The Customer's attention is drawn to the exclusions from and limitations of liability contained in these Terms and Conditions and in particular to the provisions of clauses 4.15, 5, 6, 8, 9.2, 10, 12, 13, 18 and 26 of Part A of these Terms and Conditions and clauses 2.3 and 2.4 of Part B of these Terms and Conditions and clauses 2 and 5 of Part D of these Terms and Conditions.

Between:

1.   Caltech I.T. Limited (a company registered in England under number 03701887) whose registered office is at Unit 66, Batley Technology Centre, Grange Road, Batley, West Yorkshire, WF17 6ER trading as Caltech ("Caltech"); and

2.   The person, partnership, company or other undertaking named as the Customer in the Quotation (the "Customer")

Background:

(1)   The parties have been in negotiation regarding the supply of certain computer software and the provision of certain services;

(2)   The parties have agreed to enter into these Terms and Conditions to define their contractual rights and liabilities between themselves and to regulate the other documentation which has been produced in the course of those negotiations.

It is agreed as follows:

PART A : GENERAL PROVISIONS

1.   **Definitions**

In these Terms and Conditions:

1.1   "Additional Charges" means charges to be calculated by Caltech in accordance with Caltech's standard rate for time, materials, travel, accommodation and subsistence from time to time prevailing;

1.2   "Agreement" means the agreement based on these Terms and Conditions;

1.3   "Consequential Loss" means pure economic loss, loss of profit, loss of business and like loss;

1.4   "Diagnostic/Change Request" means a Quotation described as such;

1.5   "GDPR" means the General Data Protection Regulation of the European Union (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016);

1.6   "Intellectual Property Right" means a patent, right in a design, copyright, trade mark, database right and any other intellectual property right whether or not registered or capable of registration;

1.7   "Microsoft Software Maintenance Services" means the provision of the support services for Microsoft Dynamics software as detailed in clause 4.1 of Part E;

1.8   "Part" means a part of this Agreement;
*

1.10   "Quotation" means the document the document headed "Quotation" sent by Caltech to the Customer;

1.10   "Services" means the Services indicated in the Quotation together with any other services from time to time agreed to be supplied by Caltech to the Customer;

1.11   "Site" means the Customer's premises specified in the Quotation;

1.12   "Software" means the computer software created by Caltech and licensed to the Customer by Caltech pursuant to this Agreement being the software indicated as such in the Quotation;

1.13   "Software Support Services" means the provision of the support services as detailed in clause 10.1 of Part C;

1.14   "Specification" means the functionality of the Software as broadly indicated in the Quotation which contains a Diagnostic/Change Request and any functionality as may have been demonstrated to the Customer by Caltech prior to the date of this Agreement;

1.15   "System" means the Software being both the software a copy of which is supplied to the Customer by Caltech together with Microsoft software and, where cloud based services are provided to the Customer, the software residing on Caltech computer systems and together also with the Customer's data (if any) stored by Caltech;

1.16   "Termination Event" means any of the following events:

   1.16.1 the Customer fails to pay any moneys due under this Agreement within thirty (30) days of the due date;

   1.16.2 the Customer breaches a term or condition of this Agreement (other than a term or condition requiring payment of money within clause 1.16.1 above) and (in the case of a breach capable of being remedied) fails to have remedied such breach within thirty (30) days of a written or email request by Caltech so to do;

   1.16.3 (where the Customer is a company) (and otherwise than for the purposes of an amalgamation or reconstruction of a solvent company) the Customer convenes a meeting of its creditors or a proposal is made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal is made for a composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or a trustee, receiver, administrative receiver or a similar officer is appointed in respect of all or a part of the business or assets of the Customer or a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the Customer or for the making of an administration order or (where the Customer is established in a country other than the United Kingdom) an event takes place in the territory in which the Customer is established which is similar to any of the foregoing;

   1.16.4 the event that the Assignor dies or becomes mentally impaired this agreement

   1.16.5 the Customer ceases to carry on business or threatens so to do.

1.17   "Third Party" means a person, partnership, company or any other undertaking not being Caltech or the Customer;

1.18   "Training Services" means the Services (if any) to be provided by way of training as indicated in the Quotation;

1.19   "Working Day" means a day on which banks in London are open for a full range of banking transactions;

1.20   "Writing" means in writing and for the avoidance of doubt, excludes facsimile transmission, text, instant messaging or email and "Written" shall be construed accordingly; and

1.21   "Year" means a calendar year in which this agreement subsists, the first Year being the calendar year in which this Agreement is entered into.

2.   **Overall Structure**

2.1   The provisions set out in all Parts of these Terms and Conditions shall always apply.

2.2   In the event of a conflict:

2.2.1   between the provisions of the main Parts of these Terms and Conditions and the provisions of a Quotation, the provisions of the Quotation shall prevail; and

2.2.2   between the provisions of a Quotation which contains a Diagnostic/Change Request, and the provisions of an early Quotation, the latest Quotation which contains the relevant Diagnostic/Change Request shall prevail.

2.3   For the avoidance of doubt, the document headed "Microsoft Dynamics 365 Support Desk Service Terms and Conditions" produced by Caltech shall not form part of the Agreement.

2.4   These Terms and Conditions shall always apply to the exclusion of any terms and conditions proffered by the Customer including without limitation any contained in or referred to in any Purchase Order or any other document submitted by the Customer. The provisions of the previous sentence shall apply irrespective of any request made by Caltech for a purchase order number from the Customer.   The Customer acknowledges that These Terms and Conditions shall prevail over any qualification, term or condition purported to be imposed by the customer (whether in the Purchase Order or in any other document) and any previous course of dealing between Caltech and the Customer.

2.5   Any acceptance by the Customer of a Quotation shall always be on the provisions of this Agreement. Any initial proposal made by Caltech is indicative only and shall not form part of the Agreement.

2.6   Without prejudice to the provisions of clause 2.4 above, the parties may agree that the Customer shall provide a purchase order number to Caltech and this requirement may be referred to in the Quotation.

2.7   The Agreement based on these Terms and Conditions is made on the date on which the Customer accepts the Quotation.

3.   **Caltech's Obligation**

In consideration of the monies payable by the Customer pursuant to this Agreement, Caltech shall supply the software and services indicated in the Quotation subject to the other provisions of this Agreement.

4.   **Payment**

4.1   The fees payable for the Services and the right to use the Software shall be as indicated in the Quotation.

4.2   Payment of the support fee and the software licence fee shall be made in the manner and on the dates specified in the Quotation. Where the manner and dates are not specified in the Quotation, payment shall be made in such manner and on the dates as reasonably specified by Caltech. The support fee and the software licence fee are payable annually in advance or else at the frequency specified in the Quotation.

4.3   The fees that are payable for the development of bespoke software and training are as indicated in the Quotation and subject to no work being required to be undertaken to the Customer's data by Caltech shall be fixed. Where additional work needs to be undertaken by Caltech in respect of the Customer's data, including without limitation where the Customer's data needs to be dedupliacted or otherwise cleaned by Caltech prior to integration of that data within the System, Caltech may charge Additional Charges.

4.4   The licence payments for third party software and charges for Microsoft Software Maintenance Services (if any) are subject to changes as made by those third parties

within time scales specified by those third parties. Caltech shall inform the Customer of any such changes as soon as Caltech is reasonably able to do so.

4.5   The licence payments for Caltech software and all other annual support charges are as specified in the Quotation. Caltech will give not less than thirty (30) days notice of any change in those licence payments or any other annual support charge.

4.6   All licence payments (whether for third party software or Caltech software) are expressed based on the number of users of the System from time to time. Such users are potential named users rather than concurrent users.

4.7   All invoices issued by Caltech pursuant to this Agreement shall be paid by the Customer within thirty (30) days of the date of issue.

4.8   Where specified in the Quotation, the Customer may purchase a specified number of call-off hours (a "time bank"), which may be used for future development and changes to the Software. Any such hours must be used by the Customer within twelve (12) months of their purchase.

4.9   Payments for the rights to use the Software and the Microsoft Dynamics software are levied for each year with effect from acceptance of the Software pursuant to clause 8 or in the case of Microsoft Dynamics software, installation or use of that Microsoft Dynamics software. Where so indicated in the Quotation, payments may be made on a monthly basis, without prejudice to the minimum notice period to terminate this Agreement being twelve (12) months, twenty four (24) months or thirty six (36) months, as provided for in clause 14 of this Part A.

4.10   Any annual payments are due on the date of entry into this Agreement and on each anniversary of that date. Any biennial payments are due on the date of signing of entry into this Agreement and every two years thereafter. Any triennial payments are due on the date of signing of entry into this Agreement and every three years thereafter. The Customer shall make all payments in advance. The Customer shall make all payments on an annual basis unless otherwise indicated in the Quotation.

4.11   Where any payment would otherwise be due pursuant to this Agreement in the middle of a calendar month, Caltech may require payment, in addition to the payment that would otherwise be due, so that annual or monthly payments due from the Customer are payable as at the beginning of a month. Caltech may issue an additional invoice accordingly, on a pro rata basis.

4.12 Caltech reserves the right to charge simple interest to the Customer on any sums, fees or other charges payable under this Agreement which are not paid on the due date and such interest may be charged (as well after as before a judgment) at the rate of three per cent (3%) per annum above the base rate of The Co-operative Bank plc from time to time subsisting: such interest to accrue on a daily basis.

4.13 Where a Termination Event occurs or the Customer fails to pay any monies on the due date or does not comply with an obligation imposed upon the Customer under this Agreement then, without prejudice to any other right or remedy available to Caltech, Caltech shall be entitled to:

    4.13.1 withhold the supply of any Software, Services or third party software to be provided to the Customer by or on behalf of Caltech until such payment is made or obligation complied with;

    4.13.2 suspend the Customer's right to use the Software until such payment is made or obligation complied with;

    4.13.3 suspend the performance of any obligation owed by Caltech under this Agreement until such payment is made or obligation complied with; and

    4.13.4 require payment in full by the Customer for all the Software and Services which the Customer has agreed to purchase further to this Agreement before supplying that Software and those Services.

4.14 All sums estimated pursuant to this Agreement are exclusive of Value Added Tax and any other similar tax which will be added at the rate prevailing as at the date of invoice.

4.15 The Customer shall not be entitled to make any set-off or counter-claim or claim a lien in respect of any monies owed by the Customer and shall pay all amounts due under or further to this Agreement without making a deduction of any kind.

4.16 Caltech may issue invoices for any Additional Charges monthly in arrears.

5. **Substitution and Modification**

Caltech reserves the right, as Caltech shall in its discretion determine, to make a substitution or modification in the specification of any part of the System or Services provided that such substitution or modification will not substantially worsen the overall performance of the System and Services.

6.   **Customer's Obligations**

6.1   The Customer shall:

6.1.1   pay all sums, fees and other charges due under this Agreement upon the dates provided for under this Agreement; and

6.1.2   take all necessary precautions to protect the health and safety of Caltech's personnel whilst at the Site or any other location of the Customer.

6.2   The Customer shall promptly provide Caltech, on request, with all information and assistance that Caltech may reasonably require to assist Caltech in the performance of Caltech's obligations pursuant to this Agreement.

6.3   In the event that the provision of the System is delayed by reason of any delay in the provision by the Customer of any such information or assistance or where the Customer for any reason delays the delivery, installation, integration or testing of the System, Caltech shall (without prejudice to any other remedy of Caltech) be entitled, acting reasonably, to increase the price of the System to compensate Caltech for all additional costs that are reasonably incurred by Caltech and to extend any delivery date.

6.4   The Customer alone shall be responsible for the accuracy and validity of the information provided by the Customer.

7.   **Documentation**

7.1   Save in respect of documentation for which Caltech does not own the copyright, the Customer shall be free to photocopy or otherwise duplicate the on-line documentation provided by Caltech and relating to the use of the Software provided always that such copies and duplicated copies of the documentation shall:

7.1.1   be made available only for the use by the employees of the Customer and for the internal use of the Customer; and

7.1.2   carry an identical copyright notice to the copyright notice included by Caltech upon the original documentation provided by Caltech.

8.   **Timetable**

8.1   All dates supplied by Caltech relating to the delivery, installation and integration and testing of a module of the System or for the provision of a Service shall be treated as being approximate only. Caltech shall not be liable for a delay if such dates are not complied with or met. No liability shall accrue to Caltech for a delay in the provision of a module of the System or for a delay in the provision of the Services.

8.2   Upon the successful delivery, installation and integration of the System by Caltech, Caltech shall inform the Customer that the System is ready to be tested by the Customer.   Where installation is not applicable or Caltech is precluded or unreasonably delayed by the Customer for any reason from carrying out delivery, installation and implementation Caltech may in any event inform the Customer that the System is ready to be tested by the Customer without such delivery, installation and implementation having been completed.

8.3   After Caltech has informed the Customer that the System is ready to be tested by the Customer, the Customer shall diligently undertake user acceptance testing of the System as quickly as possible and in any event within the time specified in the Quotation. The Customer shall prepare and provide access to and copies of proper test data to enable the adequate testing of the System.

8.4   Where the Customer finds a substantial element of non-conformity with the Specification, the Customer shall promptly provide all available details of the same to Caltech. Caltech shall subsequently use its reasonable endeavours to correct that element of non-conformity as soon as reasonably practicable, having regard to Caltech' other commitments from time to time prevailing and to the nature of the non-conformity. For the avoidance of doubt, the Customer shall diligently undertake user acceptance testing of those aspects of the System not directly affected by that non-conformity (if appropriate using any work-around provided by Caltech).

8.5   Upon the completion of user acceptance testing and the rectification of any such non-conformities, the Customer shall promptly confirm to Caltech that it has accepted the System.

8.6   If the Customer does not confirm that it has accepted the System within seven (7) days Working Days of a notice from Caltech stating that Caltech reasonably believes that the user acceptance testing has been successfully completed then the Customer shall be deemed to have accepted the System.

8.7   Where the Customer uses the System in a live environment then the Customer shall be deemed to have accepted the System.

9.   **Warranty**

9.1   Caltech warrants to the Customer that the Software supplied pursuant to this Agreement will be substantially in accordance with the Specification.

9.2   Without prejudice to the provisions of clause 9.1 above and to the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or otherwise by general law into this Agreement or otherwise relating to the software, goods or services supplied or to be supplied by Caltech are hereby excluded.

10.   **General Exclusions and Limitations of Liability**

10.1   The payments due from the Customer pursuant to this Agreement are determined on the basis of the exclusions from and limitations of liability contained in this Agreement. The Customer expressly agrees that these exclusions and limitations are reasonable because of (amongst other matters) the possibility that otherwise the amount of damages awardable to the Customer for a breach by Caltech of this Agreement may be disproportionately greater than the price of the System. Caltech is willing to arrange for additional insurance cover to enable Caltech to take on the burden of additional liability to the Customer provided that the Customer pays Caltech a commensurately higher fees for the use of the System. If the Customer wishes Caltech to obtain a quotation for additional insurance cover accordingly the Customer shall notify Caltech prior to this Agreement being entered into.

10.2   The following provisions in this clause 10 set out Caltech's entire liability (including any liability for the acts and omissions of its employees, agents or sub-contractors) to the Customer in respect of:

10.2.1 a breach of Caltech's contractual obligations;

10.2.2 a tortious act or omission for which Caltech is liable;

10.2.3 an action arising out of a misrepresentation by or on behalf of Caltech;

arising in connection with the performance or contemplated performance of this Agreement or out of an act done or omission made as a consequence of the entry into by Caltech of this Agreement.

10.3 The total liability which Caltech shall owe to the Customer and in respect of all claims howsoever arising pursuant to this Agreement shall not exceed the sum of one million pounds (£1,000,000).

10.4 Caltech shall in no circumstances be liable to the Customer for any Consequential Loss.

10.5 Caltech shall in no circumstances be liable to the Customer for any indirect loss.

10.6 Caltech shall in no circumstances (whether before or after termination of this Agreement) be liable to the Customer for any loss of or corruption to data or programs held or used by or on behalf of the Customer and the Customer shall at all times keep adequate back-up copies of the data and programs held or used by or on behalf of the Customer.

10.7 The Customer shall only be entitled to bring a claim against Caltech where the Customer issues legal proceedings against Caltech within the period of twenty four (24) months commencing on the date upon which the Customer ought reasonably to have known of its entitlement to bring such a claim.

10.8 Notwithstanding anything to the contrary contained in this Agreement Caltech's liability to the Customer (including any liability for the acts and omissions of its employees, agents or sub-contractors) for:

10.8.1 death or personal injury resulting from the negligence of Caltech, its employees, agents or sub-contractors;

10.8.2 damage suffered by the Customer as a result of a breach by Caltech of the condition as to title or the warranty as to quiet possession implied by law or statute;

10.8.3 damage for which Caltech is liable to the Customer under Part I of the Consumer Protection Act 1987; or

10.8.4 fraud;

shall not be limited save that nothing in this clause 10 shall confer a right or remedy upon the Customer to which the Customer would not otherwise be entitled.

10.9 The exclusions from and limitations of liability set out in this clause 10 shall be considered severally. The invalidity or unenforceability of any part of this clause 10 shall not affect the validity or enforceability of any other part of this clause 10.

10.10 The provisions of this clause 10 shall survive any termination of this Agreement.

10.11 For the avoidance of doubt, the provisions of this clause 10 also apply to any claim arising pursuant to clause 13. In the event of any conflict or inconsistency between the provisions of clause 13 and the provisions of this clause 10, the provisions of clause 10 shall prevail.

11. **Provision of Facilities**

The Customer shall provide all necessary stationery, electricity, internet connectivity, bandwidth, telecommunication facilities and other consumables, materials and apparatus and all necessary and safe facilities for the proper undertaking of Caltech's obligations under this Agreement when Caltech is at the Site including without limitation such accommodation and office and car parking space as is reasonably required by Caltech at the Site and the Customer's other locations as appropriate.

12. **Force Majeure**

12.1 Any delay in or failure of performance of any obligation by either party (save an obligation in respect of the payment of monies) shall not constitute a breach of such obligation but only to the extent that such a delay or failure is caused by an event (a "event of force majeure") which is not within the reasonable control of the party otherwise in default and which such party is unable to prevent or to circumvent by the exercise of reasonable diligence including without limitation an event such as a fire, flood, tempest, earthquake, epidemic, governmental action, war, riots, civil commotion strike, lock-out or other industrial action or trade dispute (whether or not involving the work force or a part of the work force of the party otherwise in default).

12.2 The party otherwise in default shall take and continue to take all reasonable steps to circumvent and mitigate the effect of the event of force majeure and to reduce any delay in the performance of such obligation.

12.3 The party otherwise in default shall notify the other party of the event of force majeure as soon as reasonably practicable.

13. **Control over Unlawful Use of Software**

In order to ensure that the Software is not used in an unauthorised manner, Caltech may employ a code or other device. Accordingly, the Customer may be required to input a code number periodically in order for the Software to function correctly. Where the Software is for any reason no longer licensed, the Software may cease to function where no code number or the incorrect code number is input.

14. **Termination of the Agreement**

14.1 Either party may terminate this Agreement at any time by giving not less than twelve (12) months' notice so to do, such notice to be expressed to expire:

14.1.1 where the System is hosted by the Customer at the end of a calendar month; and

14.1.2 where the System is hosted by Caltech or Microsoft, at the end of a year commencing on acceptance of the Software pursuant to clause 8 or in the case of Microsoft Dynamics software, installation or use of that Microsoft Dynamics software.

14.2 Notwithstanding the provisions of clause 14.1 above where the Customer has paid to use the Software on a biennial basis either party may terminate this Agreement at any time by giving not less than twelve (12) months' notice so to do, such notice to be expressed to expire:

14.2.1 where the System is hosted by the Customer at the end of a calendar month on or after the end of the twenty fourth (24th) calendar month following commencement of this Agreement; and

14.2.2 where the System is hosted by Caltech or Microsoft, at the end of a year commencing on acceptance of the Software pursuant to clause 8 or in the case of Microsoft Dynamics software, installation or use of that Microsoft Dynamics software provided always that such notice may not take effect until a

date on or after the end of the twenty fourth (24th) calendar month following commencement of this Agreement.

14.3   Notwithstanding the provisions of clause 14.1 above where the Customer has paid to use the Software on a triennial basis either party may terminate this Agreement at any time by giving not less than twelve (12) months' notice so to do, such notice to be expressed to expire:

14.3.1 where the System is hosted by the Customer at the end of a calendar month on or after the end of the thirty sixth (36th) calendar month following commencement of this Agreement; and

14.3.2 where the System is hosted by Caltech or Microsoft, at the end of a year commencing on acceptance of the Software pursuant to clause 8 or in the case of Microsoft Dynamics software, installation or use of that Microsoft Dynamics software provided always that such notice may not take effect until a date on or after the end of the thirty sixth (36th) calendar month following commencement of this Agreement.

14.4   Upon the happening of a Termination Event, Caltech may by Written notice terminate the whole of this Agreement with immediate effect. This right shall apply notwithstanding the right of either party to otherwise terminate this Agreement as otherwise provided under this Agreement or by operation of law.

14.5   Upon any termination of this Agreement:

14.5.1 the Customer shall immediately cease to be entitled to use the Software; and

14.5.2 the Customer shall promptly return to Caltech all copies (whether authorised or unauthorised) of that part of the Software supplied by Caltech to the Customer, the associated documentation and manuals.

14.6   The termination of this Agreement shall be without prejudice to the rights and duties of either party accrued prior to termination.

14.7   Upon the termination of this Agreement the Customer shall not be entitled to a rebate of any sum paid or payable in advance pursuant to this Agreement.

14.8   The following provisions shall survive any termination of this Agreement: clauses 1, 2, 4, 6.1, 6.4, 9.2, 10, 12, 13, 14, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27 and 28 of Part A and clauses 1, 5.2 and 6 of Part C.

15. **Communications**

15.1 The Customer shall communicate to Caltech within seven (7) Working Days of the date of entry into of this Agreement and thereafter from time to time the identity of:

15.1.1 the person and the deputy within its undertaking at the Site who shall act as the sole contact point and channel of communication for the day to day technical discussions with Caltech; and

15.1.2 the person and the deputy within its undertaking at the Site who shall act as the sole contact point and channel of communication for commercial discussions with Caltech.

The Customer shall promptly inform Caltech of any substitution for any such person or deputy.

15.2 Where the Customer is required to contact Caltech then it shall contact Caltech at its service centre as requested by Caltech from time to time in Writing or by email.

16. **Severability**

16.1 If a provision in this Agreement is determined by a Court or tribunal of a competent jurisdiction to be wholly or partly unenforceable for any reason:

16.1.1 such unenforceability shall not affect the rest of this Agreement; and

16.1.2 the parties shall in good faith amend and if necessary novate this Agreement to reflect as near as may be the spirit and intention behind such unenforceable provision or provisions so that the same comply with the laws of that jurisdiction.

17. **Assignment**

17.1 The Customer shall not transfer, mortgage or charge this Agreement or any of its rights, benefits or liabilities under this Agreement (or purport to do so) without the previous consent in Writing of Caltech (such consent to be given at the reasonable discretion of Caltech).

17.2   Caltech may assign this Agreement as Caltech in its discretion as it sees fit.

18.   **Sub-Contracting and Hosting**

18.1   Caltech shall be free to sub-contract any of its rights and obligations under this Agreement as Caltech in its discretion sees fit. Save as provided for in accordance with the provisions of clause 18.2 below, Caltech shall not be liable to the Customer for the acts and omissions of its sub-contractors.

18.2   Where Caltech hosts the Software or the Microsoft Dynamics software, then:

18.2.1 Caltech may use such external third party hosting provider as it deems fit provided that such provider is fully subject to the GDPR (or an equivalent regime) because either (a) it is a company situated in the European Union or the United Kingdom or (b) it is a company which is registered under the Privacy Shield regime in respect of data protection; and

18.2.2 Caltech shall use its reasonable endeavours to pass on to the Customer the benefit of any warranties in respect of the service provided by the third party hosting provider, but shall not be liable further or otherwise in that respect to the Customer.

19.   **Data Protection**

19.1   In this clause 19:

19.1.1   "Personal Data" means personal data, as defined in the GDPR, about Customer's clients provided or made available to Caltech by the Customer in connection with Caltech' provision of the Services; and

19.1.2   "Data Controller" and "Data Processor" shall have the meanings ascribed to them by the GDPR.

19.2   Unless authorized in the Agreement or otherwise by the Customer, Caltech shall not use or disclose any of the Personal Data for any purpose save that (a) Caltech may use the Personal Data to provide or assist in the provision of the Services and to exercise any rights granted to it under the Agreement and (b) Caltech may disclose the Personal Data as required by applicable law.

19.3 Each Party agrees to comply with the provisions of the GDPR in relation to the collection, exchange and processing of the Personal Data pursuant to this Agreement. Each party shall take appropriate measures in accordance with the provisions of the GDPR to protect against the unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to the Personal Data.

19.4 The Customer shall minimize the amount of Personal Data supplied to Caltech.

19.5 The Customer shall remain the Data Controller of the Personal Data processed by Caltech. Caltech shall be the data processor of such Personal Data. Subject to the provisions of Clause 19.2 above, Caltech shall comply with all reasonable lawful instructions in respect of Caltech's processing of the Personal Data.

19.6 In the event there is any unauthorized or unlawful access to or use of the Personal Data that is required to be notified by Caltech under the GDPR (or which is required to be notified by the Customer under the GDPR) (a "Security Incident"), Caltech shall as soon as reasonably possible notify the Customer of the Security Incident, subject to applicable confidentiality obligations and to the extent required by the GDPR. In the event of a Security Incident, Caltech and the Customer shall cooperate in good faith to resolve any data privacy or security issues involving the Personal Data.

20. **Confidentiality**

20.1 Each party agrees with the other in respect of all information of a confidential nature disclosed pursuant to this Agreement or discovered further to the operation of this Agreement (which includes without limitation (i) the Quotation; (ii) information as to the operation of the business of Caltech and (iii) information relating to the source code and structure of the Software) ("Confidential Information"):

20.1.1 to keep the Confidential Information in strict confidence and secrecy;

20.1.2 not to use the Confidential Information save for complying with its obligations under this Agreement;

20.1.3 not to disclose the same to a Third Party;

20.1.4 to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its employees and others who of necessity need the same in the performance of their duties as envisaged by this Agreement and in

such circumstances to ensure that such employees and others are aware of the confidential nature of the Confidential Information;

provided however that where a part of the Confidential Information is already or becomes commonly known in the trade (except through a breach of the obligations imposed under this Agreement) then the foregoing obligations of confidentiality in respect of such part shall not apply or shall cease to apply (as the case may be).

20.2   This obligation of confidentiality shall survive the termination of this Agreement.

21.   **Amendment and Waiver**

21.1   No amendment of this Agreement shall be binding unless agreed in Writing and signed by or on behalf of the party granting the waiver.

21.2   Save in respect of a waiver granted in Writing by a party, the failure of either party at any time to enforce a provision of this Agreement shall not be deemed a waiver of such provision or of any other provision of this Agreement or of such party's right thereafter to enforce that or any other provision of this Agreement.

21.3   Notwithstanding the provisions of this clause 21 and any other provision of this Agreement, nothing in this Agreement shall prevent Caltech undertaking work or modifying Services for the Customer following the written or oral request of a Customer so to do and for charging the Customer Additional Charges accordingly.

22.   **Employees**

22.1   Without the prior consent in Writing of Caltech, the Customer shall not either during the continuance of this Agreement (or during the period of one hundred and eighty (180) days commencing on the date of termination) solicit, procure or attempt to procure the employment of a person employed from time to time by Caltech.

22.2   Without the prior consent in Writing of Caltech, the Customer shall not employ a person who has previously been employed by Caltech during the period of one hundred and eighty (180) days commencing on the date of cessation of their employment.

22.3   Without the prior consent in Writing of the Customer, Caltech shall not either during the continuance of this Agreement (or during the period of one hundred and eighty

(180) days commencing on the date of termination) solicit, procure or attempt to procure the employment of a person employed from time to time by the Customer.

22.4   Without the prior consent in Writing of the Customer, Caltech shall not employ a person who has previously been employed by the Customer during the period of one hundred and eighty (180) days commencing on the date of cessation of their employment.

23.   **Contracts (Rights of Third Parties) Act 1999**

A Third Party shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Agreement.

24.   **Notices**

24.1   Save as otherwise indicated, any notice to be given pursuant to this Agreement shall be in Writing and may be served and if so served shall be deemed to have been duly served:

24.1.1 if delivered by hand, when left at the proper address for service;

24.1.2 if given or made by prepaid first class post, 48 hours after being posted (excluding days that are not Working Days); or

provided that where in the case of delivery by hand such delivery occurs either after 5:00 pm on a Working Day or on a day other than a Working Day service shall be deemed to occur at 9:00 am on the next following Working Day (such times being local time at the address of the recipient).

24.2   Any notice to be given pursuant to this Agreement may be addressed to the recipient in the case of a company at its registered office or such other address as the recipient may previously have notified to the other party in Writing from time to time.

25.   **Entire Agreement and Representations**

25.1   This Agreement supersedes all previous written or other documents or agreements (written or oral) relating to the subject matter of this Agreement including without limitation all documents proffered by the Customer and relating to the subject matter of this Agreement.

25.2   The parties acknowledge that in entering into this Agreement they have not relied upon any representations other than those reduced to Writing in this Agreement. The provisions of this clause 25.2 shall not apply to any fraudulent misrepresentation.

26.   **Interpretation**

26.1   Reference in these Terms and Conditions to a clause is to a clause of a Part of this Agreement.

26.2   The index and the headings to the clauses of these Terms and Conditions shall not affect the construction of these Terms and Conditions.

26.3   In these Terms and Conditions the use of the plural shall include the singular and the use of the singular shall include the plural.

26.4   In these Terms and Conditions references to the masculine, feminine or neuter genders shall include each and every gender.

26.5   Where a consent or approval is to be given or a discretion is to be exercised under a term or condition of these Terms and Conditions by Caltech then Caltech shall be entitled (unless the contrary is expressly indicated) to withhold (or give) such consent, approval or discretion at Caltech's absolute discretion.

27   **Escalation Procedure**

27.1   In this clause 27.1 (i) a "Dispute" means any dispute or question whatsoever which arises either during the subsistence of the agreement contained in these Terms and Conditions or afterwards between the parties touching these Terms and Conditions or the construction or application thereof or as to any other matter in any way relating to this Agreement; and (ii) a "Meeting" means a physical meeting.

27.2   In the event of a Dispute arising, senior representatives appointed by each party shall, within ten (10) days of a Written request from either party addressed to the other party, hold a Meeting (scheduled to last for not less than two (2) hours) in a good faith attempt to resolve the dispute without recourse to legal proceedings. If the Dispute is not resolved at that Meeting, the parties shall thereafter attempt further to resolve the Dispute as provided for in clause 27.3 below.

27.3   If either party, following the attempt referred to in clause 27.2, considers that the Dispute has not been satisfactorily resolved, that party shall notify the other party in Writing that it believes that the Dispute has not yet been satisfactorily resolved within twenty one (21) days of the first request for a Meeting made pursuant to clause 27.2.

27.4   Upon receipt of any Written notification, pursuant to clause 27.3, the party receiving Written notice shall forthwith contact the notifying party to arrange a Meeting (scheduled for not less than three (3) hours) between directors of each party to take place at a mutually convenient time for those directors (but in any event within thirty (30) days of receipt of Written notification). Those directors shall attempt in good faith amicably and constructively to resolve the Dispute.

27.5   Failing a resolution of the Dispute by the directors pursuant to clause 27.4 above or in any case where the directors fail to meet within such thirty (30) day period, either party may by notice served on the other party require the Dispute to be referred to and finally resolved by arbitration, in accordance with clause 28 below.

27.6   Provided the time periods provided for in this clause 27 above have passed (and whether or not the requisite actions have occurred in those time periods) neither party shall raise any allegation of bad faith or lack of good faith in carrying out the foregoing procedures against the other party as a barrier to or reason to delay the right of the parties to proceed to arbitration as provided for in clause 28 below.

28.   **Law and Arbitration**

28.1   The formation, construction, performance, validity and all aspects whatsoever of this Agreement shall be governed by English Law and subject to the remainder of the provisions of this clause 28, each of the parties hereby submits to the non-exclusive jurisdiction of the English courts.

28.2   All disputes and questions whatsoever which arise either during the subsistence of the agreement contained in this Agreement or afterwards between the parties touching these Terms and Conditions or the construction or application thereof or as to any other matter in any way relating to this Agreement shall be referred to a single arbitrator in accordance with and subject to the provisions of the Arbitration Acts 1950-1979 (or any statutory modification or re-enactment thereof for the time being in force). Either party may serve notice upon the other party to agree upon an arbitrator and in default of such agreement within seven Working Days of the date of such notice the arbitrator shall be appointed at the request of either party by the President at

the time of the Institution of Engineering and Technology. The costs of any such arbitration shall be paid by one or more parties as determined by the arbitrator.

28.3 The arbitration proceedings will be conducted in the English language and will be held in London, England. The arbitrator shall act as an expert and accordingly the decision of the arbitrator will be final and binding on the parties.

28.4 Notwithstanding the provisions of clause 28.2 above, Caltech shall have the right to seek appropriate injunctive relief against the Customer in an English or foreign court and provided that such court is satisfied that such proceedings have not been brought frivolously or vexatiously all aspects of the dispute the subject of the injunction proceedings shall be dealt with by such court and not by arbitration as provided for in clause 28.2 above.

PART B : PROVISION OF CONSULTANCY, INTEGRATION AND OTHER SERVICES

1. **Caltech's Obligations**

1.1 Caltech shall provide such consultancy, integration and other services as are indicated in the Quotation in consideration of the payment by the Customer of the charges indicated in the Quotation.

1.2 The Services may take the form of all or any of the following:

1.2.1 the provision of a set number of man days of consultancy (whether for the preparation of bespoke software, a software specification or otherwise) as indicated in the Quotation;

1.2.2 the supply of bespoke software, a configuration service or a software specification for bespoke software or such other items as indicated in the Quotation;

1.2.3 the provision of training and other services as indicated in the Quotation.

1.3 The provision of all services by or on behalf of Caltech for the Customer shall be subject to the provisions of this Agreement.

2. **Services to be Provided**

2.1   Where the Services involve the preparation of bespoke software, the charge for the same shall be as specified in the Quotation.

2.2   Where Caltech is requested to undertake work that cannot yet be specified in full, Caltech may agree with the Customer an initial Quotation for the preparation of a detailed Diagnostic/Change Request which may then form the basis of a further Quotation.

2.3   Any estimate or indication by Caltech as to the number of man days required by Caltech to undertake a specific task shall be construed as being an estimate only. Caltech shall in no circumstances be liable for a delay or for any other loss, damage or other cost of whatsoever nature howsoever arising (including without limitation Consequential Loss) suffered or incurred by the Customer where such estimate or indication is incorrect.

2.4   Where Services are agreed to be provided and where a fixed charge for the provision of those Services has been agreed between the parties then nevertheless Caltech shall not be bound by such fixed charge where the Customer subsequently requires an improvement, substitution or modification to those Services.

2.5   For the purposes of this Agreement, there are seven and a half (7.5) working hours in a working day.

3.   **Additional Items**

The charges for the Services include travel, accommodation and subsistence expenses (including the cost of time spent travelling) incurred in the provision of the Services by Caltech to the extent that the same are specified in the relevant Quotation. Where Caltech, provides a Quotation for a number of days of work, some of those working days may be used as chargeable travel time.

4.   **Bespoke Software**

Where the Services include the provision of bespoke software, then such software shall belong to Caltech and the provisions of Part C shall apply to that bespoke software.

PART C : PROVISION OF SOFTWARE AND SOFTWARE SUPPORT

1.   **Ownership**

Notwithstanding any description of the Customer's rights as or by virtue of a sale (and whether made orally or in writing and whether made in these Terms and Conditions or in any other document) the Customer's only right to use the Software is by virtue of Part C of these Terms and Conditions and the Customer acknowledges that all Intellectual Property Rights in or relating to the Software and all related documentation and all parts of the Software and shall remain the exclusive property of Caltech or in the case of Software licensed to Caltech by a Third Party licensor, the exclusive property of such licensor.

2.   **Licence and Payment**

2.1   Subject to payment by the Customer to Caltech of the fee to use the Software as indicated in the Quotation, Caltech hereby grants to the Customer the non-exclusive, non-transferable licence to use the Software for the period covered by the payments. For the avoidance of doubt, the Customer may not grant a sub-licence out of this licence. The Customer's licence is limited to the right to use only the Software as it currently exists from time to time. For the avoidance of doubt (i) Caltech may from time to time change the user interface of the Software at Caltech's discretion; and (ii) the Customer has no entitlement to use any earlier or future release or version of the Software.

2.2   For the avoidance of doubt, this licence shall be deemed to incorporate and include all software which is supplied from time to time to the Customer by Caltech and whether such software is expressly referred to in a Quotation or not. This clause 3.2 is without prejudice to Caltech's right to charge the Customer for the supply and licence of any further software.

2.3   The fee to use the Software shall be as indicated in the relevant Quotation.

2.4   Caltech shall determine the subsequent fee for the right to use the Software from time to time as provided for on this Agreement.

2.5   The Customer may at any time request an increase in the number of licences of the Software. In such circumstances Caltech shall provide a further Quotation for those additional licences. The Customer may at any time request a reduction in the number of licences of the Software by giving not less than twelve (12) month's notice so to do. The Customer may not request a reduction in the number of licences of the Software to less than one licensed copy of the Software. The Customer may at any

time request a reduction in the Support of the Software by giving not less than twelve (12) month's notice so to do.

3.   **Invoicing**

Any fee for the use of the Software may be invoiced by Caltech annually in advance, or with such other frequency as may be indicated in the Quotation. For the avoidance of doubt, the frequency of payment is without prejudice to the minimum notice period to terminate this Agreement being twelve (12) months, twenty four (24) months or thirty six (36) months, as provided for in clause 14 of Part A.

4.   **Warranty**

Caltech warrants to the Customer that it has the right to grant the Customer the licence and rights hereby granted in this Part C.

5.   **Restrictions**

5.1   The licence hereby granted and the Customer's rights to use the Software are subject to the following restrictions:

        5.1.1   the Software shall be used only by the Customer for the purposes of the Customer's own internal business from the Site or at such other location as Caltech may previously agree in Writing;

        5.1.2   the Customer shall not assign, sub-licence, charge or otherwise dispose of or grant rights over or out of the licence hereby granted or the Software and shall not attempt to do any such thing;

        5.1.3   nothing in this Agreement prevents the Customer from maintaining a reasonable number of copies of that part of the Software supplied by Caltech to the Customer in machine readable form for normal operational security and back-up purposes as permitted in law and this licence applies to any such copy as it applies to the original copy of the Software supplied to the Customer;

        5.1.4   the Customer shall not attempt to ascertain or list the source programs or source code relating to the Software; and

5.1.5   the Customer shall not decompile or translate the Software into any other computer language nor attempt so to do;

5.2   The Customer agrees not to use the Software or the associated documentation save in accordance with the provisions of this Agreement.

5.3   Save as provided in clause 5.1.4 of this Part C the Customer shall only use a single copy of the Software supplied to the Customer by Caltech.

5.4   The Customer acknowledges and agrees that none of the acts which are prohibited by the provisions of this Agreement (including, without limitation, the prohibitions on copying or adapting the Software or any part for the purpose of correcting errors in the Software) are necessary for the purposes of the use of the Software by the Customer in accordance with its intended purpose or for the purposes of the use of the Software in accordance with this licence.

6.   **Modifications and Unauthorised Use**

6.1   The Customer shall not modify, alter or in any way interfere with the Software or merge the Software with other programs or systems. Without prejudice to any other remedy of Caltech if the Customer (in breach of this clause) does modify, alter, interfere with or merge the Software no such modification, alteration, interference or merger however extensive shall derogate from the obligations of and restrictions on the Customer under this Agreement which shall thereafter apply to the Software as so modified, amended, altered, interfered with or merged.

6.2   If any unauthorised use is made of the Software (or any of it) and such use is attributable to the act or default of the Customer then, without prejudice to Caltech's other rights and remedies, the Customer will immediately be liable to pay Caltech an amount equal to the charges which Caltech would have levied had Caltech authorised the grant of a licence to or for such unauthorised user at the beginning of the period of such unauthorised user together with interest at the rate provided for in clause 4.12 of Part A from the date of such unauthorised use to the date of payment.

7.   **Additional Development Services**

Caltech shall use its reasonable endeavours (subject to Caltech's other commitments from time to time prevailing) to enter into further quotations to provide additional development services as required by the Customer from time to time.

8.   **Provision of Software Support**

In consideration of the payment by the Customer from time to time of the software support fee in respect of the Software as indicated in the relevant Quotation, Caltech undertakes to provide the Software Support Services in respect of the Software which are supplied by Caltech to the Customer upon the provisions of this Agreement commencing upon the date of entry into of this Agreement until this Agreement is terminated.

9.   **Fee for Software Support Services**

The Software Support Services shall subsist for so long as the Software is licensed and the appropriate fee indicated in the Quotation has been duly paid by the Customer.

10.   **Software Support Services**

10.1   The Software Support Services to the Customer in respect of the Software consist of the following:

10.1.1 reasonable assistance in the resolution of queries relating to the Software;

10.1.2 reasonable steps to recommend relevant to the course of action necessary to recover from a fault, error or failure emanating from the Software or its use;

10.1.3 upon request by the Customer the diagnosis of faults in the Software and the rectification of such faults (remotely or by attendance at the Customer's premises) by the issue of fixes or work-arounds in respect of the Software;

10.2   The Customer shall supply to Caltech a detailed description of the fault requiring Software Support Services by virtue of clauses 10.1.1, 10.1.2 or 10.1.3 above and the circumstances in which the fault arose promptly upon becoming aware of such circumstances.

10.3   The Software Support Services may be performed at one of Caltech's premises or via the internet or at the Customer's premises as Caltech determines. At the request of Caltech the Customer shall provide internet connectivity approved from time to time for the purpose by Caltech for connection to the Customer's hardware. The Customer shall provide access to and copies of such test data as Caltech may reasonably require for the performance of the Software Support Services. Caltech shall, where

appropriate, treat the information as is contained in the test data as confidential pursuant to the provisions of clause 20 above of Part A. Where in Caltech's discretion Caltech considers it necessary to visit the Site in order to perform the Software Support Services, Caltech may charge the Customer Additional Charges for travel, accommodation and subsistence expenses (including the cost of time spent travelling).

10.4   The above Software Support Services shall not include the diagnosis or rectification of a fault resulting from :

   10.4.1 the improper use, operation or neglect of either the Software, the System or the Customer's hardware;

   10.4.2 the use of the Software with hardware, an operating system or internet connection that is not adequate for the purpose;

   10.4.3 the improper set up of Microsoft Outlook, security software or other third party software;

   10.4.4 the modification or alteration of or interference with the System or its merger (in whole or in part) with any other software;

   10.4.5 the use of the Software by an individual who has not undergone training with Caltech to the required level or is not otherwise reasonably competent in the use of the Software;

   10.4.6 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by Caltech;

   10.4.7 a repair, adjustment, alteration or modification of the Software by a Third Party save with the prior Written authority of Caltech;

   10.4.8 the use of the System for a purpose for which it was not designed.

10.5   Caltech may at Caltech's discretion upon request from the Customer provide the above support notwithstanding that the fault results from any of the circumstances described in clause 10.4 above of this Part C. Caltech shall in such circumstances be entitled to charge the Customer Additional Charges for the same. Caltech may issue invoices for Additional Charges monthly in arrears.

10.6   Caltech shall make an initial response to a request for the Software Support Services within four (4) hours.

PART D: REMOTE HOSTING SERVICE SPECIFICATION

1.   Definitions

In this Part D, "Data Centre" means the data centre of Caltech's third party suppliers from time to time who presently are Rackspace US, Inc; Microsoft Corporation (both of which are registered under the United States privacy shield system) and Ledatic Limited (registered in England under company number 05490118);

2.   Connectivity

The hosting of the System shall be as specified in the Quotation and may be:
•   hosted by the Customer or a third party appointed by the Customer
•   hosted by Caltech
•   hosted by Microsoft

Caltech is responsible only for the data in the data centre where the hosting is undertaken by Caltech in Caltech's Data Centre. Caltech is not responsible for any data outside of Caltech's Data Centre, nor for any telecommunication connection to any data centre.

3.   Payment

Where the System is hosted by the Customer or a third party appointed by the Customer, the Customer shall pay Caltech an annual charge for maintenance of Microsoft Dynamics software pursuant to the Microsoft Software Maintenance Services.

Where the System is hosted by Caltech, the Customer shall pay Caltech an annual charge for Microsoft Dynamics which includes maintenance of Microsoft Dynamics software pursuant to the Microsoft Software Maintenance Services.

Where the System is hosted by Microsoft, the Customer shall pay Microsoft an annual charge for maintenance of Microsoft Dynamics software, which payment is included in the annual hosting fee.

Where the System is hosted by the Customer or a third party appointed by the Customer the Customer must pay Caltech for Microsoft Assurance services once every year or once every two (2) years as the case may be. It is the customer's responsibility to request a Quotation from Caltech for the renewal of Microsoft Assurance services once every year or once every two (2) years as the case may be.

Such payments shall be levied by Caltech as indicated in the relevant Quotation and normally for a period of one year with effect from Acceptance of the Software pursuant to clause 8 or in the case of Microsoft Dynamics software installation or use of that Microsoft Dynamics software.

4. Patches to Microsoft Dynamics software

Where the System is hosted by Microsoft, patches to Microsoft Dynamics software are automatically applied by Microsoft. Where the System is hosted by Caltech, patches to Microsoft Dynamics software will be applied by Caltech as soon as reasonably practicable following their release by Microsoft for which Caltech shall levy an Additional Charge. Where the System is hosted by the Customer, then, as part of the support services, when patches to Microsoft Dynamics software are released Caltech shall as soon as reasonably practicable following their release by Microsoft, produce recommendations to the Customer regarding the implementation of those patches. Caltech shall subsequently implement those recommendations for which Caltech shall levy an Additional Charge, both for the making of the recommendations and for the implementation. Where the Customer requests any other patch to be installed, Caltech will do so for an Additional Charge. Caltech may issue invoices for Additional Charges monthly in arrears.

5. Back-up of data

5.1   Caltech does not provide back-up services. Accordingly and since the Customer can make as many and as frequent copies of the Customer's data included in the System (the as the Customer wishes, the Customer is solely responsible for the Customer's data.

6. Recovery of Data

6.1   Where the Customer requires the Customer data included in the System to be restored, the Customer may make an appropriate request to Caltech's help desk. The Customer will detail the exact Customer data to be restored from the back-up data and the reason for the restoration.

6.2   Caltech will assist the Customer to undertake the restoration of the required Customer data from the Customer's back-up of data, for which Caltech shall charge the Customer Additional Charges. Caltech may issue invoices for Additional Charges monthly in arrears.

PART E : PROVISION OF MICROSOFT DYNAMICS SOFTWARE AND MAINTENANCE

1   Licence

Subject to payment by the Customer to Caltech (or Microsoft as the case may be) of the fee for a licence of the Microsoft Dynamics software as indicated in the Quotation, the Customer shall be entitled to use a copy of that Microsoft Dynamics software. The terms and conditions of the use of that Microsoft Dynamics software are as set out in the relevant Microsoft licence. The Microsoft Dynamics software is licensed to the Customer conditional upon the continuing payment of the relevant licensing fee.

The Customer may at any time request an increase in the number of licences of the Microsoft Dynamics software. In such circumstances Caltech shall provide a further Quotation for those additional licences. The Customer may at any time request a reduction in the number of licences of the Microsoft Dynamics software by giving not less than twelve full calendar month's notice so to do. The Customer may at any time request a reduction in the Microsoft Software Maintenance Services corresponding to the reduction in the number of licences by giving not less than twelve full calendar month's notice so to do.

2.   Provision of Microsoft Software Maintenance

In consideration of the payment by the Customer from time to time of the software Maintenance fee in respect of the Microsoft Dynamics software as indicated in the relevant Quotation, Caltech undertakes to provide the Microsoft Software Maintenance Services in respect of the Microsoft Dynamics software to the Customer upon the provisions of this Agreement commencing upon the date of entry into of this Agreement until this Agreement is terminated

3.   Fee for Microsoft Software Maintenance Services

The Microsoft Software Maintenance Services shall subsist for so long as the Microsoft Dynamics software is licensed and the appropriate fee indicated in the Quotation has been duly paid by the Customer.

4.   **Microsoft Software Maintenance Service**

4.1   The Microsoft Software Maintenance Services to the Customer in respect of the Microsoft Dynamics software consist of the following:

      4.1.1   reasonable assistance in the resolution of queries relating to the Microsoft Dynamics software;

      4.1.2   reasonable steps to recommend relevant to the course of action necessary to recover from a fault, error or failure emanating from the Microsoft Dynamics software or its use;

      4.1.3   the release to the Customer from time to time at Microsoft's sole discretion of fixes in respect of the Microsoft Dynamics software;

      4.1.4   the release to the Customer from time to time at Microsoft's sole discretion of new releases and versions of the Microsoft Dynamics software.

4.2   The Customer shall supply to Caltech a detailed description of the fault requiring Microsoft Software Maintenance Services by virtue of clauses 4.1.1 or 4.1.2 above and the circumstances in which the fault arose promptly upon becoming aware of such circumstances.

4.3   The Microsoft Software Maintenance Services may be performed at one of Caltech's premises or via the internet or at the Customer's premises as Caltech determines. At the request of Caltech the Customer shall provide internet connectivity approved from time to time for the purpose by Caltech for connection to the Customer's hardware.

4.4   The above Software Maintenance Services shall not include the diagnosis or rectification of a fault resulting from :

      4.4.1   the improper use, operation or neglect of either the Microsoft Dynamics software, any operating system, the System or the Customer's hardware;

      4.4.2   the use of the Microsoft Dynamics software with inadequate hardware;

4.4.3 the modification or alteration of or interference with the Microsoft Dynamics software or its merger (in whole or in part) with any other software;

4.4.4 the use of the Microsoft Dynamics software by an individual who has not undergone training with Caltech to the required level or is not otherwise reasonably competent in the use of the Microsoft software;

4.4.5 the failure by the Customer to implement recommendations in respect of or solutions to faults previously advised by Caltech;

4.4.6 a repair, adjustment, alteration or modification of the Microsoft Dynamics software by a Third Party save with the prior Written authority of Caltech;

4.4.7 the use of the Microsoft Dynamics software for a purpose for which it was not designed.

The above Software Maintenance Services shall not include the diagnosis or rectification of a fault which would require Caltech to have access to the source code.

The above Software Maintenance Services shall not include the diagnosis and rectification of a fault which would require Caltech formally to open a support case with Microsoft in order to resolve.

4.5 Caltech may at Caltech's discretion upon request from the Customer provide the above Maintenance notwithstanding that the fault results from any of the circumstances described in clause 4.4 above of this Part E. Caltech shall in such circumstances be entitled to charge the Customer Additional Charges for the same.

4.6 Whenever an upgrade of Microsoft Dynamics is released, the Customer before applying the upgrade must seek the clearance in advance of Caltech. Where the effect of that upgrade of Microsoft Dynamics is that modifications to the Software are required then Caltech shall undertake such modifications for which Caltech shall be entitled to charge the Customer Additional Charges.

4.7 Caltech shall make an initial response to a request for the Microsoft Software Maintenance Services within four (4) hours.

The Customer's attention is drawn to the exclusions from and limitations of liability contained in these Terms and Conditions and in particular to the provisions of clauses 4.15, 5, 6, 8, 9.2, 10, 12, 13 18 and 26 of Part A of these Terms and Conditions and clauses 2.3 and 2.4 of Part B of these Terms and Conditions and clauses 2 and 5 of Part D of these Terms and Conditions.