees are payable in arrears, then Valto may withdraw or vary such arrangements at any time if:
- 10.4.1 Valto serves a notice of termination of the Contract;
  - 10.4.2 there is in the sole opinion of Valto a material adverse change in the creditworthiness of the Customer, or
- 10.5 Applicable third-party support and licensing Fees will be payable at initial purchase and any subsequent renewal dates.
- 10.6 When the Customer first orders a Managed Service not previously supplied, or it is agreed by the parties as being either an addition to, or change to an existing Managed Service being supplied, then a non-recurring charge may be specified as part of the Fees. This non-recurring charge is for installation of additional network infrastructure, cabling, electronics or other materials or consultancy. Non-recurring charges are payable by the Customer after delivery of the relevant Managed Service and will be billed in arrears. If the Customer fails to pay such non-recurring charges within thirty (30) calendar days following Valto's invoice for such non-recurring charges then:
- 10.6.1 such failure to pay shall be an Excused Outage for the purposes of provisioning and/or installation of the Managed Services;
  - 10.6.2 Valto may issue a revised Contract Start Date and/or Activation Date; and
  - 10.6.3 Valto may suspend installation of the Managed Service until receipt of such non-recurring charges.
- 10.7 If the Customer reasonably disputes any portion of an invoice, the Customer must submit a written claim for the disputed amount within thirty (30) calendar days after delivery of the relevant invoice and shall at all times remain liable for the payment of all items not disputed or not validly disputed as reasonably determined by Valto. Where such dispute turns upon level of usage of the Managed Services, Valto's records of

such usage shall be presumed to be accurate unless proved otherwise by an independent expert appointed by Valto or appears to be contrary to Customer's written purchase order for such Services.

- 10.8 The Customer waives the right to dispute any Fees not disputed within thirty (30) days of receipt of the relevant invoice.
- 10.9 When a dispute regarding amounts payable under the Contract is resolved to the Customer's reasonable satisfaction, the Customer will immediately pay any amounts that were the subject of such dispute.
- 10.10 Valto reserves the right to charge interest to the Customer on any sums, fees or other charges which are not paid on the due date and that interest may be charged from the date such payment falls due at the statutory rate of two per cent (2%) per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.11 The Customer shall reimburse Valto for all actual, reasonable travel costs and expenses including airfares, hotels and meals incurred by the Supplier in performance of the Set-up Services.
- 10.12 On expiry or termination of the Contract for any reason, any Fees incurred but unpaid shall become immediately due and payable and shall represent a debt due from the Customer to Valto.
- 10.13 All charges for Managed Service are net of VAT and other taxes. Except for taxes based upon Valto's net income, the Customer will be responsible for payment of all applicable taxes that arise in any jurisdiction, including but not limited to, VAT, sales, use, excise, access, bypass, franchise or other taxes, fees, charges or surcharges, however designated, imposed on or based on the provision, sale or use of the Managed Services.

## **11 Change control**

- 11.1 If either party wishes to change the scope of the Services (including Customer requests for additional services), it shall submit details of the requested change to the other in writing.
- 11.2 If either party requests a change to the scope or execution of the Services, Valto shall, within a reasonable time, provide a written estimate to the Customer of:
  - 11.2.1 the likely time required to implement the change;
  - 11.2.2 any variations to the Fees arising from the change;
  - 11.2.3 the likely effect of the change on the Project Plan; and
  - 11.2.4 any other impact of the change on the terms of the Contract.
- 11.3 If Valto requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 11.4 If either party wishes the other party to proceed with the relevant change referred to in clause 11.3, Valto has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.

## **12 Service review and governance**

- 12.1 The Customer's Project Manager and Valto's Success Manager shall have regular monthly meetings (**Monthly Meetings**) to monitor and review the performance of the Contract, to discuss any changes proposed in accordance with clause 12 and to discuss the Service Level Arrangements. These meetings shall be minuted by Valto's Success Manager and copies of those minutes shall be circulated to, and approved by, both parties.
- 12.2 Before each Monthly Meeting, the Customer's Project Manager shall notify Valto's Success Manager, and vice versa, of any problems relating to the provision of the Services for discussion at the Monthly Meeting. At each such meeting, the parties shall agree a plan to address such problems. In the event of any problem being unresolved or a failure to agree on the plan, the matter shall be resolved in accordance with the Dispute Resolution Procedure. Progress in implementing the plan shall be included in the agenda for the next Monthly Meeting.
- 12.3 A review meeting to assess the performance of Valto in the delivery of the Managed Services shall be held at six-monthly intervals (**Review Meeting**). Each meeting shall be attended by senior representatives of the Customer and of Valto, together with the Customer's Project Manager and Valto's Success Manager.
- 12.4 The Customer and Valto shall review the Service Level Arrangement at each Review Meeting and shall, in accordance with clause 11, agree modifications to reflect changes in the Customer's requirements for the Managed Services.

## **13 Proprietary rights**

- 13.1 The Customer acknowledges and agrees that, as between the parties, Valto and/or its licensors own all Intellectual Property Rights in the Work Product and in all other materials connected with the Services and/or developed in connection with the Contract by Valto its officers, employees, sub-contractors or agents. Excepted as expressly stated in the Contract, the Contract does not grant the Customer any rights to such Intellectual Property Rights.
- 13.2 Valto grants to the Customer a perpetual (for the Term of the Contract and thereafter), irrevocable, sub-licensable, non-transferable, non-exclusive, royalty-free, worldwide licence to all of Valto's Intellectual Property Rights as incorporated by Valto into the Work Product solely in connection with the Customer's (and its permitted sub-licensees') use of the Work Product in accordance with the Contract.
- 13.3 The Customer grants to Valto a revocable, sub-licensable, non-transferable, non-exclusive, royalty-free, worldwide limited licence for the Term of the Contract to use, exploit, copy, reproduce, manufacture, sub-license, modify, improve, enhance and make derivative works of the Customer's Intellectual Property Rights and the physical Work Product solely to the extent necessary to enable Valto to comply with its obligations under the Contract.
- 13.4 Valto shall not disclose to the Customer or use in its work any trade secrets or confidential information of a third party which Valto is not lawfully entitled to disclose or use in such manner. Valto shall not use any equipment, supplies, facilities, computer code, work product, inventions or materials of any other third party (**Third-Party Materials**) in any Work Product or in Valto's performance under the Contract unless:

- 13.4.1 Valto has the full right and authority to do so without violating any rights of any third party;
  - 13.4.2 Valto has obtained all necessary rights to enable it to perform its obligations under the Contract and grant the rights granted pursuant to the Contract, and to permit the Customer to utilise the Third-Party Materials as contemplated under the Contract, in each case at no additional cost or expense to the Customer;
  - 13.4.3 the Customer's use of such Third-Party Materials will not restrict or impair in any manner its use of the Work Product or subject the Customer to any obligation or liability; and
  - 13.4.4 such Third-Party Materials are specifically identified to the Customer in writing in advance of any use and the Customer has agreed in writing to such use.
- 13.5 Valto grants to the Customer a perpetual (for the Term of the Contract and thereafter), irrevocable, sub-licensable, non-transferrable, non-exclusive, royalty-free, worldwide licence to such Third-Party Materials as are incorporated in the Work Product solely in connection with the Customer's (and its permitted sub-licensees') use of the Work Product in accordance with the Contract.

## **14 Domain names**

- 14.1 If the Customer instructs Valto to obtain a domain name for the Customer, Valto shall act as an agent for the Customer in dealing with the relevant domain name registration authority. The contract for the domain name shall be between the Customer and the relevant domain name registration authority and the Customer agrees that it shall be solely responsible for renewals, and for legal, technical, administrative, billing or other requirements imposed by the relevant domain name registration authority (and relevant costs and expenses thereof).
- 14.2 Valto gives no warranty that the domain name requested shall not infringe the rights of any third party and all such enquiries shall be the responsibility of the Customer. The domain name shall form part of the Customer's Intellectual Property Rights for the purposes of the Contract.
- 14.3 If Valto licenses to the Customer an IP address as part of the Services, such IP address shall (to the extent permitted by law) revert to Valto after expiry or termination of the Contract for any reason, whereupon the Customer shall cease using the address. At any time after such expiry or termination, Valto may re-assign the address to another user.

## **15 Confidentiality**

- 15.1 The provisions of this clause 15 shall not apply to any Confidential Information that:
  - 15.1.1 is or becomes generally freely available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 15);
  - 15.1.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
  - 15.1.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound

- by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- 15.1.4 was known to the receiving party before the information was disclosed to it by the disclosing party; or
- 15.1.5 the parties agree in writing is not confidential or may be disclosed.
- 15.2 Each party shall keep the other party's Confidential Information confidential and shall not:
- 15.2.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement (**Permitted Purpose**); or
- 15.2.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 15.
- 15.3 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 Representatives in violation of the terms of the Contract.
- 15.4 The Customer:
- 15.4.1 acknowledges and agrees that Valto's Confidential Information includes any designs, plans, software or other materials created by Valto in connection with the Services; and
- 15.4.2 agrees not to make use of any such designs, plans, software or other materials for any purpose other than receipt of the Services.
- 15.5 Valto acknowledges and agrees that the Customer Data is the Confidential Information of the Customer.
- 15.6 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:
- 15.6.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- 15.6.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 15.
- 15.7 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 (including any relevant securities exchange) 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 15.7, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 15.8 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this MSA are granted to the other party or to be implied from the Contract.
- 15.9 The provisions of this clause 15 shall continue to apply during the Term of the Contract and for a period of two years after termination or expiry of the Contract.

## **16 Term, Renewal and Cancellation Charges**

- 16.1 The Contract will continue for the Initial Term and will thereafter automatically renew for successive Renewal Terms unless:
- 16.1.1 either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Term or the then-current Renewal Term, in which case the Contract will terminate upon the expiry of the Initial Term or then-current Renewal Term, as the case may be; or
  - 16.1.2 otherwise terminated in accordance with its terms.
- 16.2 Certain Managed Services are subject to longer cancellation periods imposed by the upstream supplier. The cancellation period for such Managed Services will be as set out in the Work Order, and in respect of such Managed Services clause 16.1.1 will be deemed to be amended accordingly.
- 16.3 The Customer acknowledges that the Fees are subject to variations caused by, among other things, increases in upstream supplier charges and general inflation, and that Valto may therefore vary the Fees payable by the Customer in respect of Renewal Terms. 45 days before the expiry of the Initial Term and each Renewal Term, Valto will notify the Customer of any adjustment in the Fees payable for the subsequent Renewal Term and, unless the Customer terminates the Contract in accordance with clause 16.1.1, such adjusted Fees will apply from the start of such Renewal Term.
- 16.4 The Customer may additionally terminate the Contract at any time during the Term if it pays to Valto the Cancellation Charge.

## **17 Suspension**

- 17.1 Valto may suspend all or any part of any Managed Service without liability to the Customer if:
- 17.1.1 Valto reasonably believes that the Managed Services have, are or will be used in breach of the Contract;
  - 17.1.2 Valto discover that the Customer is affiliated in any manner with a person who has used similar services abusively in the past;
  - 17.1.3 the Customer does not co-operate with Valto's investigation of any suspected breach of the Contract;
  - 17.1.4 Valto reasonably believes that the Customer has permitted the Managed Services to be accessed or manipulated by a third party without its consent;
  - 17.1.5 Valto reasonably believes that Customer applications, databases or operating systems hosted on the Managed Services have been hacked or compromised, except where such hack or compromise is reasonably attributable to Valto's failure to perform its obligations under the Contract;
  - 17.1.6 Valto reasonably believes that suspension of the Managed Services is necessary to protect Valto's System or Valto's other customers;
  - 17.1.7 any Fee or other amount due under the Contract is overdue or is at risk of non-payment in the opinion of; or
  - 17.1.8 Valto is required to do so by law or a regulatory or government body.
- 17.2 Valto will give the Customer advance notice of a suspension under this clause of at least twelve (12) Business Hours unless Valto determines in its reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect Valto or its other customers from imminent and significant operational, legal, or

security risk, or non-payment of its Fees. If Valto suspends any Managed Services pursuant to any of clauses 17.1.1, 17.1.3 or 17.1.7, then Valto may continue to charge the Customer the Fees for the Managed Services during the period of suspension, and may charge the Customer a reasonable reinstatement fee upon reinstatement of the Managed Services. If Valto suspends any Managed Services pursuant to clause 17.1.5, then the Customer must address the underlying vulnerability prior to Valto placing the Managed Services back in service. If the Customer requests, Valto may be able to perform this work for the Customer as a supplementary service on a time and materials basis at Valto's standard hourly rates.

## **18 Limitation of liability**

18.1 This clause 18 sets out the entire financial liability of Valto (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

18.1.1 any breach of the Contract;

18.1.2 any use made by the Customer of the Services; and

18.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

18.2 Except as expressly provided in the Contract:

18.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services, and for conclusions drawn from such use. Valto shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Valto by the Customer in connection with the Services, or any actions taken by Valto at the Customer's direction; and

18.2.2 all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from the Contract.

18.3 Nothing in the Contract excludes or limits the liability of Valto for:

18.3.1 death or personal injury caused by Valto's negligence;

18.3.2 fraud or fraudulent misrepresentation; or

18.3.3 any other liability which cannot lawfully be excluded or limited.

18.4 Without prejudice to the provisions of clause 18.4, Valto shall not be liable or responsible for:

18.4.1 any defects or failures caused by the equipment owned or used by the Customer (including but not limited to computers, servers, routers, telephones, databases, including loss or corruption of data or (unless and to the extent that backup services are part of the Managed Services) failure to implement back-up procedures);

18.4.2 any failure of any Customer-managed IT Partner to provide its Services in accordance with the relevant agreements;

18.4.3 any data breaches caused directly or indirectly by the Customer or any third parties, including any Customer-managed IT Partner;

18.4.4 any failures or damage caused by an employee of the Customer or any third party who has had access to and/or interfered with the Customer's Operating Environment;

- 18.4.5 any latent defect in any third party equipment or Software, or failure of such equipment or Software to performance in accordance with the manufacturer's specification, or
- 18.4.6 a Force Majeure Event.
- 18.5 Subject to clause 18.3:
  - 18.5.1 Valto shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill or similar losses, or for any indirect or consequential loss, costs, damages, charges or expenses however arising; and
  - 18.5.2 Valto's total aggregate liability in contract, 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 price paid for the Services during the 12 months preceding the date on which the claim arose.

## **19 Termination**

- 19.1 Without prejudice to 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:
  - 19.1.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 19.1.2 the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 19.1.3 the other party repeatedly breaches 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 Contract;
  - 19.1.4 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;
  - 19.1.5 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 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;
  - 19.1.6 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 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;
  - 19.1.7 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;



- 19.1.8 the holder of a qualifying floating charge over any of the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - 19.1.9 a person becomes entitled to appoint a receiver over any of the assets of the other party or a receiver is appointed over any of the assets of the other party;
  - 19.1.10 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;
  - 19.1.11 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 19.1.4 to clause 19.1.9 (inclusive);
  - 19.1.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
  - 19.1.13 there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 19.2 The party not affected by a continuing Force Majeure Event may terminate the Contract in accordance with clause 21.
- 19.3 If clause 19.1 applies then without prejudice to any other right or remedy available to Valto it shall be entitled to cancel the supply of the Managed Services without any liability to the Customer and any unpaid Fees shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 19.4 Any provision of the Contract which expressly or by implication is intended to come into or continue in force on or after expiry or termination of the Contract shall remain in full force and effect.
- 19.5 Expiry or termination of the Contract for any reason shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at expiry or termination.
- 19.6 On expiry or termination of the Contract for any reason:
- 19.6.1 Valto shall immediately cease provision of the Set-Up Services, Managed Services and Maintenance Services but may provide Transition Services for a further period in accordance with clause 20;
  - 19.6.2 (subject to clause 19.7) 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 and the Customer shall cease to use any IP address licensed to the Customer by Valto pursuant to clause 14.3; and
  - 19.6.3 if Valto receives, no later than ten days after the effective date of the expiry or termination of the Contract for any reason, a written request for the delivery to the Customer of the most recent backup of the Customer Data and such request is, where relevant, in accordance with clause 4.4(f), Valto shall [use reasonable commercial endeavours to] deliver the backup to the Customer within 30 days of its receipt of such a written request in the format stored or in a format as otherwise reasonably requested by the Customer, provided that the Customer has at that time paid all fees and charges outstanding at (and including any resulting from) expiry or termination (whether or not due at the date of expiry or termination). Once such ten-day period has expired or Valto has, at the Customer's request, delivered to the Customer the most recent

backup of the Customer Data (as applicable), Valto shall (subject to clause 19.7) promptly expunge from Valto's System and otherwise destroy or dispose of all of the Customer Data in its possession or control[. The Customer shall pay all reasonable costs and expenses incurred by Valto in returning and disposing of Customer Data and expunging it from Valto's System].

- 19.7 If a party is required by any law, regulation, or government or regulatory body (**Regulatory Requirement**) to retain any documents or materials which it would otherwise be obliged to return or destroy under clause 19.6.3, it shall notify the other party in writing of such retention, giving details of the documents or materials that it must retain. clause 15 shall continue to apply to any such retained documents and materials for as long as any such requirement continues in force, subject to any disclosure mandated by any Regulatory Requirement.
- 19.8 Valto shall be considered to have satisfied its obligation to "expunge" or "destroy" or "dispose" of any electronic data, for the purposes of clause 4.4(f) and clause 19.6.3, where it puts such electronic data beyond use.

## **20 Exit assistance**

- 20.1 Valto shall, on request from the Customer at any time after the expiry of six months from the Activation Date, prepare or update a detailed plan for the orderly transition of the Services from Valto to the Customer or its nominated Replacement Supplier (**Exit Plan**).
- 20.2 The Customer may, at any time before expiry or termination of all or any part of the Contract for any reason request Valto to provide the Transition Services or otherwise to offer reasonable assistance in transitioning the Services to the Customer or a Replacement Supplier (by providing the Transition Services). Valto shall, in consideration of a reasonable fee (to be agreed in advance), provide such Transition Services for a maximum period of three months, or until expiry or termination of the Contract for any reason in accordance with clause 21, whichever is later.
- 20.3 On expiry or termination of all or any part of the Contract for any reason Valto shall sell, and the Customer shall buy, the Customer-site Equipment for net book value, calculated in accordance with Valto's reasonable then-current depreciation policy. Title to such Customer-site Equipment shall pass to the Customer on payment for the same.
- 20.4 The Customer shall:
- 20.4.1 accept assignments from Valto or join with Valto in procuring a novation of each Transferring Contract; and
  - 20.4.2 once a Transferring Contract is novated or assigned to the Customer or the Replacement Supplier, carry out, perform and discharge all the obligations and liabilities created by or arising under that Transferring Contract and exercise its rights arising under that Transferring Contract or, as applicable, procure that the Replacement Supplier does the same.

## **21 Force majeure**

- 21.1 Neither party shall have any liability to the other under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, except to the extent that it could reasonably have avoided such circumstances by

fulfilling its obligations or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice), including strikes, lock-outs or other industrial disputes (including any industrial disputes involving the workforce of Valto), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a **Force Majeure Event**), provided that:

- 21.1.1 the other party is notified of such an event and its expected duration; and
- 21.1.2 it uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned, and that if the period of delay or non-performance continues for 90 days or more, the party not affected may terminate this agreement by giving not less than 14 days' written notice to the other party.

## **22 Audit**

For the Term of the Contract, and for a period of seven years from expiry or termination of the Contract for any reason, Valto shall maintain full and accurate records, in an agreed form, of all charges, prices, costs and expenses associated with and invoiced in respect of the Services and all processing of data under this agreement.

## **23 Non-Solicitation**

- 23.1 Both parties agree that during the period of the Contract and for a period of twelve (12) months after its termination or expiry, save for where such action is a result of a bona fide public recruitment process, neither party shall entice or seek to employ or engage directly or indirectly (without the other party's prior written agreement, such consent not to be unreasonably withheld or delayed) or make or seek to make any offer of employment or engagement to any of the other party's officers, employees or workers, including those of any of its sub-contractors who have been involved in the course of the negotiation, conclusion and performance of the Contract;
- 23.2 If any officer, employee or worker of a party leaves the employment of that party as a result of a breach of this clause 24 and commences employment with, or provides services to, the other party, it shall pay the non-breaching party 50% of the higher of:-
  - 23.2.1 the annual salary (including any benefits-in-kind, bonus payments, commissions and other benefits) of the employee at the date that they ceased to be an employee of the non-breaching party; or
  - 23.2.2 the annual salary of the employee at the time they commence employment by the breaching party.
- 23.3 Each party acknowledges that any such payment is by way of liquidated damages and is a reasonable and genuine pre-estimate of the non-breaching party's losses.

## **24 No Waiver**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

**25 Publicity**

Subject to clause 17, Valto shall be entitled to disclose the name of the Customer as a user of the Services on Valto's website or otherwise, or make any public statement publicising that the Customer uses the Services subject to the statement being agreed with the Customer prior to release.

**26 Insurance**

Each party shall at all times maintain appropriate policies of insurance with a reputable insurance company to cover their separate risks and liabilities under the Contract.

**27 Severance**

27.1 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.

27.2 If any provision or part-provision of the Contract is deemed deleted under clause 0 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.

**28 Entire agreement and variation**

28.1 The Contract constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

28.2 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.

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

**29 Assignment**

29.1 Valto may at any time assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract without the consent of the Customer.

29.2 The Customer shall not, without the prior written consent of Valto, assign, transfer, mortgage, charge, sub-contract, delegate, declare a trust over or deal in any other manner with any of its rights or obligations under the Contract.

**30 No partnership or agency**

30.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, or (except as expressly provided in clause 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.

30.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**31 Third party rights**

Except as expressly provided elsewhere in the Contract, no one other than a party to this agreement, its successors and permitted assignees, shall have any right to enforce any of its terms.

**32 Rights and remedies**

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

**33 Anti-Bribery**

Neither party will commit, or do or omit to do any act or thing which would result in the other party committing, and offence under sections 1, 2 or 6 of the Bribery Act 2010.

**34 Notices**

- 34.1 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand, by email to the Customer Representative at the address specified in the Work Order, or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business.
- 34.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or if sent by email, at 9.00 am on the next Business Day after sending, or otherwise 9.00 am on the second Business Day after posting.
- 34.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**35 Dispute resolution**

- 35.1 If a dispute arises under or in connection with the Contract (**Dispute**), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice (**Dispute Notice**) of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this clause 36.
- 35.2 If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, each party shall promptly (and in any event within five Business Days):
- 35.2.1 appoint a representative who has authority to settle the Dispute and is at a higher management level than the person with direct responsibility for the administration of this agreement (**Designated Representative**); and
  - 35.2.2 notify the other party of the name and contact information of its Designated Representative.
- 35.3 Acting reasonably and in good faith the Designated Representatives shall discuss and negotiate to resolve the Dispute, including agreeing the format and frequency for such discussions and negotiations, provided that all reasonable requests for relevant

information relating to the Dispute made by one party to the other party shall be complied with as soon as reasonably practicable).

- 35.4 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, either party may proceed with any other available remedy.
- 35.5 Notwithstanding any other provision of this agreement, a party may seek interim or other equitable relief necessary (including an injunction) where damages would be an inadequate remedy.

### **36 Governing law and jurisdiction**

- 36.1 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 construed in accordance with the law of England and Wales.
- 36.2 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).