



## **Managed Services Agreement**

*Last updated: 14<sup>th</sup> September 2020*

## Definitions and Interpretation

1.1 In this Managed services agreement for Coltella managed services (this “MSA”), the following definitions shall apply.

Defined Term	Definition
Acceptable and Fair Use Policy	Coltella’s acceptable and fair use policy in respect of Managed Services, as notified to the Customer and as Coltella may update it from time to time in accordance with its terms.
Activation Date	The date from which Coltella considers that the Managed Services are ready for activation.
Business Day	Monday to Friday excluding public holidays in England and Wales.
Business Hours	9.00 a.m. to 5.00 p.m. on Business Days.
Cancellation Charge	An amount equal to: (i) if the cancellation takes effect after the later of the Contract Start Date and the Activation Date, the Fees that would otherwise have been payable from the date the Managed Service is cancelled to the the date such Managed Service was scheduled to expire in accordance with the Contract; and (ii) if the cancellation takes effect before the later of the Contract Start Date and the Activation Date, any non-recurring charges payable pursuant to clause 9.6 plus 50 per cent. of the other Fees payable during the Initial Term, plus in each case any other amounts specified as payable as part of the Cancellation Charge in the Work Order.
Change Control Procedure	The procedures for changing the Managed Service Specification as set out in clause 10.
Confidential Information	Confidential Information means any information, technical data or know-how, in any medium, which is marked “confidential”, which the receiving party knows or reasonably ought to know is confidential, or which is by its nature confidential, except information, technical data or know-how which: (iii) is in the possession of the receiving party at the time of disclosure, is not subject to an obligation of confidentiality and can be demonstrated beyond doubt as being in the receiving party’s files and/or records immediately prior to the time of disclosure; (iv) prior to or after the time of disclosure becomes public knowledge, other than as a result of breach by the receiving party of its obligations under the Contract; (v) is approved for release by the disclosing party; or (vi) is independently developed by the receiving party without the use of any Confidential Information of the disclosing party.
Contract	The agreement between Coltella and the Customer comprising this MSA and the Work Order.
Contract Start Date	The date specified as such in the Work Order.
Customer	The person identified as such in the Work Order.
Customer Data	Any data uploaded to, stored on or processed using the Managed Services by the Customer.
Customer’s Operating Environment	The Customer’s computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Managed Services and which interfaces with Coltella’s System in order for the Customer to receive the Managed Services, but excluding the Customer Site Equipment.

Customer Representative	The contact defined in the Work Order or such other person notified in writing by Customer to Coltella who shall be the Customer's main technical contact.
Customer Site	Any premises occupied by the Customer at which it receives the Managed Services, as detailed in the Work Order.
Customer Site Equipment	Any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively by Coltella as part of the Managed Services.
Data Controller	Has the meaning given to it in the DPA.
Data Processor	Has the meaning given to it in the DPA.
DPA	The Data Protection Act 2018.
Documentation	The solution documentation made available to the Customer by Coltella from time to time which may set out any additional description of the Managed Services and/or contain the user instructions for the Managed Services.
Excused Outage	Any outage, unavailability, delay or other degradation of Service related to, associated with or caused by: Planned Maintenance events; any Service not supported by a Coltella traversing Hardware component; any third party plugin or ancillary equipment not supplied by Coltella; a Customer application running on a server (virtual or physical) which is not supported by Coltella; the Customer actions or inactions or those of any third party excluding any sub-contractor or IT Partner of Coltella directly involved in the performance, operation or maintenance of the Customer's Managed Service.
Fees	All of the fees payable to Coltella by the Customer in respect of the Managed Services, whether one-off or recurring, as set out in the Work Order in respect of the Initial Term, and thereafter as revised by Coltella prior to each Renewal Term in accordance with clause 13.3.
Good Industry Practice	The degree of skill and care which it is reasonable to expect of a provider of managed services similar to the Managed Services.
Hardware	All physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by Coltella to deliver the Managed Services to the Customer.
Initial Term	The initial term of the Contract specified in the Work Order, measured from the later of the Contract Start Date and the Activation Date.
Initial Work Order	The first document entitled "Work Order" issued by Coltella in response to the Customer's request for Managed Services, setting out at least a high level description of the Managed Services to be provided by Coltella, and the corresponding Fees payable by the Customer.
Intellectual Property Rights	Any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions.

IT Partner	A third party used by either party in the provision of a Managed Service.
Maintenance Contract	Hardware or Software support contracts held on supported devices and supplied by the manufacturer or recognised vendor support partner.
Managed Services	The managed services to be provided to the Customer by Coltella, as set out in the Work Order.
Managed Service Specification	The specification of the Managed Services as set out in the Work Order and the Documentation.
Personal Data	Has the meaning given to it in the DPA.
Renewal Term	A period of 12 months from the expiry of the Initial Term or the previous Renewal Term, as the case may be.
Replacement Supplier	Has the meaning given to it in clause 16.2.3.
Service Credit	Any credits payable to the Customer in accordance with the Service Level Arrangements.
Service Level Arrangement or SLA	The service level arrangements applicable to the Managed Services, if any, as attached to the Work Order.
Service Levels	The metrics for measuring the performance of the Managed Services as set out in the SLA.
Coltella	Coltella LTD (Company number 10894285) and any successor or assignee thereof.
Coltella's System	The information and communications technology system to be used by Coltella in performing the Managed Services, including the Hardware, the Software, the Customer Site Equipment and communications links between the Hardware and the Customer Site Equipment and the Customer's Operating Environment.
Software	Any software used by Coltella to provide the Managed Services to the Customer.
Supplementary Work Order	Any document issued by Coltella and entitled "Work Order" which, notwithstanding that it may be a separate document and/or delivered at a later date, supplements an Initial Work Order and, once accepted by the Customer in accordance with clause 2.2, forms part of the Work Order.
Term	The Initial Term and each Renewal Term.
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014.
Transition Assistance Period	Has the meaning given to it in clause 16.2.3.
Work Order	Collectively, the Initial Work Order and any Supplementary Work Order, and all documents scheduled or attached to them.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this MSA.
- 1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.4 Any phrase introduced by the words "including", "includes", "in particular" or "for example", or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.

1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

1.6 If there is a conflict between this MSA and the Work Order, the latter shall prevail.

## 2 **Ordering Services**

2.1 In response to a request by the Customer, Coltella will prepare and send to the Customer an Initial Work Order. If the Customer wishes to contract with Coltella to provide the Managed Services set out in that Initial Work Order, it will indicate its acceptance of the Initial Work Order by signing it and returning a signed copy to Coltella, whereupon the Contract will come into existence.

2.2 Depending on the nature of the Managed Services, the Customer recognises that it may be necessary for Coltella to perform additional preparatory design or specification work before proceeding to installation, provisioning and/or "go live", in which case Coltella will provide to the Customer upon completion of that additional preparatory work a Supplementary Work Order setting out further detail on how the Managed Services will be provided. The Customer may request reasonable changes to the Supplementary Work Order, and Coltella will use reasonable efforts to accommodate such changes within the scope of the Fees set out in the Initial Work Order, failing which Coltella and the Customer, each acting reasonably, will agree such changes to the Managed Services and the corresponding Fees as may be required to give effect to the Customer's request. The Customer can accept a Supplementary Work Order in writing, by email, or by requesting through any medium that Coltella proceed with providing the Managed Services, and in the absence of a written indication to the contrary will be deemed to have accepted a Supplementary Work Order 7 days after Coltella sends it to the Customer. Once accepted, a Supplementary Work Order forms part of the Work Order (and, therefore, part of the Contract) in respect of the relevant Managed Services.

2.3 Following acceptance of the Work Order (including, where applicable, any Supplementary Work Order), Coltella will provide the Customer with a provisional Activation Date for each of the ordered Managed Services. Coltella will use reasonable efforts to begin delivering the relevant Managed Services by such provisional Activation Date, subject to payment by the Customer of any Fees which are payable in advance and the Customer's compliance with the terms of the Contract (and in particular its obligations in clause 6), but time shall not be of the essence in this regard and the Customer acknowledges that the actual Activation Date may differ.

2.4 If Coltella has agreed with the Customer that any Fees will be payable in arrears, the delivery of the Managed Services is subject to credit approval at the beginning of the Term.

2.5 Coltella does not expect that any of the Customer's workers or employees, or those of its other current or former suppliers, will transfer to Coltella under TUPE by virtue of the Contract. The Customer must disclose to Coltella, before Coltella becomes obliged to provide the Managed Services (and as a condition to such provision), sufficient information about any such workers or employees who will so transfer so as to enable Coltella to assess the likely costs of making such workers or employees redundant. If any such worker or employee who the Customer has not disclosed to Coltella as transferring nevertheless is able to show that his or her contract of employment has transferred to Coltella under TUPE as a result of the Contract, the Customer will indemnify Coltella for its actual losses resulting from a claim brought by such undisclosed workers or employees, including reasonable legal fees, provided that Coltella must not settle or otherwise dispose of such a claim without the Customer's prior written consent.

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

### 3 **Service Provision**

- 3.1 Any applicable Service Level Arrangements shall apply with effect from the start of the first complete month occurring after the Activation Date.
- 3.2 The Customer is responsible for the use to which it puts the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer). In particular, the Customer acknowledges that the Managed Services are not designed to be used in circumstances in which errors or failures in the Managed Services could lead to death, personal injury or severe physical or environmental damage. Therefore, unless expressly agreed otherwise in the Work Order, the Customer will not use the Managed Services for such purposes.
- 3.3 The Customer Site Equipment is at the Customer's risk from the point of installation.
- 3.4 The Customer shall not provide the Managed Services to third parties or permit any third party to access or benefit from the Managed Services, nor to access the Customer Site Equipment, unless otherwise expressly agreed to in writing by Coltella.
- 3.5 Coltella reserves the right to:
  - 3.5.1 modify Coltella's System, its network, system configurations or routing configuration; or
  - 3.5.2 modify or replace any Hardware or Software in its network or in equipment used to deliver any Managed Service over its network, provided that so doing will have no material adverse effect on either party's ability to perform its obligations under the Contract. If such changes will have such a material adverse effect, the affected party will notify the other and the parties will follow the Change Control Procedure.
- 3.6 If a Managed Service to be delivered by Coltella is no longer readily available or is in short supply at the agreed time of delivery, Coltella may substitute another product or service in its place. The substituted product will have equivalent or better performance and function and will be provided at no additional cost to the Customer.
- 3.7 If the Customer uses a Managed Service, or requires Coltella to implement or configure a Managed Service, in a manner contrary to the Documentation or Coltella's reasonable recommendations, Coltella's obligation to provide that Managed Service will be limited to reasonable endeavours.
- 3.8 Time shall not be of the essence in respect of the delivery of the Managed Services.

### 4 **Disaster Recovery, Customer Data and Data Protection**

- 4.1 The Customer acknowledges that certain risks, such as data loss, are an inherent part of using services such as the Managed Services. Coltella can, where agreed with the Customer, provide backup and restore services as part of the Managed Services, which can form part of a Customer's wider business continuity and recovery strategy. However, Coltella does not provide general business continuity planning and execution services. Business continuity planning, and the execution and testing of such plans, is the responsibility of the Customer, and the Customer acknowledges that Coltella's backup and restore services are not a complete substitute for such arrangements. Therefore, if backup and restore services are not included in the Managed Services, Coltella will have no liability for any loss of or damage to Customer Data, however caused. If backup and restore services are included in the Managed Services, Coltella will perform such backup and restore services as are set out in the Work Order to the appropriate Service Level and in accordance with Good Industry Practice. However, the Customer acknowledges that:

- 4.1.1 Coltella is not in a position to develop, evaluate or test the Customer's wider business continuity or disaster recovery arrangements, and can only provide such backup and recovery services as form part of the contracted Managed Services, and the selection and testing of appropriate backup and recovery solutions and strategies is therefore the Customer's responsibility; and
- 4.1.2 Coltella is not in a position to verify the accuracy, completeness or integrity of the Customer Data, and can only back up the Customer Data as of its then-current state. Therefore, Coltella will not be liable if any Customer Data backed up or restored by Coltella is inaccurate, incomplete or corrupted, provided that the restore and corresponding backup job completed without error.
- 4.2 Notwithstanding clause 4.1, Coltella will not itself delete any Customer Data unless specifically permitted to do so by the Contract or instructed to do so by the Customer.
- 4.3 The Customer acknowledges that Coltella is not an insurer. Therefore, where Customer Site Equipment must be replaced in the course of a disaster recovery, Coltella can provide assistance in doing so, and will provide break/fix services to the extent that such services are within the scope of the Managed Services, but all replacement, relocation and/or reinstallation costs in respect of Customer Site Equipment will otherwise be borne by the Customer.
- 4.4 Each party warrants that it shall comply with the DPA when performing its respective obligations under the Contract.
- 4.5 To the extent that Coltella (as Data Processor) processes Personal Data on behalf of the Customer (as Data Controller), Coltella will:
- 4.5.1 process such Personal Data only in accordance with the Customer's instructions or as required by law or regulation;
- 4.5.2 take appropriate technical and organisational measures to protect such Personal Data against unauthorised or unlawful processing and accidental loss, destruction, alteration or disclosure;
- 4.5.3 ensure that, having regard to the state of technological development and their cost of implementation, those measures ensure a level of security appropriate to (1) the harm that might result from such processing, loss, destruction or damage; and (2) the nature of such Personal Data; and
- 4.5.4 promptly inform the Customer if it receives a request or notice from a data subject seeking to exercising his or her rights under the DPA in respect of such Personal Data, and (at the Customer's cost) comply with the Customer's reasonable instructions with respect to that request or notice.
- 4.6 The Customer instructs Coltella to take such steps in the processing of Personal Data on its behalf as Coltella reasonably considers necessary to the performance of its obligations under the Contract, irrevocably authorises Coltella to give equivalent instructions to any relevant subcontractor on its behalf, and warrants that it is and will remain entitled to give the instruction and authorisation in this clause 4.6.
- 4.7 Coltella will ensure that any subcontractor to which it delegates the processing of Personal Data on behalf of the Customer is bound by a written agreement imposing on the subcontractor obligations equivalent to those set out in clause 4.5.
- 5 **Security**
- 5.1 Coltella will operate safety and security measures and procedures consistent with Good Industry Practice for the prevention of unauthorised access or damage to any and all Managed Services.

5.2 Each of Coltella and the Customer will promptly inform the other if it suspects or uncovers any breach of security in respect of the Managed Services, and Coltella will use all commercially reasonable endeavours to verify and, if verified, promptly remedy such breach.

## 6 Customer Obligations

6.1 To assist Coltella to fulfil its obligations under the Contract, the Customer will:

6.1.1 provide Coltella promptly with any information and assistance it may reasonably require from time to time;

6.1.2 afford Coltella full and safe access to the Customer Site(s) and the Customer Site Equipment during normal working hours;

6.1.3 provide at the relevant Customer Site(s) all suitable computer hardware, software and telecommunications equipment (other than those specified to be provided by Coltella in the Work Order);

6.1.4 where applicable, install the correct management agents for the Customer's Operating Environment, or if Coltella installs management agents as part of the Managed Services, not interfere with such management agents;

6.1.5 provide Coltella with copies of all policies that Coltella is expected to observe at the Customer Sites;

6.1.6 appoint a Customer Representative who will be Coltella's primary contact at the Customer and who must have or promptly be able to obtain sufficient authority to make all necessary decisions in relation to the Contract. The Customer will use reasonable endeavours to ensure continuity of the Customer's Representative.

6.1.7 comply with all applicable laws and regulations with respect to its activities under the Contract;

6.1.8 carry out its responsibilities to Coltella in a timely and efficient manner. In default of such obligation, Coltella may adjust any timetable or delivery schedule as reasonably necessary;

6.1.9 use, and procure that its officers, employees, workers and subcontractors use, the Managed Services only in accordance with the Acceptable and Fair Use Policy;

6.1.10 ensure that the Managed Services are not used to receive, transmit, host or otherwise process any material and/or communication (other than entirely unsolicited inbound communications) that is menacing, of a junk-mail or spam-like nature, illegal, obscene, threatening, defamatory, discriminatory, actionable, or in violation of (or which would place Coltella in violation of) any rules, regulations or laws to which the use of the Managed Services are subject, or infringe the Intellectual Property Rights of Coltella or any third party;

6.1.11 inform Coltella of any new applications and or services brought onto the Managed Services and ensure that such applications or services are licensed and compliant

6.1.12 where relevant, properly train, supervise and manage its personnel in the use and application of the Managed Services; and

6.1.13 implement effective and appropriate backup and other procedures for the protection of its data where backup and restore services are not part of the Managed Services.

- 6.2 Additionally, and notwithstanding the above, Coltella will not be responsible for any failure to provide the Managed Services unless the Customer has met or observed the following requirements:
- 6.2.1 all Customer hardware and software configurations to be supported by Coltella have been installed by Coltella or have been reviewed by both parties and agreed that the solution presented is both suitable for purpose and within the ability of both parties to sustain;
  - 6.2.2 the Customer has assumed responsibility for the purchase of associated hardware and software Maintenance Contracts. Where any related Maintenance Contract has been arranged directly with an IT Partner by the Customer, the Customer shall be responsible for advising that IT Partner that Coltella will be managing the Customer's systems from the applicable start date and, to the extent required, procuring for Coltella a right to use the services provided under such Maintenance Contract;
  - 6.2.3 the Customer has ensured that the performance or operation of any Customer installed applications have no direct impact upon Coltella's ability to deliver the agreed Service Levels; and
  - 6.2.4 the Customer has advised Coltella of its internal procedures of internal escalation and systems maintenance.
- 6.3 If the Customer wishes to make any alterations, additions, or maintenance that will or may impact upon Coltella's ability to deliver the Managed Services, then the Customer will inform Coltella in writing of such works prior to their commencement.
- 6.4 In the event that the Customer, or any third party who is not a sub-contractor of Coltella, omits or commits anything that prevents or delays Coltella from undertaking or complying with any of its obligations under the Contract, then Coltella shall notify the Customer as soon as possible and Coltella will have no liability in respect to any delay in the provision of the Managed Service that results from such act or omission.
- 6.5 Coltella may charge the Customer for any additional reasonable costs and expenses properly incurred by Coltella caused by variation in the Customer's instructions, any failure on the part of the Customer to provide instructions in a reasonable and timely manner, or other failure to comply with this Clause 6.

## 7 Warranties

- 7.1 Coltella warrants that:
- 7.1.1 it will provide the Managed Services in accordance with Good Industry Practice and substantially in accordance with the Managed Service Specification and the Contract;
  - 7.1.2 it has the full capacity and authority to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of Coltella;
  - 7.1.3 it will comply with all applicable laws in performing its obligations under the Contract; and
  - 7.1.4 all personnel and sub-contractors used by Coltella in the performance of the Contract are adequately skilled and experienced for the activities they are required to perform.
- 7.2 The warranties in clause 7.1 shall not apply to the extent of any non-conformance caused by use of the Managed Services contrary to Coltella's instructions.
- 7.3 If the Managed Services do not conform with any of the warranties in clause 7.1 as a result of a breach by Coltella of such warranty, Coltella will use reasonable commercial endeavours to

correct such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranties in clause 7.1.

- 7.4 Coltella does not warrant that the Customer's use of the Managed Services will be uninterrupted or error-free.
- 7.5 The Customer warrants that:
  - 7.5.1 it has the full capacity and authority to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Customer;
  - 7.5.2 it has the authority to grant any rights granted to Coltella under the Contract;
  - 7.5.3 it will comply with and use the Managed Services in accordance with the Contract and all applicable laws;
  - 7.5.4 it has and shall maintain all necessary licences, permits, rights, consents, registrations, approvals and titles necessary for Coltella to use or host any software, hardware, documentation or other materials provided by the Customer for use in the provision of the Managed Services to the Customer; and
  - 7.5.5 Coltella's use of any third-party materials supplied by the Customer in connection with the Contract, shall not cause Coltella to infringe the rights, including any Intellectual Property Rights, of any third party.

## 8 IT Partners, EULAs and other Third Party Agreements

- 8.1 The Customer may contract directly with an IT Partner for provision of software or services related to the Managed Services. Unless managing such contracts falls within the scope of the Managed Services, the Customer will (as against Coltella) be solely responsible for all matters arising out of such contracts.
- 8.2 Where Coltella provides to the Customer access to or use of third party Software in the course of providing the Managed Services, the Customer agrees to comply with the terms of the relevant end user licence agreements applicable to such Software. Where required by an upstream supplier of such Software, the Customer agrees to provide to such upstream supplier sufficient access to relevant systems and records to allow such upstream supplier to verify compliance with such end user licence agreements.
- 8.3 The Customer shall licence or procure a licence for the use of any software, programs and/or applications used by the Customer and not supplied by Coltella (including the Customer's Operating Environment). These may or may not be indirectly related to the Managed Services.

## 9 Invoicing and Payment

- 9.1 Until the Contract comes into existence, all Fees are subject to change without prior notice. Coltella will notify the Customer of any changes to Fees set out in a draft Work Order before such Work Order comes into effect.
- 9.2 The Customer acknowledges that the Fees chargeable in respect of certain Managed Services (for example, AWS, Azure, VCHS, cloud backup and SIP per-minute billing) are based on the Customer's actual usage, and that the level of usage of such Managed Services is controlled by the Customer. The Customer therefore agrees in respect of such Managed Services to pay such Fees as the Customer may incur as a result of its actual usage, without the requirement for any additional purchase order. The Customer further acknowledges that fees charged by the upstream suppliers of certain Managed Services will vary from time to time during the Term. The

Customer therefore agrees that Coltella may vary the Fees to reflect such changes in upstream fees. Coltella will use reasonable endeavours to provide reasonable notice of such variations.

- 9.3 Coltella will invoice the Customer for its Fees for the Managed Services either monthly or quarterly in advance as specified in the Work Order and unless the Work Order specifies otherwise, provided that in respect of the Managed Services of the type referred to in clause 9.2 Coltella will invoice monthly in arrears. The Customer will pay Coltella in full within thirty (30) calendar days from receipt of invoice unless otherwise specified in the Work Order.
- 9.4 If the Work Order provides that the Fees or any part of the Fees are payable in arrears, then Coltella may withdraw or vary such arrangements at any time if:
  - 9.4.1 Coltella serves a notice of termination of the Contract;
  - 9.4.2 there is (in the sole opinion of Coltella) a material adverse change in the creditworthiness of the Customer; or
  - 9.4.3 the Customer fails to pay any amount which is due and payable.
- 9.5 Applicable third-party support and licensing Fees will be payable at initial purchase and any subsequent renewal dates.
- 9.6 When the Customer first orders a Managed Service not previously supplied, or it is agreed by the parties as being either an addition to, or change to an existing Managed Service being supplied, then a non-recurring charge may be specified as part of the Fees. This non-recurring charge is for installation of additional network infrastructure, cabling, electronics or other materials or consultancy. Non-recurring charges are payable by the Customer after delivery of the relevant Managed Service and will be billed in arrears. If the Customer fails to pay such non-recurring charges within thirty (30) calendar days following Coltella's invoice for such non-recurring charges then:
  - 9.6.1 such failure to pay shall be an Excused Outage for the purposes of provisioning and/or installation of the Managed Services;
  - 9.6.2 Coltella may issue a revised Contract Start Date and/or Activation Date; and
  - 9.6.3 Coltella may suspend installation of the Managed Service until receipt of such non-recurring charges.
- 9.7 If the Customer reasonably disputes any portion of an invoice, the Customer must submit a written claim for the disputed amount within thirty (30) calendar days after delivery of the relevant invoice and shall at all times remain liable for the payment of all items not disputed or not validly disputed as reasonably determined by Coltella. Where such dispute turns upon level of usage of the Managed Services, Coltella's records of such usage shall be presumed to be accurate unless proved otherwise by an independent expert appointed by Coltella or appears to be contrary to Customer's written purchase order for such Services.
- 9.8 The Customer waives the right to dispute any Fees not disputed within thirty (30) days of receipt of the relevant invoice.
- 9.9 When a dispute regarding amounts payable under the Contract is resolved to the Customer's reasonable satisfaction, the Customer will immediately pay any amounts that were the subject of such dispute.
- 9.10 Coltella reserves the right to charge interest to the Customer on any sums, fees or other charges which are not paid on the due date and that interest may be charged from the date such payment falls due at the statutory rate of two per cent (2%) per annum above the Bank of England base

rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

- 9.11 On expiry or termination of the Contract for any reason, any Fees incurred but unpaid shall become immediately due and payable and shall represent a debt due from the Customer to Coltella.
- 9.12 All charges for Managed Service are net of VAT and other taxes. Except for taxes based upon Coltella's net income, the Customer will be responsible for payment of all applicable taxes that arise in any jurisdiction, including but not limited to, VAT, sales, use, excise, access, bypass, franchise or other taxes, fees, charges or surcharges, however designated, imposed on or based on the provision, sale or use of the Managed Services.

## 10 **Change Control Procedure**

- 10.1 The Customer acknowledges that changes to services such as the Managed Services must be carefully managed. Therefore, if either party wishes to change the scope of any of the Managed Services (including Customer requests for additional services), it shall submit a change request to the other party and the parties will then proceed according to Coltella's change control procedure as it may be amended from time to time (the "Change Control Procedure").

## 11 **Intellectual Property**

- 11.1 Nothing in the Contract will change the ownership of any of the Intellectual Property Rights of either party.
- 11.2 Each party grants to the other a non-exclusive, limited, revocable licence to use its Intellectual Property Rights solely to the extent necessary for that party to perform its obligations under the Contract.
- 11.3 The Customer will indemnify Coltella against any claim brought against Coltella by a third party that the Customer Data or the Customer's use of the Managed Services infringes such third party's Intellectual Property Rights or other rights, provided that Coltella will provide reasonable assistance in the defence and/or settlement of such claims, and provided that the Customer will have on request sole authority to defend or settle any such claim.
- 11.4 Coltella will indemnify the Customer against any claim brought against the Customer by a third party that the Managed Services infringe such third party's Intellectual Property Rights or other rights, provided that the Customer will provide reasonable assistance in the defence and/or settlement of such claims, and provided that Coltella will have on request sole authority to defend or settle any such claim

## 12 **Confidentiality**

- 12.1 Each party undertakes to the other that, except as provided by clause 12.4 or as authorised in writing by the other, it shall, at all times:
  - 12.1.1 keep confidential all Confidential Information disclosed to it by the other party;
  - 12.1.2 not disclose any such Confidential Information to any other person;
  - 12.1.3 not use any such Confidential Information for any purpose other than as contemplated by the Contract; and

- 12.1.4 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that party, would be a breach of this clause 12.1.
- 12.2 The Customer acknowledges that Coltella's Confidential Information includes any designs, plans, software or other materials created by Coltella in connection with the Managed Services.
- 12.3 Coltella acknowledges that the Customer's Confidential Information includes the Customer Data.
- 12.4 Notwithstanding clause 12.1, either party may disclose the Confidential Information of the other to:
  - 12.4.1 any sub-contractor, supplier or professional adviser of that party;
  - 12.4.2 any governmental or other authority or regulatory body; or
  - 12.4.3 any employee or officer of that party, or of any of the aforementioned persons, in each case only to such extent as is necessary for the purposes of performing or enforcing the Contract, or as required by law, and in each case (unless prohibited by applicable law) subject to that party first informing the person in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in clause 12.4.2 above or any employee or officer of any such body) obtaining and submitting to the other party a written undertaking from the person in question, as nearly as practicable in the terms of this clause, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 12.5 The provisions of this clause 12 shall continue notwithstanding the termination of the Contract for any reason.

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

- 13.1 The Contract will continue for the Initial Term and will thereafter automatically renew for successive Renewal Terms unless:
  - 13.1.1 either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Term or the then-current Renewal Term, in which case the Contract will terminate upon the expiry of the Initial Term or then-current Renewal Term, as the case may be; or
  - 13.1.2 otherwise terminated in accordance with its terms.
- 13.2 Certain Managed Services are subject to longer cancellation periods imposed by the upstream supplier. The cancellation period for such Managed Services will be as set out in the Work Order, and in respect of such Managed Services clause 13.1.1 will be deemed to be amended accordingly.
- 13.3 The Customer acknowledges that the Fees are subject to variations caused by, among other things, increases in upstream supplier charges and general inflation, and that Coltella may therefore vary the Fees payable by the Customer in respect of Renewal Terms. 45 days before the expiry of the Initial Term and each Renewal Term, Coltella will notify the Customer of any adjustment in the Fees payable for the subsequent Renewal Term and, unless the Customer terminates the Contract in accordance with clause 13.1.1, such adjusted Fees will apply from the start of such Renewal Term.
- 13.4 The Customer may additionally terminate the Contract at any time during the Term if it pays to Coltella the Cancellation Charge.

### 14 **Suspension**

- 14.1 Coltella may suspend all or any part of any Managed Service without liability to the Customer if
  - 14.1.1 Coltella reasonably believes that the Managed Services have, are or will be used in breach of the Contract;
  - 14.1.2 Coltella discover that the Customer is affiliated in any manner with a person who has used similar services abusively in the past;
  - 14.1.3 the Customer does not co-operate with Coltella's investigation of any suspected breach of the Contract;
  - 14.1.4 Coltella reasonably believes that the Customer has permitted the Managed Services to be accessed or manipulated by a third party without its consent;
  - 14.1.5 Coltella reasonably believes that Customer applications, databases or operating systems hosted on the Managed Services have been hacked or compromised, except where such hack or compromise is reasonably attributable to Coltella's failure to perform its obligations under the Contract;
  - 14.1.6 Coltella reasonably believes that suspension of the Managed Services is necessary to protect Coltella's System or Coltella's other customers;
  - 14.1.7 any Fee or other amount due under the Contract is overdue or is at risk of non-payment in the opinion of Coltella; or
  - 14.1.8 Coltella is required to do so by law or a regulatory or government body.
- 14.2 Coltella will give the Customer advance notice of a suspension under this clause of at least twelve (12) Business Hours unless Coltella determines in its reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect Coltella or its other customers from imminent and significant operational, legal, or security risk, or non-payment of its Fees. If Coltella suspends any Managed Services pursuant to any of clauses 14.1.1, 14.1.3 or 14.1.7, then Coltella may continue to charge the Customer the Fees for the Managed Services during the period of suspension, and may charge the Customer a reasonable reinstatement fee upon reinstatement of the Managed Services. If Coltella suspends any Managed Services pursuant to clause 14.1.5, then the Customer must address the underlying vulnerability prior to Coltella placing the Managed Services back in service. If the Customer requests, Coltella may be able to perform this work for the Customer as a supplementary service on a time and materials basis at Coltella's standard hourly rates.

## 15 Termination

- 15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 15.1.1 the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
  - 15.1.2 the other party commits a material breach of any terms of the Contract which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
  - 15.1.3 the other party repeatedly breaches the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the Contract;

- 15.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 15.1.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 15.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 15.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 15.1.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 15.1.9 a person appoints or becomes entitled to appoint a receiver over the assets of the other party;
- 15.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or
- 15.1.11 the other party suspends, ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 15.2 If clause 15.1 applies then without prejudice to any other right or remedy available to Coltella it shall be entitled to cancel the supply of Managed Services without any liability to the Customer and any unpaid Managed Services shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 15.3 On termination or expiry of the Contract:
  - 15.3.1 each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and
  - 15.3.2 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 15.4 Upon expiration or termination of the Contract, the Customer must discontinue use of the Managed Services and relinquish use of the IP addresses and server names assigned to the Customer by Coltella in connection with Services, including pointing its domain name(s) away from Managed Services. The Customer agrees that Coltella may, as it determines necessary, make modifications to DNS records and zones on Coltella managed or operated DNS servers and services.
- 16 **Exit Assistance, Return of Customer Data and Transfer of Employees and Assets**
  - 16.1 Reasonably promptly following expiry or termination of the Contract for any reason, Coltella will provide the Customer with one electronic copy of the Customer Data, in the format it is then in

and on an “as-is” basis. Thereafter, subject to clause 16.3, Coltella may delete the Customer Data at its discretion.

- 16.2 Reasonably promptly following expiry or termination of the Contract for reasons other than those set out in clause 15.1, Coltella will:
  - 16.2.1 provide to the Customer copies of existing technical documentation of the Managed Services;
  - 16.2.2 hand over to the Customer all relevant passwords specific to the Managed Services provided to the Customer; and
  - 16.2.3 provide the Customer with such reasonable assistance and information in transitioning the Managed Services to a replacement supplier (“Replacement Supplier”) as the Customer may request, free of charge for a period of up to 30 days following such expiry or termination, and thereafter chargeable to the Customer on a time and materials basis at Coltella’s then-current rates for a further period of no more than 90 days following such expiry or termination (together, the “Transition Assistance Period”).
- 16.3 If requested to do so by the Customer, upon expiry or termination of the Contract for reasons other than those set out in clause 15.1 and subject to continuing payment by the Customer of the applicable Fees, Coltella will use reasonable endeavours to continue to provide such of the Managed Services as the Customer may require for up to 30 days following such termination or expiry so as to allow the Customer to transition to a Replacement Supplier. The Customer acknowledges that certain upstream suppliers may not permit such transitional provision, and therefore agrees that this clause 16.3 will not apply in respect of Managed Services which are dependent upon such upstream suppliers.
- 16.4 As soon as practicable after the commencement of the Transition Assistance Period, Coltella will disclose to the Customer whether any of its workers or employees will transfer to the Customer or the Replacement Supplier by operation of TUPE, and if so will provide the Customer with sufficient information about such workers or employees to enable the Customer to assess the likely cost of making such workers or employees redundant. If any worker or employee of Coltella who Coltella has not disclosed to the Customer as transferring nevertheless is able to show that his or her contract of employment has transferred to the Customer or the Replacement Supplier under TUPE as a result of transitioning the Managed Services to the Customer or the Replacement Supplier, Coltella will indemnify the Customer for its actual losses resulting from a claim brought by such undisclosed workers or employees, including reasonable legal fees, provided that the Customer must not settle or otherwise dispose of such a claim without Coltella’s prior written consent.
- 16.5 If applicable, on expiry or termination of the Contract Coltella shall sell to the Customer, and the Customer shall buy, the Customer Site Equipment for net book value, calculated in accordance with Coltella’s reasonable then-current depreciation policy. Title to such Customer Site Equipment shall pass to the Customer on payment.

## 17 **Force Majeure**

- 17.1 Neither party shall be liable, nor will Service Credits be applied, for any failure of any equipment, facilities or delivery of Managed Services due to causes beyond such party’s reasonable control.

## 18 **Liability**

- 18.1 Except as expressly and specifically provided in the Contract:
  - 18.1.1 the Customer assumes sole responsibility for results obtained from the use of the Managed Services, and for conclusions drawn from such use. Coltella shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Coltella by

the Customer in connection with the Managed Services, or any actions taken by Coltella at the Customer's direction; and

- 18.1.2 all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 18.2 Nothing in the Contract is intended to or shall be interpreted to exclude or limit the liability of either party for:
  - 18.2.1 the indemnities expressly given in the Contract; or
  - 18.2.2 any liability which cannot lawfully be excluded or limited.
- 18.3 Coltella will have no liability to the Customer arising out of or in connection with the Contract for any loss of profits, account of profits, loss of business, loss of revenue, loss or reputation or goodwill, loss of opportunity, loss of data or interference with business (unless and solely to the extent that Coltella provides backup and restore services as part of the Managed Services), or any indirect or consequential loss of any kind.
- 18.4 In particular and without prejudice to the provisions of clause 18.3, Coltella will not be liable for any loss or damage arising to the Customer's systems, data, information, equipment (including the Customer's Operating Environment) or any Intellectual Property Rights if such loss is in any way attributable to any of the following:
  - 18.4.1 any failure of the Customer's applications, databases or operating systems, including loss or corruption of data or (unless and to the extent that backup and restore services are part of the Managed Services) failure to implement back-up procedures;
  - 18.4.2 any failure of any applicable Service Level if in the reasonable opinion of Coltella (based on its knowledge of the industry) the solution/systems have been tampered with by the Customer or any third party authorised by the Customer with or without Coltella's knowledge;
  - 18.4.3 any failure of any Customer-managed IT Partner to provide its services in accordance with the relevant agreements;
  - 18.4.4 any Internet failure outside the control of Coltella; or
  - 18.4.5 any latent defect in any third party equipment or Software, or failure of such equipment or Software to perform in accordance with the manufacturer's specification.
- 18.5 Subject to the other provisions of this clause 18, Coltella's maximum aggregate liability to the Customer arising out of or in connection with the Contract is, in relation to each event and all events preceding that event (taken together), limited to an amount equal to the Fees paid by the Customer to Coltella in the 12 months preceding such event.

## 19 **Non-Solicitation**

- 19.1 Both parties agree that during the period of the Agreement and for a period of twelve (12) months after its termination or expiry, save for where such action is a result of a bona fide public recruitment process, neither party shall entice or seek to employ or engage directly or indirectly (without the other party's prior written agreement, such consent not to be unreasonably withheld or delayed) or make or seek to make any offer of employment or engagement to any of the other party's officers, employees or workers, including those of any of its sub-contractors who have been involved in the course of the negotiation, conclusion and performance of the Contract;
- 19.2 If any officer, employee or worker of a party leaves the employment of that party as a result of a breach of this clause 19 and commences employment with, or provides services to, the other party, it shall pay the non-breaching party 50% of the higher of:-

19.2.1 the annual salary (including any benefits-in-kind, bonus payments, commissions and other benefits) of the employee at the date that they ceased to be an employee of the non-breaching party; or

19.2.2 the annual salary of the employee at the time they commence employment by the breaching party.

19.3 Each party acknowledges that any such payment is by way of liquidated damages and is a reasonable and genuine pre-estimate of the non-breaching party's losses.

## 20 **No Waiver**

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

## 21 **Insurance**

21.1 Each party shall at all times maintain appropriate policies of insurances with a reputable insurance company to cover their separate risks and liabilities under this agreement (such policies to include but not be limited to public liability insurance in an amount of not less than GBP 5,000,000 for any event, unless the parties agree otherwise in writing).

## 22 **Severance**

22.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 22 shall not affect the validity and enforceability of the rest of the Contract.

## 23 **Assignment**

23.1 The Customer shall not, without the prior written consent of Coltella, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

23.2 The Customer accepts that Coltella may, in its sole discretion, sub-contract, outsource or resell all or parts of the delivery of a Managed Service to any of Coltella's IT Partners, provided that Coltella remains responsible for any act or omission of its IT Partners and other sub-contractors.

## 24 **No Partnership or Agency**

24.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

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

## 25 **Third-Party Rights**

25.1 Nothing in the Contract will confer any rights on any third parties.

## 26 **Notices**

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

## 27 **Anti-Bribery**

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

## 28 **Entire Agreement and Amendment**

- 28.1 The Contract constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.
- 28.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Contract.
- 28.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 28.4 No alteration to or variation of the Contract shall take effect unless and until the same is in writing and signed on behalf of each of the parties by a duly authorised representative.

## 29 **Law And Jurisdiction**

- 29.1 The Contract and all non-contractual obligations arising out of or connected with it will be governed by English law and subject to the exclusive jurisdiction of the English courts.