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## SABIO TERMS AND CONDITIONS OF SUPPLY

### 1. Definitions and Interpretation

#### 1.1 Definitions:

**Affiliate** means in relation to any company, its subsidiaries, associates and holding company and the subsidiaries and associates of such holding company as such terms are defined in Sections 1159 and 1169 of the Companies Act 2006 and Section 435 of the Insolvency Act 1986;

**Business Day** means a day (other than Saturday or Sunday) on which banks are open for business in London;

**CCN** means a change control note agreed by the parties in accordance with clause 18;

**Client/Customer** means the Party stated on the Work Order to which Sabio will provide Products and Services;

**Client Responsibilities** means the obligations and responsibilities of the Client set out in these Terms, the Work Order and the SOW, including (without limitation) those in the SLA;

**Confidential Information** means any information, whether tangible or intangible (including, without limitation, any formula, pattern, compilation, device, method, technique, process, customer lists, pricing information, business plans, computer equipment, financial projections, marketing information, actual or anticipated research and development and similar internal data relating or belonging to a Party) which is not generally known to the public and which is stated as being or should be reasonably regarded as confidential (whether or not it is marked "confidential"), and includes information of employees, customers, suppliers, joint venturers, licensors, licensees, distributors and other persons with whom a Party does business;

**Currency** means the currency specified in the Work Order;

**Deliverable** means any work, materials, reports or other items provided by Sabio during the performance of its obligations under these Terms (excluding the Products);

**Discrepancy Amount** has the meaning set out in clause 9;

**DP Laws:** means: (a) the GDPR (and any legislation which seeks to implement the GDPR as enacted by the UK) and the UK Data Protection Act 2018 (and any related UK legislation) ("DPA"); or (b) from and including the date on which the legislation comes into force, any UK legislation which replaces the GDPR or DPA from time to time (including without limitation the UK GDPR).

**"Enhanced Services"** means those services which are set out in Schedule 3 Part 1, and which (if applicable) Sabio shall provide to the Client;

**"Europe Zone"** means the European Economic Area and the United Kingdom.

**Excluded Faults** means those Faults listed in the SLA; **Fault** has the definition given to it in the SLA;

**Fees** means the fees to be paid by the Client in the Currency and set out in the Work Order;

**Force Majeure** means any event or circumstance or a combination of events and circumstances which is

beyond the reasonable control of a Party including but not limited to act of God; lightning; flood; exceptionally severe weather; subsidence; fire; explosion; war; civil disorder; acts of terrorism; cyber-attack; nuclear, biological or chemical incidents; national or local emergency; epidemic and pandemic; statutory obligation; industrial disputes of any third Party supplier; delay or failure or rationing of energy supplier; acts or omissions of local or central government or of other competent authorities; or acts or omissions of a person for whom Sabio is not responsible; or any other cause whether similar or dissimilar outside its control; **"GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016;

**Incident** means an unplanned interruption or reduction in quality of the Supported System or a failure of part of the Supported System that has not yet impacted service;

**Initial Term** means the initial term for the Support Services as defined in clause 11.1;

**Insolvent** means where a Party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of that Party (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of that Party or that Party enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction;

**Intellectual Property Rights** means all patents, trademarks, service marks, registered designs, utility models, design rights, copyright (including without limitation copyright in computer software and databases), database rights, domain names and other Internet keywords, semi-conductor topography rights, inventions, trade secrets and other confidential information, know-how, business or trade names and all other intellectual and industrial property and rights of a similar or corresponding nature in any part of the world whether registered or not or capable of registration or not and including without limitation all applications for, the right to apply for and to sue for past infringements of any of the foregoing rights;

**Location(s)** means the location(s) of the Supported System as at the Support Commencement Date;

**Party** means the Client or Sabio as the context requires (together the "Parties");

**Payment Plan** means if applicable the plan of payments in respect of Sabio's performance of its obligations under these Terms, which plan is set out in the Work Order;

**Products** the hardware or software provided by Sabio as set out in the Work Order (if any);

**Professional Services** means the professional services (unrelated to support of the Supported System) provided by Sabio as set out in the Work Order and SOW (if any);

**Sabio** means Sabio Ltd (company number 03644452) having its registered office at 12th Floor, Blue Fin Building, 110 Southwark Street, London, SE1 0SU

**Service Document** means a claim form or any other court papers;

**Service Level** in relation to the Support Services means the levels of performance set out in Part 2 of the SLA;

**Services** means the Support Services, the Enhanced Services and/or the Professional Services (as the context requires);

**SOW** means Sabio's statement of work for the Professional Services (if any) referred to in the Work Order or as otherwise agreed between the parties in writing;

**Support Services** means the support services to be provided in relation to the Supported System as further described in the SLA and the Work Order, including without limitation any Enhanced Services (as the context requires);

**SLA** means the service level agreement for the Support Services attached at Schedule 1;

**Support Commencement Date** means the date agreed by the Parties in the Work Order for commencement of the Support Services;

**Supported Hardware** means the hardware supported by Sabio specified in the Work Order;

**Supported Software** means the software supported by Sabio specified in the Work Order;

**Supported System** means together the Supported Software and Supported Hardware;

**System** means the Client's hardware and software situated at the Location including without limitation the Supported System;

**Work Order** means a mutually agreed order, stating the details of the Products and Services and Fees payable.

## 1.2 Interpretation

In constructing these Terms, unless otherwise specified:

(a) references to clauses and schedules (a) to clauses of, and schedules to, these Terms;

(b) references to a "person" shall be construed so as to include any individual firm, company or other body corporate, government, state or agency of a state, local or municipal authority or government body or any joint venture, association, partnership or limited partnership (whether or not having separate legal personality);

(c) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;

(d) any reference to a "day" (including without limitation within the phrase "Business Day") shall mean a period of 24 hours running from midnight to midnight;

(e) a reference to any other document referred to in these Terms is a reference to that other document as amended, varied, novated or supplemented (other than in breach of the provisions of these Terms) from time to time;

(f) headings and titles are for convenience only and do not affect the interpretation of these Terms;

(g) To the extent that there is an inconsistency between these and SLA, these Terms shall prevail. In the event of any inconsistency between a Work Order and these Terms, the Work Order shall prevail.

(h) References to "personal data", "processing", "processor", "data subject", "controller" and similar expressions in these Terms have the meanings given to them in the DP Laws and references to personal data refer to the personal data processed by Sabio in connection with the provision of Services under these Terms and the Work Order.

## 2. The Products and Services

2.1 Sabio shall provide: (a) the Products and Services in accordance with these Terms; (b) the Services with reasonable skill and care; and (c) the Support Services in accordance with the SLA including without limitation the applicable Service Levels.

2.2 Sabio shall not be obliged to provide the Support Services in respect of the Excluded Faults.

2.3 Without prejudice to clause 2.2, the Client may request that Sabio remedy an Excluded Fault and Sabio shall within three (3) Business Days of such request either notify the Client that it intends to attempt to remedy the Excluded Fault or that it will not remedy the Excluded Fault.

2.4 If, pursuant to clause 2.3, Sabio notifies the Client that it intends to remedy an Excluded Fault Sabio shall use its reasonable endeavours to remedy such Excluded Fault and the Client shall pay Sabio for so doing at Sabio's then prevailing time and materials rates. For the avoidance of doubt, both parties will agree in writing the timeframe and cost of such remedy prior to the commencement of work on an Excluded Fault by Sabio.

2.5 Faults with any Products forming part of the Supported System will be dealt with under the SLA. The Support Services provided for Products are (to the extent permitted by applicable law) in lieu of all terms implied by law in relation to satisfactory quality, fitness for purpose, merchantability or otherwise.

2.6 Title to hardware Products sold to the Client under the Work Order will pass to the Client on payment in full of the Fees for the hardware (unless otherwise set out in the Work Order). Software will remain vested in Sabio or the third party licensor and will be licensed in accordance with clause 5.

## 3. Additional Products and Services

3.1 The Client may, from time to time, notify Sabio of its requirement for additional products and services and the terms for supply shall be specified in the applicable Work Order.

3.2 The details in relation to those products and services and the additional Fees shall be as specified in the Work Order.

## 4. The Client's Obligations

4.1 The Client shall co-operate with Sabio's reasonable requests to enable timely supply of the Products and Services including without limitation provision of co-operation, reasonable access to the Location(s) and provision of power or communications facilities and products. In respect of Professional Services, the Client will provide, in a timely manner and at no cost to Sabio, assistance, co-operation, information, equipment, technical data, computer and telecommunications facilities, all necessary licences, programs, files, documentation, test data, sample

output, a suitable work environment, and other resources or requirements necessary, in Sabio's reasonable opinion, to enable Sabio to perform the Professional Services (collectively "Assistance") and the Client acknowledges that Sabio's ability to provide Professional Services and related Deliverables in a timely fashion may be affected if the Client does not provide, or provides inadequate, Assistance.

4.1A The Client shall comply with its obligations contained in these Terms, the Work Order, the SOW and the SLA.

4.2 In respect of the Support Services, the Client shall: (a) maintain, properly use and administer the Supported System in accordance with the applicable manufacturer's or Sabio's documentation or any relevant instructions supplied by Sabio for the purposes for which the Supported System was supplied and/or designed and at the currently supported version as recommended by the manufacturer; (b) maintain a suitable environment for the Supported System at the Location including but not limited to network, Client supported servers, desktop or host configurations, equipment or software other than the Supported System and the maintenance of a constant power supply; (c) ensure that the external surfaces of the components of the Supported System are kept clean and in good condition; (d) use on the Supported System only such operating supplies as the manufacturer or Sabio shall recommend in any relevant supplied handbook or otherwise; (e) not request, permit or authorise anyone other than Sabio personnel or those authorised by Sabio, to provide or perform the Support Services and to permit only trained employees, or persons under their supervision, to use the Supported System; (f) not use in conjunction with the Supported System any accessory, attachment or additional equipment other than that which has been supplied by the manufacturer for use with the Supported System or approved in writing by Sabio, such approval not to be unreasonably withheld; (g) ensure access to the Supported System, including but not limited to any power or communications wires and cables, connectors and peripherals, and supply Sabio, free of charge, with all documentation, information, and computers including, without limitation, computer runs, core dumps and data preparation and telecommunications facilities as are reasonably required for Sabio to carry out its obligations under these Terms; (h) provide Sabio with the remote access as stated in SLA Part 1 to enable Sabio to provide timely diagnostics and fault resolution or such remote access as the Parties may otherwise agree in writing; and (i) inform Sabio in advance, of any changes to the location, position or specification, of the Supported System or associated systems and or networks that may impact the operation of the Supported System and not move any Location(s) of the Supported System without the agreement of Sabio.

4.3 The Client hereby warrants that: (a) the existing Supported System necessary for Sabio to perform the Support Services has been installed at the relevant Locations and is in good and proper working order, and to the best of the Client's knowledge there are no critical or serious vulnerabilities present on the Supported System as at the Support Commencement

Date; (b) it has the necessary licences for the Supported System and latest supported versions of software (including that all patches and updates recommended by the manufacturer have been applied); (c) there is and has been no infringement or unauthorised use of any third party Intellectual Property Rights; and (d) as at the Support Commencement Date, unless stated in the relevant Work Order, the Supported System will not contain any personal data or payment card data. Clauses 4.3(a) and (b) do not apply in respect of Products to be implemented by Sabio under the Work Order, which are provided in accordance with these Terms. The Client shall ensure that all users of the Supported System (including any Client Affiliate) comply with these Terms (and have the rights to use the Supported System under any applicable end user licence agreement) and any acts or omissions of the users shall be deemed the acts or omissions of the Client.

4.4 The Client shall ensure that back-up copies of the Client's data are made in accordance with good industry practice and that such copies are recorded on media from which the Client's data can be re-loaded in the event of any corruption or loss of the Client's data.

4.5 Sabio shall use reasonable endeavours to notify the Client of any failure by the Client to perform any of the Client Responsibilities as soon as reasonably practicable following Sabio becoming aware of such failure and shall use reasonable endeavours to perform the Services notwithstanding the failure of the Client to comply with the Client Responsibilities.

4.6 Sabio shall not be in breach of these Terms and shall not be liable to the Client if, and to the extent that, its inability to provide the Services is as a result of any failure of the Client to comply with the Client Responsibilities.

4.7 If Sabio would have provided, or procured the provision of, the Services in accordance with these Terms, but has failed to do so as a result of the Client failing to comply with the Client Responsibilities, Sabio shall be entitled to be paid for any additional, proven costs and unavoidable losses which directly result from such failure.

4.8 Sabio shall not be obliged to accept a request from the Client to delay or change any agreed timescale for the provision of Professional Services, or to change the scope of the Professional Services. Save for any express rights of termination set out in these Terms, the Client shall not be entitled to cancel any Professional Services contracted under a Work Order.

4.9 Without prejudice to clause 4.8, where the Client requests or causes a delay or change to an agreed timescale for the delivery of any Professional Services, without prejudice to any other rights or remedies Sabio may have, the Client shall pay Sabio:

4.9.1 any additional reasonable costs (including, without limitation, overtime costs) which Sabio incurs as a result of the delay or change; and

4.9.2 where additional resource is required as a result of the delay or change (and/or where Sabio is unable to re-deploy staff within its business as a result of the delay or change), an additional proportionate fee calculated at Sabio's standard time and materials rates then in force.

## 5. Intellectual Property Rights

5.1 Save as otherwise set out in these Terms or as otherwise expressly agreed by the Parties in writing, no Party shall receive any rights in respect of the Intellectual Property Rights belonging to the other Party (or licensed to it) and Intellectual Property Rights shall remain the property of the Party who creates or owns the same.

5.2 Sabio hereby grants to Client a non-exclusive, non-transferable, non-sublicensable, licence to use all Deliverables and Sabio owned software Products solely for Client's reasonable internal business purposes and subject to the limitations described in the relevant Work Order. Unless otherwise set out in the Work Order, this licence is limited to use during the term of the relevant Work Order (in line with the term for the Support Services). This clause is subject to clause 5.3.

5.3 Any third party software (including without limitation third party software Products) provided by Sabio under the Work Order (including without limitation any related manufacturer software updates, patches, releases etcetera) shall be licensed as between third party licensor and the Client on the third party licensor's standard end user licence agreement set out in Schedule 2, or subject to any other licence terms set out in the Work Order, which the Client shall comply with. The Client acknowledges and agrees that the software vendors who are parties to such end user licence agreements may directly enforce, against the Client, this clause and the terms of the end user licence agreements.

5.4 To the extent permissible under applicable law, in respect of any software (including but not limited to any coding, interfaces and configurations) provided by Sabio (whether third party or Sabio owned), the Client shall not: (i) decompile, disassemble or reverse engineer the software; (ii) modify or create any derivative works (including, without limitation, translations, transformations, adaptations or other recast or altered versions) based on the software or any supplied documentation or generally to alter the software; (iii) merge the software with any other software except as expressly set forth in the supplied documentation; (iv) use, copy, sell, sublicense, lease, rent, loan, assign, convey or otherwise commercialise or transfer the software or documentation; (v) distribute, disclose, or allow use of the software or documentation, in any format, through any third party outsourcing facility, any timesharing service, service bureau, network or by any other means, to or by any third parties; (vi) enable any software features or capacity which Sabio licenses as separate products without Sabio's prior written consent; or (vii) permit or encourage any third party to do any such things.

5.5 The Parties acknowledge that there may be circumstances where they may agree that the Client shall own any Intellectual Property Rights in any Deliverables and in such circumstances the Parties will document such transfer of ownership either as part of change control or pursuant to the terms of a Work Order. In such circumstances the Client shall grant Sabio a licence to permit Sabio to perform the Services.

5.6 Subject to the other provisions of this clause 5 and to clause 10 and the Client's proper observance of its obligations under these Terms, Sabio shall indemnify the Client from and against all costs and damages which are finally awarded against the Client by an English Court arising from any infringement of a third party's Intellectual Property Rights by Sabio's supply of any Deliverables or Products.

5.7 As a condition of the indemnity given by Sabio in clause 5.6, the Client shall: (a) take all reasonable steps to mitigate any losses against which it is seeking to be indemnified; (b) notify Sabio promptly of any related claims or legal proceedings or allegation of infringement upon becoming aware of the same; (c) actively consult with Sabio regarding the conduct of any action and take its views into account; (d) make no admissions relating to any claims or legal proceedings or allegations of infringement without Sabio's prior written consent; (e) not agree any settlement or compromise of such claims or legal proceedings nor make any payment on account of them without Sabio's prior written consent; (f) allow Sabio at its own expense and sole option, to procure for the Client the right to continue using the affected Deliverables or Products including without limitation by obtaining any applicable licence(s) or replace or modify, or procure the replacement or modification of, such affected Deliverables or Products, provided that: (i) the performance and functionality of the replaced or modified part is equivalent in all material respects to the performance and functionality of the original part; (ii) the replaced or modified part does not have any material adverse effect on the System; (iii) there is no additional cost to the Client; and (iv) the terms of these Terms apply to the replaced or modified part; (g) allow Sabio at Sabio's reasonable request to conduct all negotiations and proceedings providing that Sabio consults with the Client and keeps the Client fully informed with respect to any claim, legal proceedings or an allegation of infringement and shall discuss with the Client and take into account the Client's views in relation to all material steps taken in the conduct of the defence of a claim, legal proceedings or an allegation of an infringement. The Client shall give Sabio all reasonable assistance in these matters providing Sabio agrees to pay the Client's reasonable expenses for such assistance.

5.8 The indemnity in clause 5.6 shall not apply to the extent that: (a) the Client has used the Deliverables or Products in breach of the licences granted pursuant to clause 5 or in breach of any other provision of these Terms; (b) the Client has used the Deliverables or Products other than in accordance with Sabio's instructions and such use has directly contributed to the infringement of the third party's Intellectual Property Rights; (c) the infringement or alleged infringement relates to third party Products; (d) the infringement or alleged infringement has been caused by information provided by Sabio conforming with specifications provided by the Client; or (e) the Client has been negligent and such negligence is relevant to the infringement.

## 6. Sabio Personnel



6.1 Sabio shall be responsible for the management and co-ordination on a day to day basis of its personnel. Sabio shall procure that its personnel when working at the Locations, shall at all times comply with reasonable health and safety, security and other directions, rules and regulations applicable to such Locations, provided that the Client shall have provided copies of the same to Sabio or given Sabio prior written (or, where it is reasonable to do so, oral) notification of such directions, rules and regulations.

6.2 The Client shall: (a) upon reasonable notice, provide Sabio's personnel with full and safe access to the Supported System for the purposes of these Terms; (b) provide adequate working space around the Supported System for the use of Sabio's personnel and shall make available such reasonable facilities as may be requested from time to time by Sabio for the storage and safekeeping of test equipment and spare parts and any personal effects of Sabio's personnel; (c) ensure the interests, health and safety of Sabio personnel, while at the Locations for the purposes of these Terms; and (d) ensure that the Client's system administrator and other Client's personnel necessary for Sabio's diagnosis of any Fault or problem with the Supported System are readily available to, and co-operate fully with, Sabio personnel.

## **7. Client personnel**

7.1 The Client shall be responsible for the management and co-ordination on a day to day basis of its personnel (including without limitation its suppliers and subcontractors) and shall be liable to Sabio for their acts and omissions as if it had committed the same. At all times the Client shall procure that its personnel: (a) make every effort to cause as little interference with and inconvenience to Sabio's personnel; and (b) when working at the premises of Sabio, at all times comply with the health and safety, security and all other directors, rules and regulations applicable to such premises.

## **8. Representations, warranties and authority**

8.1 Each Party represents and warrants to the other that: (a) it has the requisite corporate power and authority to enter into, execute, deliver and perform its obligations under these Terms; (b) the execution and delivery of these Terms and the performance of its obligations under them have been duly authorised by all necessary corporate action on its part; and (c) it has all authorisations, licences, approvals and consents of any governmental, administrative, judicial or regulatory body, authority or organisation that are required to authorise the execution, delivery, validity, enforceability or admissibility in evidence of these Terms or the performance of its obligations under them.

8.2 Neither Party nor any person engaged by that Party from time to time to perform that Party's obligations under these Terms, is authorised to act, nor shall it or they act or purport to act, as a representative of the other Party, whether in performing its obligations under these Terms or otherwise.

## **9. Payments**

9.1 Sabio shall invoice the Client for the Fees in the Currency specified in and in accordance with the Work Order.

9.2 Subject to clause 9.4, invoices shall become due for payment by the Client thirty (30) days after the date of the respective invoice.

9.3 All amounts payable pursuant to these Terms are exclusive of value added tax, import or export duty or any other local or national excise duty or taxation, and any such taxation duties shall be payable by the Client.

9.4 If any item or any part of an item, shown on an invoice rendered by Sabio is subject to a bona fide dispute or question by the Client (a "Discrepancy Amount"), the payment by the Client of the remainder shall not be withheld on those grounds and the provisions of clause 9.2 shall apply to the remainder (if applicable) and also to the Discrepancy Amount to the extent that it shall subsequently be agreed or determined to have been properly payable.

9.5 If any invoice rendered by Sabio to the Client contains a Discrepancy Amount then the Client shall give notice to Sabio in writing within 14 Business Days of receipt of that invoice of the fact of the Discrepancy Amount and the reasons for the bona fide dispute or question. The dispute shall then be resolved in accordance with clause 15.

9.6 Any amount due from one Party to the other Party pursuant to these Terms and remaining unpaid after the due date shall bear interest thereafter, such interest to accrue from day to day and to be calculated at a rate (after as well as before judgement) either: (a) equal to 3% above the base rate of Lloyds Bank plc from the date when payment was due until the amount due is actually received by the payee; or (b) if lower, the highest rate allowed by applicable law. Such interest shall not apply to Discrepancy Amounts until 14 days after the resolution of the discrepancy.

9.7 Unless there is an express statement on the face of the Work Order which conflicts with this, Sabio may increase the Fees by up to 5% annually (the first increase applying 12 months following the Support Commencement Date).

9.8 To the extent the Client or a Client Affiliate has any specific requirements for Sabio to meet (such as filling out documentation or providing information) in relation to billing and/or receiving or paying invoices, the requirements must be expressly set out in the Work Order and (in any event) must be reasonable in the circumstances. If such requirements have not been set out in the Work Order, neither the Client nor a Client Affiliate shall be entitled to withhold or dispute a payment under the Work Order on the grounds that any requirements (including documents or information) to support a payment under the Work Order have not been provided or met by Sabio.

## **10. Liability**

10.1 Nothing in these Terms shall exclude or limit the liability of either Party for: (a) death or personal injury resulting from the negligence of that Party or its directors, officers, employees, contractors or agents acting in the course of their employment; (b) fraud or fraudulent misrepresentation; (c) anything that cannot be excluded or limited by applicable law;

10.2 Subject to clause 10.1 Sabio shall not be liable to the Client whether in contract, in tort (including without limitation negligence), under a warranty, under statute, by means of strict liability or under any other legal theory for any of the following types of direct loss or damage howsoever arising: (a) loss of profit; (b) loss of revenue; (c) loss of anticipated savings; (d) loss of opportunity; (e) loss of business; (f) loss of contracts; (g) loss of goodwill; (h) loss due to business interruption; (i) liability to third parties (including without limitation any obligation to pay customer compensation whether ex gratia or otherwise); (j) wasted expenditure; (k) loss, alteration or corruption of data; (l) additional operational and administrative costs and expenses; (m) any fines, penalties or expenses.

10.3 In addition to the limitations provided for in clause 10.2, subject to clause 10.1, Sabio shall not be liable to the Client for any special, consequential or indirect loss or damage whatsoever whether arising in contract, tort (including without limitation negligence) or otherwise (including without limitation those relating to any claim arising from death or personal injury (insofar as this was not caused by Sabio's negligence)), including without limitation any loss of a type described in clause 10.2 above which could be described as special indirect or consequential and whether or not reasonably foreseeable or contemplable, actually foreseen or actually contemplated by the parties at the time of execution of these Terms.

10.4 Without prejudice to the provisions of clause 10.2 or 10.3 above, and subject to clause 10.1, if Sabio is found to be liable under or in connection with these Terms and/or the Work Order its total aggregate liability (whether arising in contract, tort (including without limitation negligence) or otherwise) shall be limited to 100% of the total amount of Fees paid under the applicable Work Order.

10.5 Save as expressly provided herein, all conditions, warranties and representations, written or oral, express or implied, by statute, common law, collaterally or otherwise, including without limitation conditions or warranties of satisfactory quality, merchantability and fitness for purpose, are hereby excluded by Sabio to the maximum extent permitted by applicable law.

## 11. Term and termination

11.1 The Parties agree that, unless terminated early pursuant to clauses 11.3 or 11.4, these Terms and the Work Order shall continue until expiry of the initial term of the Support Services set out in the Work Order (or if none is stated, twelve (12) months) (the "Initial Term") and any renewals of the Support Services under clause 11.2.

11.2 On the expiry of the Initial Term (or any subsequent extended term) the period for provision of Support Services shall be automatically extended for a further period of twelve (12) months unless either Party has, at least sixty (60) Business Days before the expiry of the Initial Term (or the subsequent extended term), notified the other Party that it does not wish to renew provision of Support Services.

11.3 A Party may terminate these Terms and the applicable Work Order immediately by notice in writing

to the other Party if: (a) the other Party is Insolvent; or (b) the other Party ceases to carry on business; or (c) the other Party commits a material breach of these Terms or a relevant Work Order and in the case of a remediable breach fails to remedy such breach within thirty (30) days of written notice requiring it to do so.

11.4 If the Client fails to pay any sum due pursuant to these Terms or the Work Order (other than a Discrepancy Amount) within 14 days from the date of a notice of breach sent by Sabio to the Client Sabio has the right to immediately terminate all outstanding Work Orders or suspend the Services until such sum is paid.

## 12. Consequences of termination

Upon termination of the applicable Work Order:

12.1 Sabio shall immediately cease provision of the Services but may provide mutually agreed transition services.

12.2 Each Party shall return and make no further use of any items (and all copies of them) belonging to the other Party.

12.3 Sabio may destroy or otherwise securely dispose of any of the Client's data in its possession unless it receives, no later than ten (10) Business Days after the effective date of termination or expiry of these Terms, a written request for the delivery to the Client of the most recent backup of the Client's data in its possession. Subject to the Client having paid any outstanding Fees (including without limitation Sabio's reasonable fees for provision of the backup) Sabio shall use reasonable efforts to deliver the backup to the Client within thirty (30) Business Days of its receipt of such a written request.

12.4 Any other agreements shall continue until such times as they are terminated in accordance with their terms.

12.5 The accrued rights of the Parties as at termination shall not be affected or prejudiced.

12.6 On the termination date the Client shall pay all outstanding invoices immediately.

12.7 Clauses 5, 9, 10, 11, 12, 14, 16, 17, 19 and 20 (and any other provision intended or expressly stated to survive termination) shall survive termination (the obligations of confidentiality in clause 14 shall survive termination for a period of five (5) years only).

## 13. Force majeure

13.1 If and to the extent that a Party is prevented or delayed by a Force Majeure event from performing any of its obligations under these Terms or a relevant Work Order, the Party affected shall have no liability to the other. When the Force Majeure event has ceased the affected Party shall as soon as is reasonably possible, notify the other Party that the terms of the Agreement shall be reinstated in full.

13.2 If a Party is prevented, hindered or delayed in performing an obligation under these Terms because of Force Majeure resulting in a substantial impact on the performance of the relevant Work Order as a whole, for a period exceeding sixty (60) days, the other Party may terminate the affected Work Order by giving thirty (30) days' prior notice in writing to the other.

## 14. Confidentiality

14.1 Each Party shall treat as confidential all Confidential Information obtained from the other Party and shall only use any such Confidential Information for performing its obligations under these Terms.

14.2 A party's Confidential Information shall include only such information as is clearly identified as confidential or it is obvious by its nature that it is confidential. A party's Confidential Information will not include information that: (i) is or becomes generally known to the public through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third-party without restriction on disclosure; or (iv) is independently developed by the other party without use of or reference to the other party's Confidential Information.

14.3 Each Party shall procure that any person to whom such Confidential Information is disclosed by it and each of its Affiliates complies with the restrictions set out in this clause 14 as if such person were a Party to these Terms and shall be responsible for any defaults by those persons.

14.4 Either Party may disclose such Confidential Information: (i) if and to the extent required by law; (ii) to any of its professional advisers, subcontractors or Affiliates who have a reasonable need to know the information in respect of the Work Order, provided they are required to maintain its confidentiality; or (iii) to the extent the information has come into the public domain through no fault of that Party.

## 15. Dispute resolution

15.1 Any dispute (whether contractual or otherwise) arising out of or in connection with these Terms shall in the first instance be discussed between Sabio's account manager and the Client's nominated representative. If the matter is not resolved by these representatives within ten (10) Business Days, the matter will be referred to a director of each of Sabio and the Client who must meet within five (5) Business Days to attempt to resolve the matter.

15.2 Nothing in these Terms shall prevent a Party from applying to the court for interim relief pending the resolution of a dispute or shall prevent a Party, with the consent of the other Party, from attempting to settle any dispute arising out of these Terms by mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure.

## 16. Data protection

16.1 Each Party shall comply with their respective obligations under the DP Laws.

16.2 The Parties acknowledge and agree that the Client is the controller and Sabio is the processor of all personal data processed by Sabio on behalf of Client under the Work Order and these Terms. The following provisions apply to any processing of personal data by Sabio as a processor of Client under the Work Order and these Terms:

16.2.1 Sabio may process the personal data to the extent reasonably necessary to provide the Services and otherwise as reasonably necessary to fulfil its obligations under the Work Order and these Terms

("Purposes") and Sabio may also transfer (and allow processing of) the personal data to (and by) its subcontractors for those Purposes (which includes (without limitation) the manufacturers of the Supported System, Sabio Affiliates, and other third party providers providing products or services to Sabio as a subcontractor in respect of the Services). Client hereby gives all required authorisations and consents under the DP Laws for such processing and this clause constitutes Client's documented instructions for Sabio (and its subcontractors) to process the personal data in accordance with the Work Order and these Terms and for the Purposes. Client acknowledges that the entirety of its instructions are set out in the Work Order and these Terms and any further instructions shall be subject to a written variation to the Work Order and these Terms being agreed and signed by the Parties.

16.2.2 Sabio may process (and allow the subcontractors listed in clause 16.2.1 to process) the personal data within the Europe Zone for the Purposes. Sabio may also transfer personal data to a country outside the Europe Zone (including (without limitation) transfers to and processing by the subcontractors listed in clause 16.2.1) for the Purposes provided Sabio ensures compliance with the transfer requirements of the DP Laws in respect of the transfer to the relevant country, which may include (without limitation): (1) putting in place an International Data Transfer Agreement or EU model standard contract clauses with the relevant third party transferee (including if applicable the ICO's UK Addendum); or (2) reliance on an applicable decision of adequacy. Client hereby gives all required authorisations and consents under the DP Laws for such transfers and processing and this clause constitutes the Client's documented instructions for such transfers and processing.

16.2.3 Sabio shall use appropriate technical and organisational measures designed to prevent the unauthorised or unlawful processing of personal data and protect against accidental loss or destruction of, or damage to, any personal data during the processing of the personal data.

16.2.4 For the purposes of Article 28 of the GDPR:

(a) Sabio shall ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

(b) Sabio shall take all measures required as a processor under Article 32 GDPR.

(c) Data subjects whose personal data is processed pursuant to the Work Order and these Terms may have the right to request access to and the correction, deletion or blocking of such personal data under the GDPR. Such requests shall be addressed to and be considered by the Client, who is responsible for ensuring such requests are handled in accordance with the GDPR. Sabio will (at the Client's cost) implement appropriate technical and organisational measures to assist the Client in complying with its obligations relating to data subject requests. To the extent the Client, in its use of, or receipt of the benefit of the Services, does not have the ability to access, correct, delete or block personal data, as required by the GDPR, Sabio shall comply with any commercially

reasonable request by the Client to facilitate such actions to the extent Sabio is legally permitted to do so.

(d) Sabio shall provide reasonable assistance to the Client in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of processing and the information available to Sabio.

(e) Upon expiry or termination of all Services for any reason, Sabio shall at the reasonable choice of the Client: (i) return the personal data to the Client; or (ii) delete the personal data from all computer systems and other data storage systems, provided that Sabio shall be permitted to retain a copy of the personal data that it is legally permitted to retain.

(f) Sabio shall make available to the Client all information reasonably necessary to demonstrate compliance with the obligations laid down in this clause 16.2.4 and (to the extent required under the GDPR in respect of Sabio's compliance with clause 16.2.4) allow for and contribute to reasonable audits, including reasonable inspections, conducted by the Client or another auditor mandated by the Client provided that:

(1) Client shall ensure that the audit (including (without limitation) all information learned during the audit and the results of the audit) is kept confidential (save where and to the extent required to be disclosed by applicable law (including without limitation the GDPR) or the Information Commissioner's Office);

(2) Client and its auditors shall not be entitled to audit (A) data or information of other clients of Sabio, (B) any Sabio proprietary data, including (without limitation) cost information, or (C) any other Sabio confidential information that is not relevant for the purposes of the audit;

(3) Client or its auditors shall provide Sabio with a copy of any audit draft report and the final audit report produced;

(4) Sabio competitors shall not be engaged to audit Sabio;

(5) such an audit must be conducted during Sabio's normal business hours;

(6) such an audit may be carried out no more than once per calendar year. and Client shall provide reasonable prior notice of the audit;

(7) Client shall provide all reasonable assistance to Sabio to ensure the audit is carried out with the minimum possible disruption to Sabio's business;

(8) Client shall comply with Sabio's reasonable security requirements; and

(9) Client shall pay the reasonable costs of such audit.

(g) Sabio shall promptly inform the Client if, in Sabio's opinion, an instruction of Client infringes the GDPR or other Union or Member State data protection provisions and Sabio shall be entitled without penalty or liability to suspend execution of the instructions concerned, until the Client confirms such instructions in writing. Any notification by Sabio under this clause should not be regarded as legal advice and Sabio shall not be required to perform a legal assessment of Client's instructions. Client shall seek its own legal advice in relation to its own obligations under the DP Laws.

(h) The categories of data subject, the duration of processing, the purpose of processing and types of personal data processed are as follows:

(1) Categories of data subject: The Client's (or its Affiliate's) staff and/or customers or suppliers (and/or their staff) and any other data subject whose personal data may be provided or made available to Sabio in connection with the Work Order and these Terms.

(2) Duration of processing: The term of the relevant Work Order and any further necessary period after termination (or as otherwise agreed in writing between the Parties).

(3) Purpose of processing: As set out in clause 16.2.1.

(4) Types of personal data: Personal data contained within a Supported System and/or otherwise provided or made available to Sabio in connection with the Services.

(i) In respect of processing of personal data by Sabio's subcontractors as envisaged in this clause 16.2, Sabio shall include in any contract with those subcontractors obligations on such subcontractors which are equivalent to the requirements of Article 28(3) GDPR as between Sabio and the subcontractor.

16.2.5 Nothing in clause 16.2 shall prevent Sabio processing any personal data outside the scope or requirements of clause 16.2 where required to do so by Union or Member State or UK law to which Sabio is subject; in such a case, Sabio shall inform the Client of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

16.2.6 Sabio shall notify the Client of any personal data breach by Sabio and/or any of its subprocessors without undue delay after it becomes aware of such personal data breach. Such notice shall include information regarding the personal data breach then available to Sabio in order to enable the Client to comply with any notification requirements to the relevant supervisory authority under DP Laws. Where and in so far as it has not been possible for Sabio to provide all such information at the same time in such notice, Sabio shall provide an explanation for any delay in providing such information to the Client and shall provide such information to the Client in phases without undue further delay.

16.2.7 Client shall reimburse Sabio for Sabio's reasonable costs incurred in providing any assistance or information (or taking any measures) required to be provided (or taken) by Sabio under clause 16.2.

16.2.8 Sabio shall be liable for the acts and omissions of its subcontractors who process personal data under the Work Order and these Terms to the same extent Sabio would be liable if performing the services of each subcontractor directly under the terms of this clause 16.2.

16.2.9 References to the GDPR (and to specific Articles or Chapters in the GDPR) in clause 16.2 shall be deemed to refer to any replacement legislation (and replacement equivalent Articles or Chapters) applicable from the date it comes into force.

16.3 The Client warrants and undertakes that it:

16.3.1 shall ensure that the instructions it has given in the Work Order and these Terms (including (without limitation) 16.2.1 and 16.2.2) for the processing of



personal data by Sabio comply with the DP Laws and the Client shall have the sole responsibility for the accuracy, quality, integrity, reliability and legality of the personal data and the means by which it obtained, collected and/or acquired the personal data;

16.3.2 is authorised by the relevant data subjects and third parties to give access to any personal data to which it provides access to Sabio and it will provide all necessary notices to data subjects and procure all necessary consents or satisfy a relevant legal basis in order for Sabio's processing of personal data as envisaged in the Work Order and these Terms (including (without limitation) under clause 16.2) to comply with the DP Laws; and

16.3.3 (without prejudice to Sabio's rights and remedies) shall promptly notify Sabio if it becomes aware of any breaches of or other irregularities with the requirements of the DP Laws in relation to its own processing.

## 17. Notices

17.1 Any notice to a Party under this Agreement shall be in writing signed by or on behalf of the Party giving it and shall, unless delivered to a Party personally, be left at, or sent by prepaid first class post, prepaid recorded delivery to the address of the Party as set out on page 1 of this Agreement and marked for the attention of Company Secretary (or as otherwise notified in writing from time to time). References to "writing" in this clause 17 shall not include fax or email.

17.2 A notice shall be deemed to have been served:

17.2.1 at the time of delivery if delivered personally; or  
17.2.2 2 Business Days after posting in the case of an address in the United Kingdom and 5 Business Days after posting for any other address.

## 18. Change Control

18.1 No change to these Terms or the Services shall be effective unless the change is in writing and signed by an authorised signatory of each party.

18.2 Either Party (the "Requesting Party") may request changes to or affecting the Services by submitting a written request to the other party (the "Receiving Party"). As soon as reasonably practicable the Receiving Party shall provide a written reply to that request in which it shall advise the Requesting Party of the implications of the change to the Services and the Fees and these Terms.

18.3 If, having received the Receiving Party's reply referred to in clause 18.2, the Requesting Party still wishes to implement the requested change the Parties shall, acting in good faith, use their respective reasonable endeavours to agree a CCN as soon as reasonably practicable (and, in any event within twenty (20) Business Days after receipt by the Requesting Party of the Receiving Party's reply or within such other period as the parties may reasonably agree in writing).

18.4 The costs of investigating the matters described in this clause 18 shall be borne solely by the Requesting Party.

## 19. General

19.1 Neither Party may assign its rights and obligations under a Work Order without the other Party's prior written consent.

19.2 The Parties agree that electronically or digitally transmitted signatures shall be deemed to be originals, and both Parties agree to accept and be bound thereby and these Terms may be executed in any number of counterparts, each of which shall be deemed to be an original, but shall not be effective until each Party has signed at least one such counterpart.

19.3 If at any time any provision of these Terms is or becomes, or is adjudicated by any court of competent jurisdiction or other competent authority to be invalid or unenforceable, void or voidable in whole or in part, the remaining provisions of these Terms shall continue in full force and effect.

19.4 Subject to clause 5.3, a person who is not a Party to these the Work Order has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Terms or the Work Order. The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under these Terms or the Work Order are not subject to the consent of any person other than the Parties.

19.5 These Terms and any applicable Work Order constitutes the entire agreement between the Parties in respect of its subject matter and supersedes all previous understandings, commitments, representations, agreements, draft agreements, arrangements, undertakings, or collateral contracts of any nature made by the Parties in respect of its subject matter.

19.6 Sabio shall be entitled to appoint a sub-contractor to perform its obligations on its behalf.

19.7 No delay or omission by either Party in exercising any right remedy provided by law or under these Terms shall operate as a waiver. Unless otherwise provided the rights and remedies in these Terms are cumulative and not exclusive of any legal rights and remedies.

## 20. Governing law and jurisdiction

20.1 These Terms shall be governed and construed in accordance with English law.

20.2 Subject to clause 15, the courts of England shall have exclusive jurisdiction to settle any dispute (whether contractual or non-contractual) arising out of or in connection with these Terms and those of any Work Order.

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## SCHEDULE 1

### Part 1 - The Support Services

#### 1. Definitions

“**Category 1**”, “**Category 2**” and “**Category 3**” are as defined in Part 2;

“**Coverage Hours**” means the hours during which Sabio will receive and work to resolve Faults;

“**Client Service Desk**” means a central facility which the Client has in place to record all Faults reported from within the Client’s organisation and to notify such Faults to Sabio;

“**Excluded Faults**” means those Faults listed in paragraph 4 below and which Sabio shall not be obliged to resolve;

“**Fault**” means any material defect, error, failure or deviation from proper function and/or specification which occurs in the Supported System;

“**Incident**” means a report of a Fault made to Sabio in accordance with the provisions of this Schedule;

“**Normal Business Hours**” means from 0800 to 1800 hours on Business Days;

“**Patching Hours**” means the hours outside of Normal Business Hours on Mondays to Thursdays (excluding public holidays);

“**Sabio Support Centre**” means Sabio’s helpdesk to which the Client shall report Faults, the details of which are set out below;

“**Service Restoration**” means the restoration of the Supported System (or the relevant part thereof) to good working order (which may or may not mean that the root cause of the Fault has been removed), which may be either a temporary or permanent fix or an agreed workaround which restores the Supported System to an acceptable level;

“**Technical Response**” means an acknowledgement of a Fault reported to Sabio, and which provides an indication that the Fault is under review by a technical representative of Sabio;

“**Tier 1 Support**” means analysis of the symptoms of the Fault and working to diagnose the cause of the Fault;

#### 2. Fault resolution

2.1 Sabio shall resolve Faults as soon as reasonably practicable within the Coverage Hours applicable to the Fault (as set out in paragraph 1 of Part 2) by:

- 2.1.1 investigating the Fault;
- 2.1.2 supplying all necessary information and instructions to the Client;
- 2.1.3 replacing parts of the Supported System;
- 2.1.4 providing Software updates and/or new releases; and/or
- 2.1.5 re-configuring the Supported System,

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as necessary to effect a Service Restoration.

2.2 Sabio may respond to or correct Faults by:

- 2.2.1 providing telephone advice;
- 2.2.2 remote access to the Supported System;
- 2.2.3 the attendance of a Sabio representative at the Location; and/or
- 2.2.4 any other method as reasonably determined by Sabio.

2.3 Sabio shall provide the following contact methods for Client to contact the Sabio Support Centre to report Faults:

Phone: 03444 123 123

Web Portal: <https://sabio.service-now.com/sabioit>

Critical Incidents should initially be reported to the Sabio Support Centre by telephone.

2.4 Notwithstanding anything to the contrary, where Sabio is required under this Schedule or the Work Order to carry out security patches, dot releases and/or bug fixes ("Patching Work") in respect of the Supported System, Sabio shall carry out such Patching Work during the Patching Hours. Any relevant Service Level (and/or other agreed timescale for performance) shall be adjusted accordingly.

2.5 Consumable items contained within, or which are used with, the Supported System (including RAID batteries and server batteries, where server hardware is part of the Supported System) ("Consumable Items") are not supported by Sabio as part of the Support Services. The Client shall be responsible for the maintenance and any required replacements of Consumable Items and the Client shall ensure that the Consumable Items are properly maintained and replaced (as required for the proper functioning of the Supported System) accordingly.

2.6 Sabio shall not be obliged to resolve any Fault which may be fixed by implementing a software patch, but such software patch:

- 2.6.1 has not been made available to Sabio by the relevant vendor on Sabio's request;
- 2.6.2 has been made available to Sabio by the relevant vendor but cannot be implemented without negatively affecting the performance of another component of the Supported System; or
- 2.6.3 requires an upgrade to the version of the underlying software being supported by Sabio at the time the Fault arises.

2.7 The exclusion in paragraph 2.6.3 shall not apply if Client purchases the appropriate software upgrade package from Sabio, which shall entitle Client to receive the benefit of the upgraded software.

2.8 Sabio shall not be obliged to resolve any Fault which may be fixed by implementing an updated version of any software, if another component of the Supported System would be incompatible with such updated version.

2.9 Where any component of the Supported System has reached its manufacturer end of support date, Sabio shall not be liable for any breach of any obligation under this Schedule 1 (including a failure to achieve a Service Restoration (or related Service Level)) where the relevant component of the Supported System has a Fault and Sabio (having used reasonable endeavours) is not able to resolve the Fault without manufacturer support.

2.10 Clauses 2.6 to 2.9 prevail over anything to the contrary elsewhere in this Schedule.

### 3 Client Responsibilities

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### 3.1 The Client shall:

- 3.1.1 ensure that all Faults are reported to the Sabio Support Centre by employees of the Client who are knowledgeable in the Supported System and the Client's business;
- 3.1.2 promptly provide Sabio with proper access (either remote or physical if necessary) to the Supported System;
- 3.1.3 provide onsite assistance to the Sabio Support Centre throughout the lifecycle of the Fault in order to promptly provide any further relevant information, testing, decision making or change authorisation;
- 3.1.4 promptly provide to Sabio, free of charge, such information, documentation and facilities as Sabio may reasonably request to enable Sabio to perform its obligations under this Agreement;
- 3.1.5 have a minimum of one (1) technically skilled and knowledgeable person who understands the operation of telephony and contact centre including without limitation any associated applications;
- 3.1.6 have sufficient technical resources available twenty four hours per day, seven days per week to provide initial triage and Tier 1 Support (applies only where the Client requires 24x7 support cover from Sabio);
- 3.1.7 provide Tier 1 Support;
- 3.1.8 ensure active and up to date anti-virus protection is in place, at all material times, in respect of the Supported System
- 3.1.9 perform all system backups and maintain a backup strategy;
- 3.1.10 test backup data regularly to ensure accurate data integrity;
- 3.1.11 make available any backups to Sabio for the restoration of any data if required during a Fault;
- 3.1.12 complete regular maintenance and health checks on the Supported System to ensure ongoing system performance and reliability;
- 3.1.13 provide a Client Service Desk to coordinate requests from end users;
- 3.1.14 make available, at all necessary times, personnel who have a full understanding of the Client's wider IT infrastructure;
- 3.1.15 gather and validate log files and configuration files;
- 3.1.16 apply simple patches, software updates, firmware updates and fixes under direction from Sabio;
- 3.1.17 ensure that infrastructure services (e.g. time sync, dns and active directory) are properly functioning and are managed by the Client on an ongoing basis
- 3.1.18 accurately categorise the Fault and describe its business impact;
- 3.1.19 describe symptoms (i.e. what is wrong, when it went wrong and how it differs from normal working service) and steps that cause the problem to occur;
- 3.1.20 describe anything that has been done to try to resolve the Fault;
- 3.1.21 submit or supply technical information of other integrating technology for which Sabio is not responsible (i.e. wide area network or local area network configuration/analysis) which may help Sabio identify the root cause of the Fault;
- 3.1.22 under Sabio's direction, complete any traces and capture any required log files for submission to the Sabio Support Centre
- 3.1.23 undertake a review of any Client initiated changes which may have had an impact or caused the Fault;
- 3.1.24 provide timely and accurate responses to requests from Sabio (including without limitation those in this paragraph 3.1);
- 3.1.25 perform daily checks to identify any alarms or issues before they become service impacting Faults; and
- 3.1.26 provide operational testing resource and timely feedback.

## 4 Excluded Faults



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- 4.1 Sabio shall not be obliged to resolve any Faults which arise due to:
- 4.1.1 the alteration, re-programming, modification or maintenance of the Supported System or its specification by the Client except as specified in any manual, training procedure or written specification, or by anyone other than Sabio without Sabio's prior consent;
  - 4.1.2 the use of defective or inappropriate consumable supplies including but not limited to disks, tapes, batteries (including without limitation uninterruptible power supply batteries) and printers, with the Supported System other than those supplied by Sabio or at Sabio's direction;
  - 4.1.3 any defect or error in any software used upon or in association with the Supported System, excluding always any Software supplied by Sabio for use with the Supported System, unless and to the extent that Sabio have agreed to maintain that software;
  - 4.1.4 any accident or disaster affecting the Client's Location or Supported System, including but not limited to fire, flood, water, wind, lightning, transportation, vandalism, burglary or act of terrorism;
  - 4.1.5 any modification, alteration, removal of or attachment to the Supported System which was not performed by Sabio;
  - 4.1.6 any work which in Sabio's reasonable opinion is impractical to perform due to a change to the Location or position of the Supported System;
  - 4.1.7 any breach by the Client of its obligations under this Agreement or any negligent act or omission by the Client;
  - 4.1.8 use by the Client of the Supported System in any way other than for its intended purpose;
  - 4.1.9 failure of power or utility supply to the Locations;
  - 4.1.10 any part of the Supported System being at the end of its useful life or beyond economical repair;
  - 4.1.11 the Client failing to implement a reasonable recommendation made by Sabio; or
  - 4.1.12 any Fault with the Supported System where the root cause of the Fault had arisen prior to the date the Support Services commenced (and/or, where the root cause of the Fault is due to a component of the Supported System which Sabio does not support as part of its core business (and this has been identified as such on the relevant Work Order), such Fault has arisen within three months after the Support Commencement Date).
- 4.2 If a Fault is logged with the Sabio Support Centre, and such Fault transpires to be an Excluded Fault, Sabio reserves the right to charge for (and if so charged, the Client shall pay for) time incurred and materials used at Sabio's prevailing standard time and material rates.

## SCHEDULE 1

### Part 2 - Service Levels

#### 1. Service Levels

1.1 The following table provides the Service Levels which Sabio shall provide to the Client in respect of the Supported System with effect from the date on which Support Services commence:

The relevant components of the Supported System are categorised as either Category 1, Category 2 or Category 3, as follows:

**Category 1:** Avaya CM, Avaya Elite, Avaya CMS, Avaya/Verint Call Recording, AES, Aura Messaging, to the extent any of them form part of the Supported System

**Category 2:** Bespoke IVR, Dialler, Speech Analytics, Sabio Owned Applications, Oceana, AACC, Avaya WFM, to the extent any of them form part of the Supported System

**Category 3:** any other components of the Supported System, for which the Service Levels shall be set out in the Work Order. The Service Levels below do not apply to Category 3 components.

#### Service Levels:

Description	Service Level Type	Category 1 and Category 2
<b>Sabio Support Centre</b>	P1 Coverage Hours	24x7
	P2 Coverage Hours	24x7
	P3 Coverage Hours	Monday to Friday 0800 to 1800 UK Time
	P4 Coverage Hours	Monday to Friday 0800 to 1800 UK Time
	Service Requests/MAC Coverage Hours	Monday to Friday 0800 to 1800 UK Time
<b>Incident Management</b>	P1 Technical Response	30 Mins
	P2 Technical Response	1 Hour
	P3 Technical Response	4 Hours
	P4 Technical Response	8 Hours
<b>Incident Management</b>	P1 Service Restoration*	+ 2 Hours
	P2 Service Restoration*	+ 4 Hours
	P3 Service Restoration*	+ 3 Days (Monday to Friday)
	P4 Service Restoration*	+ 5 Days (Monday to Friday) or next release

\* Where a reasonable Service Restoration is available and applicable. The Service Level to provide a Service Restoration will not apply when an action to progress an incident falls outside of Sabio's control (including without limitation where a Fault is referred to the manufacturer to resolve a software bug) or where Sabio require further information from the Client.

## 2 Incident Categorisation

2.1 For the purposes of the relevant Service Levels in paragraph 1, the Client shall (acting reasonably), when reporting an Incident to Sabio, categorise the severity of the Fault according to the following characteristics:

Incident Category	Incident Characteristics
<b>P1-Critical</b>	Core business functionality is inoperative. Disruption in service is continuous or near continuous. No workaround is available.
<b>P2-High</b>	A significant proportion of core business functionality is degraded. However some business function is still possible Disruption in core business service is intermittent No workaround is available
<b>P3-Medium</b>	Core business functionality is possible however ancillary business processes are degraded. No disruption to core business service. An ancillary business function is completely inoperative An ancillary business function is disrupted continuously or near continuously
<b>P4-Low</b>	Core business functionality is possible however ancillary business processes are degraded. No disruption to core business service. An ancillary business function is degraded however some functionality is available. An ancillary business function is disrupted intermittently

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**SCHEDULE 2 – END USER LICENCE AGREEMENTS**

**[INSERT IF APPLICABLE]**