

# OXDH (OXDH) Limited Standard Terms ("OST")

Applies to all subsidiaries including, but not limited to, OX. ASSISTED REPRODUCTION (OX.ar) LIMITED, OX. VIRTUAL CLINIC (OX.vc) LIMITED, OX. VIRTUAL HOSPITAL (OX.VH) LIMITED and OX. MANAGEMENT SERVICES (OX.ms) LIMITED

Published 20 November 2020

1. **Scope.** Client may use the Solution only in the ordinary course of Client's internal business operations for the benefit of Client and only in accordance with the terms of this Agreement (including the Documentation, the Order and the Scope of Use). Client shall be liable for any breach of this Agreement by any persons granted access to the Solution by Client.
2. **Business Purpose.** Performance by Client of patient management functions in support of Client's private clinic.
3. **Number of Environments.**
  - 3.1. Two (2) Environments comprised of:
    - A. One (1) live production Environment
  - 3.2. In the event Client wishes to increase the number of Environments beyond the scope specified (each such Environment an "Additional Environment"), the parties shall negotiate, acting reasonably, an applicable Additional Environment fee (the "**Additional Environment Annual Fees**"), such fee to be payable quarterly in advance.
4. **Specified Configuration.** Client shall, at its expense, procure and maintain the computer hardware, systems software and other items required for use of, or access to, the Solution, including those described in the Order and Documentation (the "**Specified Configuration**") and for updating the Specified Configuration in accordance with OXDH's published updates. If not yet completed, Client shall complete its procurement and installation of the Specified Configuration prior to the scheduled start of implementation of the Solution. Client shall devote all equipment, facilities, personnel and other resources reasonably necessary to begin using the Solution in production on a timely basis as contemplated by this Agreement and satisfy any Client requirements necessary for OXDH to complete the professional services described in Section 10. OXDH is not responsible for any delays or additional fees and costs associated with Client's failure to timely perform its obligations under this Section 4.
5. **Acceptance.** If Client has not accepted the Solution under Section 13.3(a), notwithstanding any of the provisions of Section 13.3(a), the Acceptance Date shall be the first day on which Client uses the Solution or part thereof in a live production Environment for the Business Purpose.
6. **Transmission of Client Supplied Data.**
  - 6.1. Client shall transmit the Client Supplied Data (for the avoidance of doubt, including any third party data to be processed by the Solution) in accordance with the Scope of Use, using the network connectivity specified at Section 17.2 and in accordance with the format and schedule established by OXDH to permit the timely processing of Client's data.
  - 6.2. Client shall maintain copies of all source data and current backup copies of all Client Supplied Data, and OXDH shall have no liability for any loss or damage caused by Client's failure to maintain copies.
7. **Payments.**
  - 7.1. **Fees.** Client shall pay to OXDH the fees stated in the Order in consideration for the Solution, in accordance with the payment terms stated on the Order. OXDH shall invoice all other fees and/or disbursements as and when incurred. All invoices shall be sent to Client's address for invoices stated on the Order. Except as otherwise specified on the Order, Client's payments shall be due within thirty (30) days after the invoice date. A late payment fee at the rate of 4% above Bank of England's base rate per year shall accrue on any amounts thirty (30) days overdue and unpaid by Client to OXDH, except for Disputed Amounts. On an annual basis, OXDH may increase recurring fees for the Solution or other products and services stated on the Order, including the Support Fees and Professional Services fees under Section 7.11, by the Price Index Change. OXDH shall notify the Client no less than 30 days in advance of any implementation of an increase in recurring fees. All fees and other amounts paid by Client under this Agreement are non-refundable except: (a) as provided in Sections 8.2(c) and 13.3(a)iii; and (b) the portion of prepaid fees relating to support or hosting services for the period between the date of Client's termination of such services and the end of the period for which such fee was pre-paid (but only to the extent early termination of such services is permitted in this Agreement).
  - 7.2. **Termination Fees.** In the event of termination by Client or OXDH of an Order prior to the normal expiration date of the Initial Term or then current Renewal Term (as applicable), a Termination Fee shall be payable by the Client as specified below.
    - a) In the event that the Client terminates an Order in accordance with the provisions of Section 11.6, no Termination Fee shall be payable.
    - b) In the event of termination without cause by Client of this Order prior to the Acceptance Date, the Termination Fee shall be the sum of fifty percent (50%) of the Annual Processing Fees and the total Implementation Fee, minus any portion of the Implementation Fee already paid by Client on or prior to the termination effective date.
    - c) In the event of termination without cause by Client of an Order on or after the Acceptance Date during the Initial Term, the Termination Fee shall be calculated as the sum of fifty percent (50%) of the Annual Processing Fees and Additional User Annual Fees (if any). The Client agrees that the Termination Fee is a reasonable reflection of the OXDH's decommissioning costs.
    - d) In the event of termination without cause by Client of an Order during the then current Renewal Term, the Termination Fee shall be calculated as the sum of the Annual Processing Fee and Additional User Annual Fees (if any) multiplied by the number of years (or part thereof) in the relevant Renewal Term, minus the sum of any Annual Processing Fees and Additional User Annual Fees already paid by Client in respect of the relevant Renewal Term on or prior to the termination effective date.
    - e) Any Termination Fee will be paid by the Client within one (1) month of the Termination Date
  - 7.3. **Legacy Release Maintenance Fee:** Client shall pay an additional monthly fee (the "**Legacy Release Maintenance Fee**") of three point five percent (3.5%) of the Annual Processing Fee per month or part thereof (as applicable) in respect of any period for which Client requires the live production Environment to remain on a Release that pre-dates the Supported Release by more than six (6) months from the general release date of the Supported Release, except that no Legacy Release Maintenance Fee is payable if circumstances under OXDH's control (including but not limited to material Errors reported by Client in respect of the Supported Release and awaiting resolution by OXDH) would have a materially adverse effect on the performance of the Solution using the Supported Release in a live production Environment.
  - 7.4. **Performance Upgrade Fee:** In the event that (a) the performance of the Solution is adversely affected by material changes in Client's usage patterns of the Solution, whether within the Scope of Use or beyond, or (b) Client requests (other than for reasons as specified in the foregoing provision (a)) increased performance of the Solution that, in OXDH's reasonable opinion, can be provided by way of additional computing capacity in the relevant Environment; or (c) Client requests improvements to the performance of the Solution while the circumstances under which the Legacy Release Fee is payable apply; or (d) the performance of the Solution is adversely affected by any other circumstance outside OXDH's control, the parties shall negotiate, acting reasonably, any fees in respect of appropriate computing capacity upgrades (the "**Performance Upgrade Fee**").
  - 7.5. **Other Terms:** The payment frequency of any recurring fees under an Order (including but not limited the Additional User Annual Fees) shall be quarterly, unless otherwise specified.
  - 7.6. **Price Index and Percentage Increment:** Annually capped at three percent (3%) plus UK CPI.
  - 7.7. **Customer's Purchase Order:** The terms of the OST and an Order override any terms or conditions as may be stipulated or referred to by Client in any purchase order. In the event that Client wishes for OXDH

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to specify a purchase order number, project code or similar billing reference on any invoice, Client shall supply such reference promptly, prior to the end of the calendar month to which the services rendered relate and in respect of which either party expects for an invoice to be raised. Client may not withhold payment on due invoices on account of any missing Client billing code or reference.

**7.8. Third-Party Fees.** The fees payable by Client to OXDH do not include any applicable royalties, costs, expenses and/or fees that may be imposed by the Third-Party Providers for the Third-Party Data and Services provided in accordance with this Agreement. Client shall be solely responsible for, and shall pay, all such fees to Third-Party Providers as and when directed by OXDH or by the Third-Party Providers.

**7.9. Taxes.** The fees and other amounts payable by Client to OXDH under this Agreement do not include any taxes, value added taxes, duties, levies, fees or similar charges of any jurisdiction (“Taxes”) that may be assessed or imposed in connection with the transactions contemplated by this Agreement, excluding only taxes based upon OXDH’s net income. Client shall directly pay any such Taxes assessed against it, and Client shall promptly reimburse OXDH for any such Taxes payable or collectable by OXDH. If any withholding or deduction for or on account of any Taxes is required by law to be made from any payment by Client to OXDH, Client will: (a) promptly notify OXDH; (b) withhold or deduct such amount from the payment due to OXDH and promptly (and in any event no later than sixty (60) days following the date the applicable payment is due to OXDH) pay that Tax to the relevant government agency; and (c) promptly (and in any event no later than ninety (90) days following the date the applicable payment is due to OXDH) give OXDH an official receipt or other official document evidencing payment of the Tax in order to allow OXDH to recover tax credits from the relevant tax authorities.

**7.10. Certain Remedies for Non-payment.** If Client fails to pay to OXDH, within thirty (30) days after OXDH makes written demand for the overdue amount, any overdue amount payable under this Agreement (including any applicable late payment fee) that is not a Disputed Amount, in addition to all other rights and remedies which OXDH may have, OXDH may, in its sole discretion by serving a written notice to Client stating the suspension date, suspend performance of any or all of its obligations under this Agreement (other than Section 5). OXDH shall have no liability for Client’s use of the Solution until all such past-due amounts and any applicable reinstatement fees are paid in full.

**7.11. Professional Services Fees**

a) The rate per OXDH Staff Day shall be per the table below plus VAT, excluding expenses and applicable taxes. The Client and OXDH may agree to invoice at a blended date rate based on a defined set of tasks.

Role	Day Rate plus VAT	Hourly Rate plus VAT
Consultant	£ 850	£ 113
Senior Consultant	£ 1,000	£ 133
Lead Consultant, Project Manager	£ 1,100	£ 147
Blended Day Rate	£ 1,000	£ 133

b) 50% of travel time for on-site engagements (i.e. at Client’s premises or other location as requested by Client) may optionally be chargeable at the applicable Professional Services rate only to the extent that such on-site engagement is authorized by Client, in writing.

c) Only to the extent that work outside the Standard Working Hours has been specifically authorized by Client, in writing, rates for Professional Services performed outside of Standard Working Hours are calculated as follows: (a) Monday to Friday, excluding public holidays at the regular place of work of the relevant OXDH Personnel, at the rate specified in Section 7.11(a) multiplied by one and a half (1.5); or (b) Saturday to Sunday and on public holidays at the regular place of work of the relevant OXDH Personnel, at the rate specified in Section 7.11(a) multiplied by two (2). The rate specified in Section 7.11(a) apply for Professional Services performed outside Standard Working Hours where such has not been specifically authorized by Client.

d) With respect to any Professional Services engagement approved by Client in writing but cancelled or postponed by Client without cause thereafter, Client

shall reimburse any expenses which OXDH is irrevocably committed to incurring in relation to the engagement and which OXDH cannot avoid or mitigate by taking reasonable steps. In addition, if Client’s notice of cancellation (or request for rescheduling to an unspecified future date) or postponement is given less than ten (10) working days (at the place at which the Professional Services were to be performed) prior to or after the scheduled commencement of the Professional Services, Client shall pay a cancellation fee under this Order equal to fifty percent (50%) of the scheduled time associated with such Professional Services engagement provided that such cancellation fee shall not exceed an amount equal to the aggregate fees payable for twenty (20) days of Professional Services with respect to each consultant who was scheduled to performed the Professional Services being cancelled or postponed.

e) For the avoidance of any doubt, the terms set out in section 7.11 shall equally apply to the Initial Implementation Services being provided under an Order.

**8. Warranties, Covenants and Limitations.**

**8.1. Compliance with Laws.** OXDH shall comply with laws, enactments, orders and regulations applicable to it as the provider of services under this Agreement. Client shall comply with all laws, enactments, orders and regulations applicable to it as the recipient and user of services under this Agreement.

**8.2. No Infringement.** OXDH shall indemnify and defend Client against any loss resulting from any third-party claim asserting that the Solution, as and when made available to Client by OXDH and when properly used for the purpose and in the manner specifically authorised by this Agreement, infringes upon any Intellectual Property Rights of such third party. OXDH shall have no obligation under this Section 8.2 Client gives notice to OXDH as soon as possible (and in any event no later than within ten (10) days) after the date Client first becoming aware of the any actual or threatened infringement claim (provided that later notice shall relieve OXDH of its liability and obligations under this Section 8.2 only to the extent that OXDH is prejudiced by such later notice); and (b) allows OXDH to have sole control of the conduct, defence or settlement of any such claim. Client may monitor the conduct and process of any such claim, related litigation or proceeding at its own expense (including the cost of using its own legal advisers of its choosing). The remedies provided in this Section 8.2 are the sole remedies for a claim of infringement or misappropriation hereunder. If any infringement claim referred to in this Section 8.2 is initiated by a third party, or in OXDH’s sole opinion is likely to be initiated, then OXDH may at its option and expense:

- a) (without accepting or admitting any alleged infringement by the Solution of any third-party Intellectual Property Rights) modify or replace all or the allegedly infringing part of the Solution so that the Solution is no longer capable of infringing the third-party Intellectual Property Rights, provided that the functionality of the Solution does not change in any material adverse respect; or
- b) procure for Client the right to continue using the allegedly infringing part of the Solution; or
- c) remove the Solution in its entirety or the allegedly infringing part of the Solution, and:
  - i. if Client has paid a one-time upfront initial licence fee for the applicable Solution, refund to Client the corresponding portion of the licence fee paid by Client to OXDH for the applicable Solution, less a reasonable rental charge equal to one-sixtieth (1/60) of the initial licence fee for each month of use following the Order Effective Date; or
  - ii. if Client is paying for the use of the Solution on a recurring basis, refund to Client the corresponding portion of the unused recurring fee(s) paid by Client to OXDH for the applicable Solution, and in each such case as referred to in subsections (c) (i) above and this subsection (c) (ii) this Agreement shall terminate with respect to the Solution or part thereof so removed.

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- 8.3. Harmful Code.** Using a recent version of a reputable virus-checking product (to the extent commercially available at a reasonable cost), OXDH will check the Solution, as well as any systems used by OXDH to deliver the Solution, for any Harmful Code and will use commercially reasonable efforts to eliminate any such Harmful Code that OXDH discovers.
- 8.4. Exclusion for Unauthorised Actions.** OXDH is not liable under any provision of this Agreement for any performance problem, claim of infringement or other matter to the extent attributable to any unauthorized or improper use or modification of the Solution by or on behalf of Client, any unauthorized combination of the Solution with other software or services (other than as specified in the Specified Configuration), any use of any version of the Solution other than the Supported Release, a failure to subscribe to ongoing support services if then offered for the Solution, any Third-Party Data or Services, any Third-Party Software or Open Source Software (except as set forth in Sections 8.11 and 8.12), any wrongful act or omission by Client, its Affiliates or its customers or any breach of this Agreement by Client.
- 8.5. Conditions of Use.** To the extent that Third-Party Users are permitted to have access to the Solution: (a) Client represents and warrants to OXDH, its Third-Party Providers, agents, successors and assigns and their respective employees (collectively, the “Indemnified Group”) that agreements between it and Third-Party Users expressly provide, and covenants that all such agreements will provide, that none of the Indemnified Group have or will have any liability in any circumstances with respect to any services offered by Client to the Third-Party Users (“Client Services”), including with respect to the data and information provided to the Third-Party Users as part of the Client Services; and (b) Client shall indemnify and defend the Indemnified Group from and against any of the following: any and all claims, liabilities and obligations (including reasonable lawyers’ fees) by any third party, including Third-Party Users, against the Indemnified Group and arising out of Client’s or Third-Party Users use of the Solution, Third-Party Data or the Documentation with respect to the Client Services.
- 8.6. Force Majeure.** Neither party shall be liable for, nor shall either party be considered in breach of this Agreement due to, any failure to perform its obligations under this Agreement (other than its payment obligations, which shall be suspended only for so long as the force majeure event renders Client unable by any means to transmit payments when due hereunder) as a result of a cause beyond its control, including any act of God or a public enemy or terrorist, act of any military, civil or regulatory authority, change in any law or regulation, fire, flood, earthquake, storm, pandemic or other like event, theft or criminal misconduct by unrelated third parties, disruption or outage of communications (including the Internet or other networked environment), power or other utility, unavailability of supplies or any other cause, whether similar or dissimilar to any of the foregoing, which could not have been prevented by the non-performing party with reasonable care.
- 8.7. Disclaimer.** EXCEPT AS STATED IN SECTIONS 8, 10.5 AND 13.5, THE SOLUTION, DOCUMENTATION AND SERVICES ARE PROVIDED UNDER THIS AGREEMENT ARE “AS IS”, AND ALL OTHER REPRESENTATIONS, WARRANTIES, TERMS OR CONDITIONS, ORAL OR WRITTEN, EXPRESS OR IMPLIED, ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, QUALITY OF INFORMATION, QUIET ENJOYMENT OR OTHERWISE (INCLUDING IMPLIED WARRANTIES, TERMS OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INTERFERENCE, OR NON-INFRINGEMENT) ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THIS AGREEMENT.
- 8.8. Limitations Cap.** OX.VC’s TOTAL AGGREGATE LIABILITY TO THE CLIENT PURSUANT TO THIS AGREEMENT SHALL UNDER NO CIRCUMSTANCES EXCEED THE AGGREGATE AMOUNT OF FEES ACTUALLY PAID BY CLIENT TO OX.VC IN THE 12 MONTH PERIOD WHICH PREDATES THE DATE OF THE EVENT WHICH THAT IS THE BASIS FOR THE RELEVANT CLAIM.
- 8.9. Consequential Damage Exclusion.** UNDER NO CIRCUMSTANCES SHALL EITHER PARTY (OR ANY OF ITS AFFILIATES PROVIDING OR RECEIVING THE SOLUTION, SERVICES OR OTHER SOFTWARE UNDER THIS AGREEMENT) BE LIABLE TO THE OTHER OR ANY OTHER PERSON FOR LOSSES OR DAMAGES WHICH FALL INTO ANY OF THE FOLLOWING CATEGORIES: (a) LOST REVENUES; (b) LOST PROFITS; (c) LOSS OF BUSINESS; (d) TRADING LOSSES; OR (f) ANY INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING ANY OF THE FOREGOING LOSSES OR DAMAGES RESULTING FROM CLIENT’S USE OF THE SOLUTION OR SERVICES PROVIDED HEREUNDER, OR ARISING FROM ANY BREACH OF THIS AGREEMENT OR ANY TERMINATION OF THIS AGREEMENT, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE AND WHETHER OR NOT FORESEEABLE, EVEN IF THE RELEVANT PARTY HAS BEEN ADVISED OR WAS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. FOR PURPOSES OF CLARIFICATION, THE FOLLOWING SHALL BE DEEMED “DIRECT DAMAGES” AS BETWEEN CLIENT AND OXDH FOR THE PURPOSES OF THIS AGREEMENT ANY AND ALL DAMAGES, INCLUDING CONSEQUENTIAL AND SIMILAR DAMAGES, AWARDED TO A THIRD PARTY FOR WHICH INDEMNIFICATION IS PROVIDED BY A PARTY UNDER SECTIONS 8.5, 10.8 OR 12.3.
- 8.10. Exceptions.** THE LIMITATIONS AND EXCLUSIONS SET FORTH IN SECTIONS 8.8 AND 8.9 SHALL NOT APPLY TO: (a) BREACHES OF THE SCOPE OF USE; (b) FAILURE TO PAY FEES WHEN DUE; (c) DAMAGES CAUSED BY EITHER PARTY’S FRAUD OR WILLFUL MISCONDUCT; (d) A PARTY’S LIABILITY FOR DEATH OR PERSONAL INJURY DUE TO THAT PARTY’S NEGLIGENCE; OR (e) A PARTY’S LIABILITY FOR DAMAGES TO THE EXTENT THAT SUCH LIMITATION OR EXCLUSION IS NOT PERMITTED BY APPLICABLE LAW.
- 8.11. Third-Party Software.** OXDH shall use reasonable efforts, but without additional cost to OXDH, to provide Client the benefit of all indemnities and warranties granted to OXDH by the licensor(s) of the Third-Party Software, to the extent possible, as and if permitted by OXDH’s agreement with the licensor of the Third-Party Software, and to the extent such warranties and indemnities pertain to Client’s use of the Third-Party Software hereunder. In the event of any defect in any Third-Party Software (in the form delivered by OXDH and when properly used for the purpose and in the manner specifically authorised by this Agreement), OXDH will use commercially reasonable efforts to replace or correct the Third-Party Software without charge. If OXDH complies with this provision, it shall accept no further liability with respect to any loss resulting from or in connection with any defect of, or caused by the use of any Third-Party Software.
- 8.12. Open Source Software Components.** The Solution may utilise Open Source Software, including that Open Source Software identified in the Documentation or on the ongoing support services website for the Solution. Open Source Software is licensed under the terms of the open source licence that accompanies, or is made available with, such Open Source Software, including via a website designated by OXDH. Nothing in this Agreement limits Client’s rights under, or grants Client rights that supersede, the terms and conditions of any applicable licence for such Open Source Software. Open Source Software shall not be deemed to be part of the Solution under this Agreement and OXDH shall have no liability relating to such Open Source Software; provided, however, that OXDH shall be responsible for fixing Errors caused by such Open Source Software to the same extent as OXDH’s ongoing support obligations as set forth in Section 12.4.

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- 8.13. Open Negotiation.** Client and OXDH have freely and openly negotiated this Agreement each with the benefit of appropriate legal advice, including the pricing, with the knowledge that the liability of the parties is to be limited in accordance with the provisions of this Agreement.
- 8.14. Other Limitations.** The warranties and representations made by OXDH in this Agreement, and the obligations of OXDH under this Agreement, are only given to Client and not to its Affiliates, its customers or any other Persons. Under no circumstances shall any Affiliate or customer of Client or any other Person be considered a third-party beneficiary of this Agreement or otherwise entitled to any rights or remedies under this Agreement (including any right to be consulted in connection with any variation or rescission of the Agreement agreed between OXDH and Client), even if such Affiliates, customers or other Persons are provided access to the Solution or data maintained in the Solution via the Internet or other networked environment. Except to the extent specified in an Order, OXDH shall not be deemed Client’s official record keeper for regulatory or other purposes and shall have no obligation to retain any records or data on Client’s behalf after termination or expiration of this Agreement.
- 8.15. Third Party Rights.** A person who is not a party to this Agreement (third party) has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement or any document referred to in it, but this does not affect any right or remedy of any such third party which exists or is available apart from that Act.
- 9. Confidentiality, Security, Ownership and Use Restrictions.**
- 9.1. Confidentiality.** The party receiving Confidential Information (“Receiving Party”) of the other (“Disclosing Party”) shall not, and shall cause its Authorised Recipients not to, use Confidential Information for any purpose except as necessary to implement, perform or enforce this Agreement. Receiving Party will use the same reasonable efforts as it uses to protect its own proprietary information and data (but in any event not less than a reasonable standard of care) to: (a) keep all Confidential Information of Disclosing Party strictly confidential; and (b) not disclose the Confidential Information of Disclosing Party to anyone other than its Authorised Recipients. Prior to disclosing the Confidential Information to its Authorised Recipients, Receiving Party shall inform them of the confidential nature of the Confidential Information and require them to abide by the terms of this Agreement. Receiving Party will promptly notify Disclosing Party if Receiving Party discovers any improper use or disclosure of Confidential Information and will promptly commence all reasonable efforts to investigate and correct the causes of such improper use or disclosure. If Receiving Party believes the Confidential Information must be disclosed under applicable law, Receiving Party may do so provided that, to the extent permitted by law, the Disclosing Party is given a reasonable opportunity to contest such disclosure or obtain a protective order. Confidential Information of either party disclosed prior to the Order Effective Date shall, with effect from that Order Effective Date, be subject to the provisions of this Section 9.
- 9.2. Security.**
- a) OXDH will implement commercially reasonable administrative, technical and physical safeguards designed to: (i) ensure the security and confidentiality of Client Data; (ii) protect against any anticipated threats or hazards to the security or integrity of Client Data; and (iii) protect against unauthorized access to or use of Client Data. OXDH will review and test such safeguards on no less than an annual basis.
- b) If Client makes the Solution or data maintained by the Solution accessible through the Internet or other networked environment, Client shall be solely responsible for all aspects of Internet use, and shall maintain, in connection with the operation or use of the Solution, adequate technical and procedural access controls and system security requirements and devices, necessary for data privacy, confidentiality, integrity, authorisation, authentication and non-repudiation and virus detection and eradication.
- c) The Client is solely responsible for the security of its own IT infrastructure, used to access the Solution, and for the acts and inactions of its authorised users. To the extent that Third-Party Users are permitted to have access to the Solution, Client shall maintain agreements with such Third-Party Users that adequately protect the confidentiality and Intellectual Property Rights of OXDH in the Solution and Documentation, and disclaim any liability or responsibility of OXDH with respect to such Third-Party Users.
- 9.3. Client Data and Data Protection**
- (a) The Client shall own all right, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data inputted or provided by the Client at the time of such inputting or provision.
- (b) If the Client, during this Agreement, is unable to retrieve or access any of the Client Data, the Client must immediately report the same to OXDH. OXDH will promptly investigate the cause of the same. Client agrees to provide reasonable assistance to OXDH during such investigation.
- (c) Client is a Data Controller (as defined under the Data Protection Act 2018 (“DPA”) all applicable data protection and privacy legislation in force from time to time in the UK and in the EU, including the General Data Protection Regulation ((EU) 2016/679 (“GDPR”); the DPA; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended (“Data Protection Legislation”).
- (d) The parties acknowledge that OXDH acts as a Data Processor (as defined under Data Protection Legislation) and may be Processing Personal Data of the Third Party End Users and that the terms of this section apply to the Processing of all such Personal Data.
- (e) As a Data Processor under this Agreement, OXDH shall:
- only act upon the instructions of Client in relation to the Client Data and at all times comply with its obligations under the DPA and relevant Data Protection Legislation including but not limited to, taking appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data. When considering what measure is appropriate, OXDH shall have regard to the state of good practice, technical development and the cost of implementing any measures to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful Processing or accidental loss or destruction, and to the nature of the data to be protected;
  - provide to Client a written description of the technical and organisational methods employed by OXDH for Processing Personal Data, including maintaining and making available to the Client from time to time records (in writing in a human readable format) of OXDH’s and any sub-contractor’s Processing activities and all other information required by Client to ensure its compliance with the requirements of the Data Protection Legislation;
  - ensure the reliability of its employees, agents and sub-contractors by vetting such personnel appropriately who have access to Personal Data;
  - not transfer Personal Data contained in the Client Data outside the European Economic Area without Client’s prior written consent;
  - not transfer or provide access to any Client Data to any person without the express written consent of Client;
  - if OXDH is permitted by Client to transfer any Client Data to a third party, such transfer shall be made by OXDH imposing the same data protection obligations as set out in this Agreement, including a requirement that the third party does not Process any Personal Data contained in the Client Data except on the Client’s instructions;
  - permit the Client or a third party appointed by it (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit, OXDH’s data processing activities (and or those of its sub-contractors) and comply with all reasonable requests or directions by the Client to enable the Client to verify and or procure that OXDH is in full compliance with its obligations under this section, upon reasonable prior notice of such audit and/or inspection. The Client shall be responsible for the costs of such audit but if any audit or inspection reveals a material non-compliance by OXDH with its obligations under Data Protection Legislation, OXDH shall pay the reasonable costs of the Client or its mandated auditors, of the audit or inspection;
  - carry out regular security audits as may be required by the British Standards Institute to ensure conformity and shall, on request, provide summaries of the reports of such audits to Client. If such audits show any non-conformity, OXDH shall

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- remedy such breaches of standards of security promptly at its own expense;
- ix. reasonably assist Client in responding to any requests from Third Party End Users and in ensuring compliance with all obligations under the Data Protection Legislation with respect to security, breach notification, impact assessments and consultations with supervisory authorities or regulators and with the implementation and performance of any legal rights a Data Subject requests;
  - x. restrict access to Client Data to such persons who need access to meet OXDH’s obligations under this Order and limit any access to any Personal Data contained therein to Personal Data that is strictly necessary;
  - xi. at the written directions of the Client, delete or return any Client Data and copies thereof to the Client on termination of this Agreement;
  - xii. notify the Client immediately if it becomes aware of any actual, threatened or potential breach of this section or the security of the Client Data and, if a breach of security occurs, immediately take all reasonable steps to:
    - o remedy such breach or protect any Personal Data against any breach or threat;
    - o prevent an equivalent breach in the future; and
    - o as soon as reasonably practicable provide to the Client details (using such reporting mechanisms as may be specified by the Client from time to time) of any actual, potential or threatened breach and the steps taken by OXDH in respect of such breach.
- (f) OXDH shall notify the Client immediately and in all cases within 24 (twenty four) hours if it receives:
- i. a request from a Data Subject to have access to that person’s Personal Data; or
  - ii. a complaint or request relating to OXDH’s or the Client’s obligations under the DPA or any Data Protection Legislation; or
  - iii. any notice or communication which relates directly or indirectly to the Processing of Personal Data or to either OXDH’s or the Client’s compliance with the DPA or any Data Protection Legislation, or the protection principles set out therein.
- (g) OXDH shall defend, indemnify and hold harmless the Client, its officers, directors and employees, promptly on first request, against all actions, costs, expenses, claims, proceedings and demands which may be brought or made against the Client, its officers, directors and employees, for breach of statutory duty under any Data Protection Legislation which arises from the actions or Processing of Personal Data relating to or in connection with this Order by OXDH, its employees, agents or sub-contractors and or a breach of the provisions of this section save to the extent that such breach occurred because OXDH was acting on the Client’s instructions or otherwise caused by or contributed to by the Client.
- (h) OXDH shall (and shall ensure that all of OXDH’s employees, agents and sub-contractors) not do any act that puts the Client in breach of its obligations under Data Protection Legislation.
- 9.4. OXDH Solution Details.** The OXDH Solution Details are trade secrets and proprietary property of OXDH or its licensors, having great commercial value to OXDH or its licensors. Title to all OXDH Solution Details and all related intellectual property and other ownership rights shall be and remain exclusively with OXDH or its licensors, even with respect to such items that were created by OXDH specifically for or on behalf of Client. OXDH and its Affiliates may freely use Feedback without attribution or the need for OXDH, its Affiliates or any third party to pay Client or any third party any royalties or other fees of any kind. This Agreement is not an agreement of sale, and no intellectual property or other ownership rights to any OXDH Solution Details are transferred to Client by virtue of this Agreement. All copies of OXDH Solution Details in Client’s possession shall be deemed to be used by the Client under a licence (and held by Client on trust for OXDH) will during the term of this Agreement.
- 9.5. Use Restrictions.** Except to the extent specifically authorised by this Agreement, Client shall not, shall not attempt to, and shall not permit any other Person under its reasonable control to: (a) use any OXDH Solution Detail for any purpose, at any location or in any manner not

specifically authorised by this Agreement; (b) make or retain any Copy of any OXDH Solution Detail; (c) create or recreate the source code for the Solution, or re-engineer, reverse engineer, decompile or disassemble the Solution except to the extent specifically permitted by applicable law; (d) modify, adapt, translate or create derivative works based upon the Solution or Documentation, or combine or merge any part of the Solution or Documentation with or into any other software or documentation except to the extent specifically permitted by applicable law; (e) refer to, disclose or otherwise use any OXDH Solution Detail as part of any effort either: (i) to develop a program having any functional attributes, visual expressions or other features similar to those of the Solution; or (ii) to compete with OXDH; (f) remove, erase or tamper with any copyright or other proprietary notice printed or stamped on, affixed to, or encoded or recorded in any OXDH Solution Detail, or fail to preserve all copyright and other proprietary notices in any Copy of any OXDH Solution Detail made by Client; (g) sell, market, license, sublicense, distribute or otherwise grant to any Person, including any outsourcer, vendor, sub-contractor, consultant or partner, any right to use any OXDH Solution Detail or allow such other Person to use or have access to any OXDH Solution Detail, whether on Client’s behalf or otherwise; or (h) use the Solution to conduct any type of application service provider, service bureau or time-sharing operation or to provide remote processing, network processing, network telecommunications or similar services to any Person, whether on a fee basis or otherwise.

**9.6. Notice and Remedy of Breaches.** Each party shall promptly give notice to the other of any actual or suspected breach by it of any of the provisions of this Section 9, whether or not intentional, and the breaching party shall, at its expense, take all steps reasonably requested by the other party to prevent or remedy the breach.

**9.7. Enforcement.** Each party acknowledges that any breach of any of the provisions of this Section 9 may result in irreparable injury to the other for which money damages would not adequately compensate. If there is a breach, then the injured party shall be entitled, in addition to all other rights and remedies which it may have, to have a decree of specific performance or an injunction issued by any competent court, requiring the breach to be cured or enjoining all Persons involved from continuing the breach.

### **10. Professional Services.**

**10.1. Professional Services.** An Order may identify certain Professional Services. In addition, at Client’s reasonable request and subject to the availability of OXDH’s personnel, OXDH shall provide to Client other Professional Services requested by Client in accordance with a fully executed Order setting out the scope and other specifications of such Professional Services Order.

**10.2. Professional Services Fees.** Client shall pay to OXDH the professional services fees stated on the Order in accordance with Section 7.11 (Professional Services Fees). In each case where professional services fees are not specified on the Order, then the fees for such services shall be based upon OXDH’s then standard professional services fee rates. OXDH’s standard professional services fee rates in effect on the Order Effective Date are stated on the Order and are subject to increase in the ordinary course of business.

**10.3. Expense Reimbursements.** Client shall reimburse OXDH for reasonable travel, living and other out-of-pocket expenses incurred by OXDH personnel in connection with all services, including, but not limited to, Professional Services and maintenance and support rendered by OXDH. Reimbursable expenses shall be incurred by OXDH personnel in accordance with OXDH’s then current per diem travel policy, a copy of which will be furnished at Client’s request. OXDH shall invoice Client for reimbursement of these expenses on a monthly basis, as incurred.

**10.4. Cooperation and Access to Facilities, Data and Employees.** To the extent reasonably necessary for OXDH to perform its obligations under this Agreement, Client shall provide to OXDH access to Client’s location site, equipment, data and employees, and shall otherwise cooperate with OXDH in its performance hereunder, all as reasonably necessary for OXDH to perform its obligations under this Agreement.

## OXDH (OXDH) Limited Standard Terms (“OST”)

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- 10.5. Professional Services Warranty.** OXDH warrants to Client that Professional Services will be performed in a good and workmanlike manner by qualified personnel, subject to Section 10.4. OXDH shall have no liability under this Section 10.5 unless, within thirty (30) days after the actual date of the performance (or delivery) of a particular Professional Service, OXDH receives notice from Client describing the breach of this warranty, together with adequate supporting documentation and data. Upon receipt of any such notice, OXDH's only obligation under this Section 10.5 is to remedy the breach and re-perform the particular Professional Services affected as soon as reasonably practical at no additional charge.
- 10.6. Compliance with Client Policies.** While OXDH personnel are performing services at Client's site, OXDH will ensure that such personnel comply with Client's reasonable security procedures and site policies that are generally applicable to Client's other suppliers providing similar services and that have been provided to OXDH in writing and in advance. Client shall promptly reimburse OXDH for any out-of-pocket costs incurred in complying with such procedures and policies.
- 10.7. Work Product.** In relation to any results of the Professional Services provided under an Order (“**Work Product**”):
- 10.7.1. OXDH and its licensors (as applicable) shall retain ownership of all Intellectual Property Rights in the Work Product, excluding the Contributed Materials;
- 10.7.2. OXDH grants the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual licence to copy and modify the Work Product (excluding the Contributed Materials) for the purpose of receiving and using the Work Product for its internal business purposes only;
- 10.7.3. the Client shall not sub-license, assign or otherwise transfer the rights granted in Section 10.7.2.
- 10.8. Contributed Material.** In the process of OXDH's performing Professional Services, Client may, from time to time, provide OXDH with designs, plans, or specifications, improvements, works or other material for inclusion in, or making modifications to, the Solution, the Documentation or any other deliverable, including any Work Product (“**Contributed Material**”). Client grants to OXDH a nonexclusive, irrevocable, perpetual, transferable right, without the payment of any royalties or other compensation of any kind and without the right of attribution, for OXDH, OXDH's Affiliates and OXDH's licensees to make, use, sell and create derivative works of the Contributed Material. Client shall indemnify and defend OXDH against any third-party claim asserting that Client does not have the full legal right (including any moral rights) to grant to OXDH such rights to use the Contributed Material and/or that the Contributed Material in the form delivered to OXDH infringes upon any third party's Intellectual Property Rights.
- 11. Term and Termination.**
- 11.1. Order Term.** The Order may state an initial term for the use of the Solution (“**Initial Term**”) and may state renewal terms (each a “**Renewal Term**”). “**Order Term**” means the Initial Term together with any Renewal Terms.
- 11.2. Initial Term.** The period commencing on the Order Effective Date and ending on the first (1<sup>st</sup>) anniversary of the last day of the calendar month into which the Acceptance Date falls, unless an Order is terminated earlier in accordance with this Section.
- 11.3. Renewal Term.** Unless stated otherwise in the Order, a Renewal Term for the Order is two years.
- 11.4. Without Cause.** Either Party may terminate an Order without cause at any time during the Order Term, with effect from the end of the applicable calendar quarter by giving no less than thirty (30) days' written notice, subject to payment of the Termination Fee, as defined and specified in Section 7.2.
- 11.5. Renewal Rights.** OXDH shall notify Client in writing at least sixty (60) days prior to the expiry of the Initial Term or then-current Renewal Term, as the case may be, of the upcoming expiry date. In the event that both parties desire to enter into a Renewal Term, the parties shall negotiate, acting reasonably, the terms applicable to such Renewal Term including the term of the Renewal Term, and execute an amendment to this Order accordingly. For the avoidance of doubt, in the event the parties have not, for whatever reason, executed by the date of expiry of the Initial Term or then-current Renewal Term an amendment to this Order governing such Renewal Term, then the Order will automatically terminate and OXDH's obligations for provision of the Solution under this Order shall cease.
- 11.6. Termination.** Either party may terminate this Agreement with **immediate** effect by giving notice of termination to the other party:
- (a) if the other party breaches any of its material obligations (or is repeatedly in breach of the terms of this Agreement) under this Agreement and does not cure the breach within thirty (30) days after receiving notice describing the breach in reasonable detail; or
- (b) if the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (c) if 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;
- (d) 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;
- (e) 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;
- (f) 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;
- (g) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (h) 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;
- (i) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- (j) there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010);
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in section 11.6(d)(b) to (j)(k) (inclusive);
- 11.7. Effect of Termination.** The provisions of Sections 7, 8, 9, 10.7, 10.8, 11.7, 18 and 20 shall survive any termination of this Agreement, whether under this Section 11 or otherwise. Client shall be liable for all payments due to OXDH for the period ending on the date of termination. Upon a termination of this Agreement, whether under this Section 11, upon the expiration or termination of an Order Term or otherwise, Client shall: (a) discontinue all use of the affected Solution, Documentation and any Work Product; (b) promptly return to OXDH all copies of the affected Solution, Documentation, any Work Product and any other affected OXDH Solution Details then in Client's possession; and (c) give notice to OXDH certifying that all copies of such items have been permanently deleted.

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### 12. Terms Applicable To SaaS, BPaaS, ASP and Hosting.

The following provisions in this Section 12 apply solely to Hosting Services and to Orders for an ASP Solution, BPaaS Solution or SaaS Solution.

**12.1. SaaS, BPaaS and Hosting.** OXDH shall provide the Hosting Services and/or access to the BPaaS Solution or SaaS Solution, as described and for the term specified on the Order.

**12.2. Passwords and Solution Access.** If OXDH provides Client or its Authorised Users with unique access codes to access the Solution (each, a “**Password**”), Client shall hold any such Passwords in strict confidence and shall not assign, share, misuse or abuse the Passwords or attempt to render ineffective the password protection of the Solution. If Client suspects or learns that a Password is being used to gain unauthorised access to the Solution, Client will immediately notify OXDH so that it can change, or assist Client in changing, the applicable Password. To the extent the Solution is within OXDH’s network, OXDH may suspend access to the Solution without advance notice if OXDH reasonably believes the Solution is being used or accessed in an unauthorised, illegal or disruptive manner, provided that OXDH will promptly notify Client of any such event. OXDH shall not be liable for any loss resulting from or in connection with Client’s breach of its obligations under this Section 12.2.

### 12.3. Client Data.

(a) Client shall supply, or cause to be supplied, all Client Supplied Data. Client shall transmit the Client Supplied Data to OXDH by communications link or in another manner described on the Order. As between OXDH and Client, Client shall be responsible for ensuring that the Client Supplied Data is accurate and complete. Client represents and warrants to OXDH that Client has the full legal right for Client and OXDH, its affiliates and agents to use the Client Supplied Data for processing hereunder. Client shall indemnify and defend OXDH, its affiliates and agents against any third-party claim alleging breach of the foregoing warranty and representation.

(b) Within thirty (30) days after termination of Hosting Services or of an Order for a Solution (including BPaaS Solution or SaaS Solution), Client shall give OXDH an instruction notice regarding the disposition of any tapes, data, files and other property belonging to Client and then in OXDH’s possession. To the extent practicable and at Client’s expense after receipt of such notice, OXDH shall use commercially reasonable efforts to comply with the notice, including converting the data on the Solution to machine-readable form. OXDH may retain such property subject to and until OXDH receives all payments due to OXDH under that Order. If Client fails to give that notice within thirty (30) days after such termination, then OXDH may dispose of such property in a commercially reasonable manner without any further recourse to Client.

(c) Client grants to OXDH a non-exclusive, non-transferable, irrevocable licence to use the Client Supplied Data on an aggregated and de-identified basis, in accordance with the terms of this Section 12.3(c) (“**Anonymised Client Data**”). In order to improve OXDH’s product and service offerings for its clients, OXDH may maintain a database of information residing on the Solution, including the Anonymised Client Data, (such information and the Anonymised Client Data, together, the “**Development Data**”). OXDH and its affiliates may use and distribute such Development Data in an aggregated and de-identified format, including (without limitation): (i) as a part of the development, distribution and licensing of any OXDH product or service offering and (ii) sharing such Development Data with selected third parties.

(d) **Regulatory Access.** To the extent permitted by law, each party will notify the other promptly of any formal request by an authorised governmental agency or regulator to examine Client Data or other records, if any, regarding Client that are maintained in OXDH facilities under this Agreement. In the event of such a request, OXDH shall make such Client Data or other records, if any, reasonably available for examination and audit by the governmental agency or regulatory authority that has jurisdiction over Client’s business and Client agrees to reimburse OXDH for the reasonable out-of-pocket costs OXDH incurs and time OXDH spends in doing so.

**12.4. Support.** OXDH shall provide to Client the ongoing support services as described in the Order.

**12.5. Data Backup and Disaster Recovery.** If the Solution maintains a database then, unless otherwise stated on the Order:

(a) OXDH shall electronically backup the Client Data in accordance with the backup cycle defined in the Order (and if no backup cycle is defined, at reasonable intervals); and

(b) OXDH shall maintain a disaster recovery plan which includes a procedure for the restoration of Client’s production environment at an alternate facility in the event of a disaster. OXDH’s disaster recovery plan shall be tested by the Client at least once each calendar year during the term of the relevant Order and Client agrees to reimburse OXDH for the reasonable costs OXDH incurs and time OXDH spends in doing so.

**12.6. Interruption to Solution.** From time to time, OXDH shall be entitled (at its discretion, without incurring liability for so doing) to interrupt the Solution to: (a) perform repairs and other maintenance and install enhancements on OXDH’s equipment, software and/or other systems that are required for the provision of the Solution; or (b) make adjustments to its infrastructure (including, for example, in relation to resources shared by its other clients) and thereby cause a disruption in the provision of the Solution. Except in the case of emergency repairs, maintenance or adjustments, OXDH will: (i) give Client reasonable prior notice of the interruption; (ii) limit such interruptions to outside of OXDH’s normal business hours; and (iii) use commercially reasonable efforts to minimise the impact of the interruption.

**12.7. Harmful Code.** Using a recent version of a reputable virus-checking product (to the extent commercially available), Client will check the Specified Configuration for Harmful Code and ensure no Harmful Code is introduced by its end users or from its systems into any systems used in the Solution and will use commercially reasonable efforts to eliminate any such Harmful Code that either Client or OXDH discovers.

**12.8. Volume Increases.** Client shall give notice to OXDH whenever Client intends to materially increase the volume of data to be processed on the Solution. Any such increase that results in an increase beyond the Scope of Use requires an additional executed Order.

### 13. Terms Applicable to Software Licenses.

The following provisions in this Section 13 apply solely to an Order that provides the right for Client to install the Solution at the facility identified on the Order.

**13.1. Grant.** Except as otherwise provided in an Order, OXDH grants to Client a non-transferable, non-exclusive, term licence to use the Solution in accordance with this Agreement and the Scope of Use. The Solution shall be installed only in object code form and only at the Designated Location(s). Client may, subject to Section 20.3, use or access the Solution at or from Client locations worldwide. Client may copy and use the Solution installed at the Designated Location(s) for inactive back-up and disaster recovery purposes. Client may copy the Documentation to the extent reasonably necessary for use of the Solution under this Agreement.

**13.2. Initial Activation.** OXDH shall deliver to Client the initial Copies of the Solution stated on the Order by supplying such initial Copies by electronic delivery only. Electronic delivery is deemed effective at the time OXDH provides Client with access to download the Solution. The date of such delivery shall be referred to as the “**Delivery Date**.” Client shall activate the Solution for access from the Designated Location(s) on or before the Scheduled Installation Date. If a Scheduled Installation Date is not specified on the Order, Client shall activate the Solution within thirty (30) days after the Delivery Date.

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- 13.3. Acceptance.** If the Solution is specified in the Order as being subject to acceptance testing, then the following terms apply:
- (a) Client is deemed to have accepted the Solution at the end of the Acceptance Period (regardless of the date when Client installs the Solution), unless during that period, the Solution fails to perform in accordance with the Documentation in some material respect that precludes acceptance of the Solution by Client, and, by the end of the Acceptance Period, Client gives notice of non-acceptance to OXDH describing the material failure in reasonable detail and explaining why the failure precludes acceptance of the Solution by Client. If Client gives a proper notice of non-acceptance to OXDH, then:
- OXDH shall investigate the reported failure. Client shall provide to OXDH reasonably detailed documentation and explanation, together with underlying data, to substantiate the failure and to assist OXDH in its efforts to diagnose and correct the failure.
  - If there was no material failure to perform or the failure to perform was not attributable to a defect in the Solution or an act or omission of OXDH, then OXDH shall give notice to Client explaining that determination in reasonable detail, and Client shall be deemed to have accepted the Solution as of the date of OXDH's notice.
  - If there was a material failure to perform that was attributable to a defect in the Solution or an act or omission of OXDH, and if OXDH cannot correct the failure within thirty (30) days (or such longer period as may be reasonable under the circumstances) after receipt of Client's notice of non-acceptance, then Client shall promptly return to OXDH all copies of the Solution and Documentation and any other items delivered to Client by OXDH, and as Client's sole and exclusive remedy, OXDH shall then refund to Client the licence fee paid by Client. If, within such period, OXDH does correct the failure, then OXDH shall give notice to Client certifying that the failure has been corrected, and another thirty (30) day acceptance period shall begin from the date of such notice in accordance with this Section 13.3.
- (b) If Client has not accepted the Solution under Section 13.3(a), then notwithstanding any of the provisions of Section 13.3(a) Client shall be deemed to have accepted the Solution on the first day that Client uses the Solution in a live production environment or as Client's system of record.
- (c) The first date on which Client is deemed to have accepted the Solution under Section 13.3(a) or under Section 13.3(b) is referred to as the **“Acceptance Date”**.
- (a) **Support.** Beginning on the Order Effective Date and continuing for the duration of the initial support term set forth on the Order (**“Initial Support Term”**), OXDH shall provide the ongoing support services described in the Order and Client shall pay to OXDH the Support Fees. Upon expiration of the Initial Support Term, the ongoing support services shall automatically renew and Client shall be obligated to pay the Support Fees for additional annual support periods (each a **“Renewal Support Term”**) unless and until the termination of this Agreement.
- 13.4. Support Termination.** On a time and materials basis, at then current day Rates, OXDH will provide resources to assist in extracting Client Data. The Client will need to request this Support Termination within thirty (30) days of Termination Date. OXDH will use reasonable efforts to assist the Client in the extraction of Client Data. Both parties will use reasonable efforts to agree the method and format of the Client Data and will confirm if any additional costs, fees or expenses payable by the Client in respect to the Client Data extraction and transfer.
- 13.5. Software Warranty.** OXDH warrants to Client that, for a period of thirty (30) days from the Scheduled Installation Date, the Solution (as delivered to Client by OXDH and when properly used for the purpose and in the manner specifically authorised by this Agreement), will perform as described in the Documentation in all material respects. OXDH's sole obligation and liability under this warranty is to comply with the provisions of Section ~~(a)13.4~~ of this Agreement.
- 13.6. Escrow of Source Code.** If stated on the Order, then within a reasonable time after the first day that Client uses the Solution in a live production environment, OXDH shall arrange, for the benefit of Client (and Client shall execute any documents required to receive such benefit), an escrow of the Solution source code with an escrow agent nominated by OXDH (**“Escrow Agent”**), in accordance with OXDH's standard escrow agreement (**“Escrow Agreement”**). The source code for the Solution may be released from escrow, in accordance with the terms and conditions specified in the Escrow Agreement. Client shall pay all fees due to the Escrow Agent arising in connection with or as a result of such escrow. Client acknowledges that the Escrow Agreement shall be deemed null and void and of no effect and that neither OXDH nor the Escrow Agent shall be under any further obligation with respect to such escrow arrangement from whichever is the earlier of: (a) the date Client fails to pay the escrow fees when due; or (b) the Support Termination Date.
- 13.7. Remote Access of Installed Software.** Provided that OXDH performs such services in accordance with the confidentiality provisions of this Agreement, Client shall permit OXDH, at OXDH's option, to remotely access the Solution installed at the Designated Location(s) for the purpose of providing ongoing support services to Client under Section ~~(a)13.4~~ and otherwise implementing the purposes of this Agreement. In remotely accessing such Solution, OXDH will comply with Client's reasonable security procedures and company policies that have been provided to OXDH in writing. Client shall promptly reimburse OXDH for any out-of-pocket costs incurred in complying with such procedures and policies.
- 13.8. Backup.** Client acknowledges that it is the best judge of the value and importance of the data held on Client's systems and that Client shall be solely responsible for maintaining secure and complete back-up copies of all data that Client processes using the Solution, which data will be backed-up on not less than a daily basis and which will be readily available on machines controlled by Client to facilitate the prompt restoration of such data in the event of any loss of or damage to it. OXDH shall have no liability for any loss or damage caused by Client's failure to maintain such backed-up copies.
- 13.9. Audit.** At OXDH's expense and upon written request with reasonable notice, Client will permit OXDH, its personnel or its outside auditors to enter the relevant Client locations during normal business hours and audit the number of copies of the Solution and Documentation in Client's possession and information pertaining to Client's compliance with this Agreement. Such audits shall not occur more than once in any twelve (12) month period (unless OXDH believes, in good faith, that there has been a breach of this Agreement by Client) and shall be performed in a manner not to disrupt Client's business and operations and will respect the confidentiality of Client, its suppliers and customers. Client will, in a timely manner, reasonably cooperate with the auditors and provide the auditors all assistance as they may reasonably request in connection with the audit. Client may require auditors acting on behalf of OXDH to execute reasonable confidentiality agreements and comply with Client's reasonable security requirements, but this requirement will not apply to OXDH's internal auditors otherwise bound by the confidentiality conditions of this Agreement.
- 14. Third-Party Data and Services.**
- 14.1. Ancillary Services.** OXDH shall provide the Third-Party Data and Services originating with a Third-Party Provider, as described and for the term specified on the Order.
- 14.2. Third-Party Providers.** Client acknowledges and agrees that the Third-Party Data and Services provided under this Agreement contain information obtained, selected and consolidated by the Third-Party Providers under the authority of the Third-Party Providers, that Client's use of the Third-Party Data and Services is authorised and regulated by the Third-Party Providers and further that the Third-Party Providers may require to be provided with information and data about Client and the Third-Party Users in connection with their provision of Third-Party Data and Services. Client also acknowledges that the Third-Party Providers may modify the Third-Party Data and Services, or discontinue availability of Third-Party Data and Services or modify the rules concerning the availability of and the applicable fees, costs



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and expenses for any of the Third-Party Data and Services, in which case neither OXDH nor the Third-Party Providers shall be held responsible for such modification and discontinuance. Any changes required by the Third-Party Providers shall be made a part of this Agreement by OXDH’s notice of any such changes to Client. For a thirty (30) day period after receiving such notice from OXDH, Client may reject such changes and terminate the affected Third-Party Data and Service by notice to OXDH. If such notice is not received by OXDH within such thirty (30) day period, this Agreement shall be modified by such changes, and shall remain in full force and effect.

### 14.3. Third-Party Provider Notices.

- (a) Client acknowledges that OXDH is required to display certain notices and agreements and to report certain data related to Client’s use of the Third-Party Data and Services to the Third-Party Providers. To enable OXDH to meet its obligation in this regard, Client shall inform OXDH, in writing, whenever its display of notices or utilisation of any information derived from the Third-Party Data and Services changes.
- (b) The notices and agreements required to be displayed as of the Order Effective Date are set forth on the Order. Client shall display all such notices and agreements in the exact manner specified by OXDH or a Third-Party Provider in writing or as set forth in this Agreement. Client acknowledges and agrees that the number and content of such notices, as well as other terms and conditions, may be changed from time to time by the Third-Party Providers. Upon written notification of such changes by OXDH to Client, the Order shall be deemed modified to include such changes and Client will update such notices.
- (c) Client shall comply with all applicable laws and obtain all necessary consents from any person, including its employees and the Third-Party Users and their respective employees, if any, regarding the collection, use and distribution to OXDH of any information or data regarding any Third-Party User and to the use by Client and the Third-Party Users of the Third-Party Data and Services for the purposes set forth in this Agreement. The information and data may include personal and other information about Client, its employees, the Third-Party Users and their employees, including their use of the Third-Party Data and Services. OXDH may use this information and data to carry out its obligations under this Agreement, including the provision of such information to the Third-Party Providers under this Agreement or for its own internal purposes.

## 15. Support & Maintenance Services

### 15.1. GENERAL SUPPORT SERVICES TERMS:

- (a) OXDH shall provide the support services as described in this Section 15 to Client in relation to the Solution in English.
- (b) OXDH shall use commercially reasonable efforts to answer questions, correct Errors in the Solution or Documentation or provide a work-around solution in accordance with the procedures detailed in Section 15.3 and OXDH’s then current Client Services procedures, as amended from time to time.
- (c) Any support services provided to Client other than those described in this Section 15.3 below are subject to the Change Control Procedure and may be charged for by OXDH at the standard Professional Services terms set out in Section 7.
- (d) Client Services shall have access to the Solution and Client Data as may be required, in OXDH’s sole opinion, to provide the support services and conform to its obligations under the Agreement. Client shall provide Client Services with access to any additional information as OXDH may reasonably require to fulfil its obligations hereunder.
- (e) The Client Services help desk shall be available to Client during the Normal Support Hours.

### 15.2. SAAS OPERATIONS SERVICES:

- (a) OXDH shall provide Client remote access to the Solution during the Service Hours or during such additional time periods as the parties may agree from time to time, in writing, to support exceptional activities.
- (b) OXDH shall procure that the Solution adheres to the then current availability, security, data privacy and audit compliance standards provided by Microsoft for Microsoft Azure, a summary of which can

be found, as at the Order Effective Date, at <https://azure.microsoft.com/en-gb/support/trust-center/> and <https://www.microsoft.com/en-us/privacystatement/OnlineServices/Default.aspx>.

- (c) OXDH shall procure that Client Data stored within the Solution is backed up no less than once each day Monday to Friday, and available for restoration during the Normal Support Hours on Client’s request.

### 15.3. SUPPORT SERVICES WORKFLOW:

- (a) Before contacting Client Services, Client is required to research any issue thoroughly in the Specifications and to reasonably try to resolve any issue themselves. Notwithstanding the foregoing, in relation to actual or suspected Errors of a severity code of “Critical” (as defined in Section 15.3(d) the parties acknowledge that Client personnel may contact Client Services.
- (b) Provided that the issue could not be resolved by Client’s own personnel, an appropriate Client representative may contact Client Services to raise an Action Request as follows: 1 Client users with appropriate training will capture details within the Zygote support workflow system and it will be routed to the OXDH Client Services first line support team. The Client representative should make sure that relevant details relating to the issue are available, including:
  - *Has the problem been encountered before?*
  - *If so, can the log number or cause be identified?*
  - *Are there any specific customizations to the product that OXDH needs to be aware of?*
  - *Can the problem be recreated?*
  - *What was the sequence of events leading up to the problem?*
  - *Severity of problem or urgency of the question. What impact is it having?*
- (c) Client Services will review the information above and record:
  - *Name of contact*
  - *Location*
  - *Description of the problem or question, including Error messages, log files, audit information and screen shots (as applicable)*
  - *Exceptional conditions which exist*
  - *Environmental issues and version of the Solution*
- (d) Client Services will assign the issue a unique problem log number in Zygote’s internal support workflow system. This problem log number should be used in all further communication with OXDH relating to the Action Request. Further, Client Services will use the information supplied by Client to assess the nature of the issue, and if the issue is due to a suspected Error, will determine, in consultation with Client, an Error severity code and take the appropriate action in accordance with the table immediately below.

Severity Code	Description	Response Time
Critical	A suspected Error that causes complete unavailability of the Solution in the live production Environment or so severely limits functionality or performance that day-to-day business cannot feasibly be continued.	Start investigating within thirty (30) minutes of issue being logged.  Work continuously on the issue until a resolution or workaround is provided, the issue is reclassified as an Error with a lower severity code (in which case the provisions related to such new severity code shall apply) or as a non-Error, or deferred to a later time only by mutual agreement between the Parties.
High	A suspected Error that causes complete unavailability of a key Solution function in the live production environment, or limits functionality or performance of a key Solution function but still allows day-to-day business to be carried out.	Start investigating within two (2) hours of issue being logged.  Work continuously on the issue until a resolution or workaround is provided, the issue is reclassified as an Error with a lower severity code (in which case the provisions related to such new severity code shall apply) or as a non-Error, or deferred to a later time only by mutual agreement between the parties.

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Medium	A suspected Error that causes reduction of availability or performance of the Solution, without notable effects on the functionality of the overall Solution.	Start investigating within eight (8) hours of issue being logged.
Low	A suspected Error that does not impede functionality but is inconvenient. Questions on the use or functionality of the Solution.	Start investigating within one week of issue being logged.
Trivial or cosmetic	A trivial or cosmetic issue	Start investigating as and when all higher severity issues have been addressed.

- (e) Response and activity times and escalation timeframes in the table above refer to time periods during Normal Support Hours. Any issues relating to a non-production environment will be assigned a severity code no higher than 'Medium'. In the event of a dispute relating to the handling of an Action Request or Error, the parties shall adhere to the dispute management procedure as set out in Section 15.8.
- (f) Once the issue has been addressed by a workaround or resolution or has been classified by Client Services as a non-Error, Client Services will inform the relevant Client representative accordingly. If Client has not responded, in writing, within fourteen (14) days as to whether the feedback provided by Client Services is satisfactory, OXDH may close the Action Request and OXDH shall take no further action.
- (g) The implementation by OXDH of solutions to Errors in a Supported Release is not considered a chargeable activity. Notwithstanding the foregoing, in case OXDH reasonably demonstrates to Client that the Solution performs as described in the Documentation, or that the cause giving rise to the Action Request reported by Client is due to circumstances under Client's control (including due to third party products supplied by or on behalf of Client), and Client requests continued OXDH assistance, then, except in the event that the root cause of the problem is found to be an issue under OXDH's sole control, OXDH reserves the right to charge Client in accordance with the standard Professional Services terms as set out in Section 10 for OXDH's reasonable efforts expended in any further tracking, investigating or resolving the cause raised in the Action Request.

### 15.4. EXCLUSIONS:

- (a) OXDH shall not be obliged to make corrections to the Solution in the event that any Errors therein arise out of any of the circumstances set out in this Section 15.4 below:
- any fault in the Specified Configuration or no-compliance of the Client's environment with the Specified Configuration;
  - any modifications made by Client (or a third party acting on Client's behalf) to the Solution without OXDH's written permission;
  - the failure of Client to implement recommendations in respect of or solutions to faults previously advised by OXDH;
  - any changes in Client-supplied third-party product interacting with the Solution;
  - any breach by Client of any of its obligations under this Agreement;
  - any negligent use of the Solution by Client; or
  - the use by Client of any Release of the Solution other than a Supported Release and for which Client is not paying a Legacy Release Maintenance Fee.

If any revisions to the Solution are requested by Client due to any of the circumstances set out in this Section 15.4 above, such requests shall be processed in accordance with the Change Control Procedure and OXDH shall use reasonable efforts to provide such revisions (as part of a Maintenance Update Package, where appropriate), subject to resource availability. Subject to an agreed Change, OXDH may charge for any such work effort at the standard Professional Services terms set out in Section 10.

### 15.5. CLIENT-SUPPLIED EXTENSIONS AND THIRD-PARTY PRODUCTS:

- (a) OXDH shall not have any support or other responsibility for data entry, or completeness, validity, integrity, adequacy or accuracy of data as well as any queries, reports, interfaces or applications, or the results thereof, that Client has developed or written itself, whether or not such Solution extensions were generated by Client using facilities provided by OXDH as part of the Solution.
- (b) OXDH shall not have any support obligations or other responsibility for the completeness, validity, integrity, adequacy or accuracy of any third-party software, data or services. Client shall or shall cause any third-party provider of third party software, data and services supplied by or on behalf of Client to give OXDH reasonable prior notice of any intended changes to the format or content of third party software, data and services and the parties shall agree any resulting Changes as may be required to the Solution in order to ensure continued operation of the Solution as intended, all in accordance with the Change Control Procedure.

**15.6. DATA RETENTION.** Throughout the Order Term, OXDH shall retain backups of the Solution production environment database (such backups to be taken by OXDH at a scheduled time during nightly batch processing, as reasonably determined by OXDH).

### 15.7. MAINTENANCE UPDATE PACKAGES AND NEW RELEASES:

- (a) At its discretion, OXDH may make available to Client from time to time Maintenance Update Packages, for reasons of Error correction or for any other reasons OXDH deems appropriate. OXDH shall give Client written notice, in accordance with the Change Control Procedure, before any such Maintenance Update Package is installed on a designated test Environment, and will allow Client reasonable time to test such Maintenance Update Package prior to promoting it to the live production Environment, taking into consideration the urgency of the Error corrections provided with the revision and Client's needs on a case by case basis.
- (b) From time to time, OXDH may issue a new Release together with any supporting documentation where appropriate. Releases of the Solution are issued at OXDH's sole discretion if and when OXDH deems it appropriate, taking into account the requirements of the Zygote customer base. Client acknowledges and accepts that modifications, revisions and updates to the Solution provided in a Release may result in changes in the form, data input/output formats, timing, rules of operation or other features of the Solution, and that Client (or OXDH at Client's instruction and cost) is responsible for ensuring compatibility with the Supported Release of any (i) interfaces between Client systems and the Solution; (ii) portions of the Solution Client may have modified; and (iii) third party software (other than the Third Party Software), data and services interacting with the Solution.
- (c) OXDH shall provide each Supported Release at no additional charge to Client, provided that the Scope of Use does not change in conjunction with a new Release and save that Client shall pay Professional Services fees, on a time and material basis, in respect of any Professional Services the parties may agree in relation to the upgrade of any (pre-existing and additional) configurations to the Solution made by OXDH at Client's request, and subject to a fully executed statement of work in respect of any project to upgrade to such Supported Release specifying the relevant Professional Services, applicable fees and any other impact on the Solution provided under this Order (if applicable).
- (d) Unless otherwise agreed between the parties, in writing, OXDH shall make any new Supported Release available to Client in a test Environment for a period of seven (7) days (or such other Period as the Parties may agree on a case-by-case basis, in writing) (the "Upgrade Acceptance Period"). Client shall be deemed to have accepted the Supported Release at the end of the Upgrade Acceptance Period, unless any Errors in such new Supported Release which Client has reported to OXDH during the Upgrade Acceptance Period remain outstanding with OXDH for resolution. If Client reports Errors during the Upgrade Acceptance Period, and such Errors remain outstanding on the last day of the original Upgrade Acceptance Period, the Upgrade Acceptance Period shall automatically be extended to the date on which OXDH has remedied all such Errors.

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### 15.8. SERVICE MANAGEMENT REPORTING AND GOVERNANCE:

- (a) OXDH shall make available to Client such access to the OXDH support workflow management system in order for Client to generate service management reports showing information on Action Requests, Change Requests, Errors, scope of planned Maintenance Update Packages and other information.
- (b) OXDH and Client shall arrange formal monthly service review meetings or conference calls to review service quality and performance. Unless otherwise agreed between the parties, preparation of the minutes of such meetings or conference calls shall be the responsibility of OXDH.
- (c) In the event of a dispute in relation to the Initial Implementation Services or day-to-day operation of the Solution, the parties shall escalate the issue through the joint management levels as per the Order, with the dispute elevated to the next management level if unresolved no later than seven (7) days after the issue has been raised by either party, in writing, to the attention of the relevant lower joint management level (as identified in the Order of levels 1-2). Each party shall notify the other party of (and may update from time to time) its named representative(s) at each level identified in the Order, in writing. Only in the event that no agreement can be reached within twenty (20) days at level 2 in the Order, a party may bring a claim.

### 16. Service Levels.

**16.1.** OXDH shall provide the Solution (including the deliverables and Solution functionalities as described in the Project Specifications for the Initial Implementation Services) in compliance with the Specifications and in accordance with the Service Levels specified in this Section 16 commencing from the Acceptance Date (or such later date as the parties may agree, in writing):

**16.2. SOLUTION AVAILABILITY.** OXDH shall monitor availability of the Solution. The Up Time Service Level shall be no less than 99% during the Service Hours. Up Time is measured within Microsoft Azure using Solution monitoring utilities that initiate “Monitor Transaction Requests” (or “MTRs”) at intervals of no less than five (5) minutes.

(i) Up Time for the Solution is calculated as follows:

Up Time Calculation Method	
Solution Up Time in % =	Number of successful MTRs / Number of expected MTRs x 100
Number of expected MTRs =	Number of possible MTRs - Number of MTRs during Maintenance Window
Number of possible MTRs =	Number of minutes in Service Period / MTR frequency in minutes
Number of MTRs during Maintenance Window =	Maintenance Window in minutes / MTR frequency in minutes

(ii) Example for illustration purposes:

Solution Uptime – MM YYYY	
Possible MTRs	8,928
Maintenance Window MTRs	(108)
Expected MTRs	8,820
Actually Recorded Successful MTRs	8,814

MTR Frequency: Every 5 minutes	
Solution Up Time	99.93%

**16.3.** Up Time during the Service Period shall be expressed as a percentage value, rounded to two (2) decimals.

**16.4.** In the event that OXDH’s Up Time monitoring utilities did not record Up Time as specified for a certain period (e.g. due to a fault or configuration error in the monitoring utility, but not the Solution as such), and OXDH can provide other reasonable evidence that the Solution was in fact available, then the Solution module Up Time as indicated by such other evidence shall substitute for MTR log data and may be used by OXDH to compute the Solution availability Service Level.

**16.5. DOWNTIME EVENT SERVICE LEVEL.** Measurement. “Solution Downtime” shall be measured using MTRs as described above.

**16.6. MAINTENANCE WINDOW SERVICE LEVELS:** The Service Level with respect to Solution Downtime during Service Hours associated with any Maintenance Windows is defined as follows but may be modified on a case-by-case basis with prior agreement between OXDH and Client:

Maintenance Windows Metrics	
OXDH notification	24 hours
Maximum number of planned maintenance events	24 per annum
Maximum time period per planned maintenance event	8 hours

**16.7.** OXDH will seek to schedule the Maintenance Windows outside the Service Hours or in any case during a time where Client access to the Solution is expected to be minimal and always following prior consultation with Client.

**16.8.** OXDH and Client may agree in writing to specify an exceptional circumstance requiring additional Downtime periods to be defined.

**16.9.** Unplanned maintenance includes corrective actions to be taken by OXDH to recover a failing component of Microsoft Azure. OXDH shall keep Client informed of such activity and the expected Downtime.

**16.10.** OXDH shall always prioritize Solution availability over fault finding, to minimize Downtime.

**16.11. REMEDY.** In the event that the Solution availability relating to the live production environment fails to meet the Up Time Service Level (as specified in Section 16) in any Service Period, Client may request and OXDH shall apply a Service Credit in respect of each Service Period in which a Service Level non-compliance occurred. The amount of such Service Credit in respect of each such Service Period shall be determined by multiplying the percentage value shown in the column headed “Service Credit” in the table below with the amount that is one twelfth (1/12<sup>th</sup>) of the Annual Processing Fees.

Solution Availability	Service Credit
< 99.0% and ≥ 98.5%	1%
< 98.5% and ≥ 95.0%	3%
< 95.0%	5%

**16.12.** In the event the Downtime Event Service Level is not met in any Service Period, Client may request and OXDH shall apply a Service Credit in respect of each Service Period in which a Service Level non-compliance occurred. The amount of such Service Credit in respect of each such Service Period shall be determined by multiplying the percentage value shown in the column headed “Service Credit” in the table below with the amount that is one twelfth (1/12<sup>th</sup>) of the Annual Processing Fees.

Downtime Events > 4 hours in Service Period	Service Credit
> zero	3%

**16.13.** The maximum aggregate Service Credit in respect of any Service Period is five percent (5%) of 1/12th of the Annual Processing Fees.

**16.14.** The Service Credits specified in Section 16.11 and/or Section 16.12 shall be Client’s sole and exclusive remedy for OXDH’s failure to meet the Service Levels.

**16.15.** OXDH shall have no obligation to provide any Service Credits other than by way of credit against the next invoice for Annual Processing Fees due to Client.

**16.16. LIMITING EVENTS:** Notwithstanding any other provision of the Agreement, OXDH shall not be responsible for a failure to carry out any of its obligations under this Order, (including its obligations to provide a Service Credit for any failure to meet a Service Level) if OXDH can reasonably demonstrate that the failure was caused by:

- a. (i) failure by Client to comply with any material terms of the Agreement; (ii) failure by Client to ensure that only appropriately trained personnel of Client or trained and authorized personnel of its sub-contractor(s) interact with the Solution; or (iii) negligent or wilful acts or omissions of the Client or its employees, contractors or agents;

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- b. failure by Client to provide access, to the extent reasonably necessary and at OXDH’s request with reasonable notice, to a Site and/or to assistance by suitable Client or third party provider personnel;
- c. Internet service quality impairments or communications links being modified or altered in any way other than by OXDH or service providers appointed by OXDH;
- d. use of the Solution outside of the Scope of Use;
- e. adverse impact due to the defects in the Specified Configuration or non-compliance of Client Data or Client-supplied third-party data and services with the Specifications;
- f. adverse impact due to material changes made to the usage of the Solution by Client where OXDH has not agreed to such changes in advance and in writing;
- g. adverse impact on Solution availability that occurs as a result of: (i) changes made by Client to applications or data; (ii) Client retaining *ROOT* or *ADMIN* privileges; (iii) Client requiring OXDH to maintain, or continue to run, unsupported software or hardware releases; (iv) Client refusing OXDH maintenance changes for any reason, (v) Client retaining access control to any devices comprised within the equipment for which OXDH is providing the Solution; or (vi) corrupt files or data supplied by Client;
- h. Client supplying data for processing by the Solution on any day in excess of the volume limits specified in Section 17; or
- i. any other event or circumstance beyond OXDH’s reasonable control.

For the avoidance of any doubt, any Maintenance Windows or any other agreed Downtime shall not be taken into account when measuring compliance with the Service Levels.

### 17. Specified Configuration.

**17.1. Minimum Configuration:** The following recommended minimum configuration for the Specified Configuration is based upon, among other factors, Client’s Scope of Use, including number of Authorised Users concurrently accessing the Solution, data update and data download volumes. Client recognizes changes in any of the determining factors may cause changes in the recommended configuration as set out herein.

**17.2.** Connecting to the Solution requires:

- a. **Network:** The Client shall procure secure internet connectivity of sufficient bandwidth from the Client’s Site to the Solution for purposes of receiving Client Supplied Data, transmitting Client Data to Client, and permitting remote access by Authorized Users to the Solution.
- b. **User Workstation Access:** Users access the Solution through a supported web browser; the minimum requirement is Microsoft Internet Explorer (IE) 9.0. Client’s user workstations communicate with the Solution via either HTTP or HTTPS as further detailed as at the Order Effective Date, at <https://technet.microsoft.com/en-us/library/hh699710.aspx>. The Client will supply high definition devices for viewing images.
- c. **Programmatic Interfaces and Protocols:** Connections between the Client’s network and the Solution will involve a number of ports and IP addresses. Real-time interfaces may use a variety of application protocols layered on top of TCP/IP. Batch file interfaces are supported via FTP and sFTP.
- d. Client must configure routers, firewall and proxy servers within the Specified Configuration in accordance with the above requirements and the mutually agreed traffic types, TCP/IP addresses and ports. Client is responsible for implementing adequate security measures (including firewall and anti-malware and intrusion protection) at the Client end of the connection to the internet.

**17.3. User Maintenance:** Client shall be responsible for maintaining and supplying to Client’s Authorised Users all passwords, pass-codes, PIN numbers, and any other security code as may be required to access the Solution.

**17.4. Traffic Encryption:** Data transferred over the internet between the Specified Configuration and the Solution shall be encrypted using SSL (HTTPS), as further specified, as at the Order Effective Date, at <https://www.microsoft.com/en-us/trustcenter/security/dynamics365-security>.

**17.5. Technology Change:** Minimum configuration requirements for the Specified Configuration are subject to change based on technology updates and Third-Party Software lifecycles. OXDH shall notify Client from time to time of any such changes as may be applicable and Client shall not unreasonably refuse to update the Specified Configuration as

may be required by OXDH. OXDH shall bear no responsibility for any adverse impact on user experience or service quality in the event Client operates any part of the Specified Configuration using third party software or hardware that is no longer supported or maintained by the relevant third-party provider.

### 18. Definitions.

As used in this Agreement, the terms below (and their plural forms) have the following meanings:

- **“Action Request” or “AR”** means any written or verbal request by Client or notification generated by an OXDH automated Solution monitoring utility for Client Services to investigate and respond to a query, suspected Error, or any other issue relating to the Solution;
- **“Acceptance Period”** means the period of thirty (30) days after the Delivery Date unless a different Acceptance Period is specified in the Order.
- **“affiliate”** whether capitalised or not, means, with respect to a specified Person, any Person which directly or indirectly controls, is controlled by, or is under common control with the specified Person as of the date of this Agreement, for as long as such relationship remains in effect.
- **“Authorised Recipient”** means: (i) with respect to Client, Client, any Authorised User and any employee of a Client contractor, provided that the contractor is not a competitor of OXDH; and (ii) with respect to OXDH, OXDH, its foreign and domestic Affiliates and their respective contractors, and Third-Party Providers.
- **“Authorised User”** means a Client employee or contractor.
- **“Change”** shall have the meaning attributed to the term in Section 19.
- **“Change Control Procedure”** means to the change management procedure set out in Section 19.
- **“Change Request”** means a request for a Change submitted by one party to the other party, in writing;
- **“Chargeable Travel Time”** means the time normally taken, assuming a continuous journey using reasonable means of transport, between the regular place of work of the OXDH Personnel (or OXDH sub-contractor personnel, as applicable) providing the relevant Professional Services and the Client Site (or such other place as may be specified by Client), but only to the extent that such travel time is chargeable to Client in accordance with the provisions of Section 7.
- **“Client Data”** means the data inputted or provided by the Client or Authorised Users for the purpose of using the Solution or facilitating the Client’s use of the Solution and any Personal Data and/or information relating to an identified or identifiable Third Party End User (whether current or prior patient of the Client) that is provided by the Client to the OXDH for use in the Solution.
- **“Client Services”** means certain OXDH Personnel (or OXDH’ sub-contractor personnel, as applicable) designated as point of contact and to provide first line help desk support to Client in response to queries about Solution functionality or suspected Errors reported by Client.
- **“Client Supplied Data”** means any information or data introduced into the Solution by or on behalf of Client.
- **“CPI”** means the UK Consumer Price Index as published by the Office of National Statistics, series D7G7 (as at the Order Effective Date, at <https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7g7/mm23>) or, in the event such index is no longer published, such other index as most closely substitutes for such index, with the reference period for the applicable CPI rate being the most recent twelve (12) month period for which CPI data is available on or about the relevant increase notification date;
- **“Confidential Information”** means all business or technical information disclosed by Disclosing Party to Receiving Party in connection with this Agreement. Confidential Information includes without limitation: (i) Client Data and the details of Client’s computer operations; (ii) the OXDH Solution Details; and (iii) the terms of this Agreement, but not the fact that this Agreement has been signed, the identity of the parties hereto or the identity of the Solution or services being provided under an Order. Confidential Information does not include information that: (aa) prior to the receipt thereof under this Agreement, had been developed independently by Receiving Party, or was lawfully known to Receiving Party, or had been lawfully received by Receiving Party from other sources, provided such other source did not receive it due to a breach of an agreement with Disclosing Party, and Receiving Party knew of such breach or ought to have reasonably

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- known of such breach; or (bb) is publicly known at or after the time either party first learns of such information, or generic information or knowledge which either party would have learned in the course of its work in the trade, business or industry; or (cc) subsequent to the receipt thereof under this Agreement: (1) is published by Disclosing Party or is disclosed generally by Disclosing Party to others without a restriction on its use and disclosure; or (2) has been lawfully obtained by Receiving Party from other sources which Receiving Party reasonably believes lawfully came to possess it.
- **“copy”** whether capitalized or not, means any paper, disk, tape, film, memory device or other material or object on or in which any words, object code, source code or other symbols are written, recorded or encoded, whether permanent or transitory.
  - **“Data Protection Legislation”** has the meaning given to it in Section 9.3.
  - **“Data Subject”** has the meaning set out in the Data Protection Legislation.
  - **“Delivery Date”** has the meaning given to it in Section 13.2.
  - **“Designated Location(s)”** means the Client’s location(s) listed as designated location(s) on the Order.
  - **“Disclosing Party”** has the meaning given to it in Section 9.1.
  - **“Disputed Amount”** means such amount which are invoiced under this Agreement but remain unpaid as a result of a good faith dispute by Client of such amounts to the extent that: (i) Client has given written notice of the dispute to OXDH promptly after receiving the invoice; and (ii) the notice explains Client’s position in reasonable detail. A dispute will not exist as to an invoice in its entirety merely because certain amounts on the invoice are Disputed Amounts.
  - **“Documentation”** means the standard user documentation OXDH provides for the Solution, as such Documentation may be updated from time to time.
  - **“Downtime”** means any period within the Service Hours that the Solution is not available;
  - **“Environment”** means a logically separate pool of computing resources on which the Solution is installed for purposes of remote access by Client under the terms of this Order;
  - **“Error”** means a failure of a Supported Release to perform in all material respects in accordance with the Documentation.
  - **“Export Laws”** means any laws, administrative regulations and executive orders of the U.S., the United Kingdom and any other jurisdiction where any OXDH Solution Details will be located or from where any OXDH Solution Details will be accessed under this Agreement relating to the control of imports and exports of commodities and technical data, use or remote use of software and related property or services, embargo of goods or services or registration of this Agreement including the Export Administration Regulations of the U.S. Department of Commerce and the regulations and executive orders administered by the Office of Foreign Asset Control of the U.S. Department of the Treasury.
  - **“Feedback”** means any suggestions or recommendations for improvements or modifications to the Solution made by or on behalf of Client.
  - **“Full User + Operations”** means any Authorized User with full read and full write capabilities to the Solution functionality within the Scope of Use (including Microsoft Dynamics 365 and Office 365 E5) through any and all modes of access described in the Documentation. For greater clarity, Client’s management and finance staff would typically require licensing as Full Users + Operations.
  - **“Full User”** means any Authorised User with full read and full write capabilities to the Solution functionality within the Scope of Use (including Microsoft Dynamics 365 and Office 365 E5) except for the Operations and Finance module (as described in the Documentation) of the Solution, through any and all modes of access described in the Documentation. For greater clarity, Client’s consultants, nurses, embryologists & lab staff would typically require licensing as Full Users.
  - **“Functional Implementation List”** or **“FIL”** means a description of the way in which OXDH shall implement Client’s requirements. The FIL in respect of the Initial Implementation Services is attached Part 3 of the Order.
  - **“Harmful Code”** means any viruses, worms or similar harmful code.
  - **“including”** whether capitalised or not, means including but not limited to.
  - **“Impact Review”** means the collection of information as described in Section 19.
  - **“Implementation Fee”** shall have the meaning ascribed to the term in the Order;
  - **“Intellectual Property Rights”** shall mean patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, and Intellectual Property Rights include, without limitation, any Marks.
  - **“Legacy Release Maintenance Fee”** shall have the meaning ascribed to the term in Section 7.3.
  - **“Maintenance Update Package”** means a package of Changes, Error corrections and/or other revisions to the Release of the Solution then operated by OXDH to Client under this Order (excluding any actual Release);
  - **“Maintenance Window”** means a period of unavailability of the Solution during the Service Hours due to planned maintenance or when otherwise agreed between the parties;
  - **“Marks”** Shall mean any and all trade marks, trade names, service marks, trade dress, logos, URLs or identifying slogans of a party to the Agreement, whether or not registered.
  - **“Microsoft Azure”** means the Solution hosting facilities within one or more Microsoft data centres;
  - **“Monitor Transaction Request”** or **“MTR”** shall have the meaning attributed to the term in Section 16.
  - **“Normal Support Hours”** means the period on Monday through Friday between 09:00 a.m. to 5:00 p.m. U.K. local time (excluding public holidays in England);
  - **“OXDH Personnel”** means employees, contractors or sub-contractors of OXDH;
  - **“OXDH Solution Details”** means any of the following: the Solution and Documentation, the object code and the source code for the Solution, the visual expressions, screen formats, report formats and other design features of the Solution, all ideas, methods, algorithms, formulae and concepts used in developing and/or incorporated into the Solution or Documentation, all future modifications, updates, Releases improvements and enhancements of the Solution or Documentation, all derivative works (as such term is used in the U.S. copyright laws) based upon any of the foregoing and all copies of the foregoing.
  - **“Open Source Software”** means computer software made generally available at no charge by the copyright holder under a license which provides the right to modify and distribute the software to anyone for any purpose at no charge.
  - **“person”** whether capitalized or not, means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, bank, association, cooperative, trust, estate, government, governmental agency, regulatory authority or other entity of any nature.
  - **“Performance Upgrade Fee”** shall have the meaning ascribed to the term in Section 7.4.
  - **“Personal Data”** means personal data and sensitive person data which shall each have the meaning set out in the Data Protection Legislation.
  - **“Price Index”** means the index specified in an Order; provided that, if the applicable Price Index is unavailable or materially changes in content and scope, then OXDH may in good faith, taking into account the geographic region of the personnel supporting the Solution and/or providing the applicable services, select another generally recognized Price Index as a substitute in order to obtain substantially the same result.
  - **“Price Index Change”** means the amount of the percentage change in the Price Index (calculated by averaging the annual Price Index change for the four (4) fiscal quarters immediately preceding the date of the applicable fee increase) plus the percentage increment specified in the Order, provided, in all cases, the minimum aggregate pricing change during any 12-month period shall not be less than two percent (2%) of the fees then applicable to the Solution or other products or service.
  - **“Processing”** shall have the meaning set out in the Data Protection Legislation.
  - **“Professional Services”** whether capitalised or not, means installation, implementation, training or consulting services including custom

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modification programming, support services relating to custom modifications, on-site support services, assistance with data transfers, system restarts and reinstallations provided by OXDH under this Agreement.

- **“Receiving Party”** has the meaning given to it in Section 9.1.
- **“Release”** means a modification or update to the Solution, which OXDH, in its sole discretion, incorporates into the Solution without requiring its then existing client base to pay a separate fee (other than Support Fees).
- **“Renewal Support Term”** has the meaning given to it in Section ~~(a)13-4~~.
- **“Scheduled Installation Date”** means the scheduled installation date stated on the Order, and if a scheduled installation date is not stated on the Order, the scheduled installation date shall be the date on which the Client installed the Solution within thirty (30) days after the Delivery Date in accordance with Section 13.2.
- **“Scope of Use”** means the Designated Computer(s), Designated Location(s), Licence Term, Platform, Business Purpose, Number of Trades, Number of Work Stations, Number of Developers, Number of Users, Volume Limit, Number of Production Databases, Number of Production Servers, and/or other restrictions or parameters as are stated (and as defined) in Section 4 or on the Order. Scope of Use shall not include the processing of any Acquired Business. In connection with Client’s use of the Solution in production solely to process Client’s business; provided that any increases in the Scope of Use shall require execution of an amendment to the relevant Order amending the Scope of Use.
- **“Service Credit”** means any portion of the fees paid or payable by Client in respect of the Solution under this Order which, due to a failure by OXDH to meet the contracted Service Levels during the applicable Service Period, OXDH shall credit to Client on the subsequent invoice for Annual Processing Fees;
- **“Service Hours”** means, in respect of each week of the Order Term, the period between 08:00 a.m. Monday and 6:00 p.m. Friday (London local time), excluding any Maintenance Windows and except as may be agreed otherwise by the Parties from time to time, in writing. For the avoidance of doubt, OXDH may, at its sole discretion, provide Client with access to the Solution at any time (excluding any Maintenance Windows), irrespective of the Service Hours;
- **“Service Levels”** means the performance levels to which the Solution shall be provided as set out in Section 16.
- **“Service Period”** means each calendar month (or part thereof) in which OXDH makes the Solution available for access by Client;
- **“Service User”** means an Authorized User with full read, but certain limited write capabilities (as set out in the Specifications) to all of the Solution functionality within the Scope of Use through any and all modes of access;
- **“Site”** means, unless the context requires otherwise, any Designated Location;
- **“Specified Configuration”** has the meaning given to it in Section 4.
- **“Staff Day”** means a quantum of Professional Services (including, as applicable, Chargeable Travel Time) of seven and a half (7.5) hours, performed during the Standard Working Hours;
- **“Standard Working Hours”** means the period between 09:00 a.m. and 5:00 p.m. (local time at the place the relevant Professional Services are performed), Monday to Friday, excluding public holidays at the regular place of work of the relevant OXDH Personnel;
- **“Supported Release”** means, unless otherwise stated in the Order, the latest Release of the Solution that is generally available to OXDH’s client base.
- **“Support Fees”** means the support fees stated on the Order.
- **“Support Termination Date”** means the effective date of termination of ongoing support services by either party or at any time when Client has failed to pay the Support Fees.
- **“Team User”** means any Authorised User with full read and limited write capabilities to the Solution functionality within the Scope of Use (including limited access to Microsoft Dynamics 365 and Office 365) except for the Operations and Finance module (as described in the Documentation) of the Solution, through any and all modes of access described in the Documentation. For greater clarity, Team Users licenses would typically be appropriate for Client’s administrative or authorized external accounting staff.
- **“Termination Fee”** means the fee payable by Client in the event of termination by Client of this Order prior to the normal expiration date of the Initial Term or then current Renewal Term (as applicable) and as specified in Section 7.2.

- **“Third-Party Data and Services”** means market data services or other data, services or software.
- **“Third Party End Users”** means patients of the Client.
- **“Third-Party Provider”** means a securities exchange or other data, services or software provider.
- **“Third-Party Software”** means the software specified as third-party software on the Order.
- **“Third-Party User”** means any of Client’s customers, or their customers, to the extent such persons are provided access to the Solution or Third-Party Data hereunder.
- **“Third Party Software”** means Microsoft SharePoint, Microsoft Office 365, Microsoft Dynamics 365 and any other third-party software listed in the Specifications;
- **“Treatment”** means a record in the Solution of any dispensation of medical care provided by Client to Patient.
- **“Up Time”** means a time period during the Service Hours (excluding any Maintenance Windows) in which any appropriately permissioned Authorised User is able to read and update Patient Records within the Solution;
- **“Upgrade Acceptance Period”** shall have the meaning ascribed to the term in Section 15.7; and
- **“Work Product”** has the meaning given to it in Section 10.7.

## 19. Change Control Procedure

- 19.1. In the event either party requests a modification to any Professional Services, the Project Specifications, the Specified Configuration, any Environment or the Solution, or the addition of Professional Services that are not deliverables within the scope of the Initial Implementation Services, or an alteration of the Scope of Use or to any other terms of this Order (each such modification, addition or alteration, a “Change”), the parties shall adhere to the Change Control Procedure as set out in this Section 19.
- 19.2. A Change shall only be made with the written agreement of both parties and all Changes shall be processed using the OXDH support workflow management system. If either party identifies a requirement for a Change, it will provide the other with a Change Request for approval. If the Change Request affects the Initial Implementation Services or other Professional Services, such Change Request shall be addressed to the other party’s designated Project Manager and each such person shall have authority on behalf of the party that it represents to authorize all aspects of the Change Request. If the Change Request concerns the Solution or any other deliverable relating to its on-going operation, such Change Request shall be addressed to OXDH’s Service Delivery Manager (where the Change Request is being raised by Client) or Client’s Project Manager or such other person notified by Client to OXDH from time to time (where the Change Request is being raised by OXDH), and each such person shall have authority on behalf of the party that it represents to authorize all aspects of the Change Request. Each Change Request will include a summary description of the Change together with reasons for the Change Request, and if the Change Request is being initiated by OXDH the Change Request will also include an Impact Review covering the information set out in Section 19.5.
- 19.3. Both parties shall process each Change Request promptly. While the parties are following this procedure, then unless otherwise agreed by both Service Delivery Managers or Project Managers or such other relevant persons authorized by either party to issue/approve Change Requests, each Party shall continue to perform its obligations as if there had been no Change Request.
- 19.4. Upon receipt of a Change Request from Client, OXDH may either accept or reject the Change Request (acting reasonably) and if OXDH rejects the Change Request OXDH shall provide to Client its reasons for such rejection. If OXDH accepts the Change Request then it shall prepare an Impact Review (as described below under Section 19.5) within a reasonable time, and where the Change Request is raised by Client OXDH reserves the right to charge for its work effort in preparing such Impact Review at the Professional Services Rates to which the Change relates, where such work effort exceeds three (3) hours and provided Client has approved such charges. If no such approval is given, OXDH shall be under no obligation to prepare the Impact Review.
- 19.5. Each Impact Review shall contain a description of the work to be carried out in implementing the Change, a description of planned work no longer required, the estimated additional cost or anticipated savings as a result of the Change, a timetable for undertaking the planned work including the impact on schedule dates, positive or adverse effects on the continued delivery of the services to which the Change relates, and any other information that OXDH has knowledge of and which is relevant for the

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- Client's ability possibility to assess whether or not to proceed with the Change.
- 19.6.** The cost or savings calculations in the Impact Review shall be made in accordance with the standard Professional Services terms as set out in Section 10 (to the extent relevant) and shall be itemized so that Client can assess the reasonableness of the forecasted costs or savings. The Impact Review shall serve as a binding quotation for the work described in the Impact Review and shall remain valid for acceptance by Client for the period of time specified by OXDH in the relevant Impact Review.
- 19.7.** Following receipt of the Impact Review, Client shall either:
- approve the proposed Change (and such approval shall be deemed to have been given when the Impact Review is accepted by Client in writing);
  - decline the proposed Change; or
  - request changes to, which shall be reasonable, or explanations of (or both) any aspect of the Impact Review and if the parties agree on any changes to the Impact Review, OXDH shall issue a revised Impact Review and the revised Impact Review shall be subject to the approval or rejection by Client in accordance with the provisions of this Section 19.
- 19.8.** Client may withdraw a Change Request any time prior to its authorization to proceed with the relevant Change. Upon approval by Client of the Change, OXDH shall begin to carry out the work described in accordance with the approved Impact Review.
- 19.9.** In the event Client terminates an approved Change and/or requests that OXDH cease carrying out the work described in the final Impact Review, any termination fee as may be applicable shall be as set out in Section 7.2 or as specified otherwise in the relevant Change.
- 19.10.** Notwithstanding any other provisions of this Section 19, OXDH may make changes without requiring adherence to the Change Control Procedure set out in this Section 19 to (a) the OXDH Solution Detail; or (b) the Environments or the operation of the Solution, provided that such changes (i) do not incur additional fees to Client; and (ii) such changes are unlikely, in OXDH's reasonable assessment, to adversely affect the provision of the Solution in accordance with this Order.
- 20. Other Provisions.**
- 20.1. Notices.** All notices, consents and other communications under or regarding this Agreement shall be in writing and shall be deemed to have been received on the earlier of: (a) the date of actual receipt; (b) the third business day after being mailed by first class, certified or air mail; (c) the same day if delivered by hand; or (d) the first business day after being sent by a reputable overnight delivery service. Any notice may be given by facsimile, or email if notice by one of the foregoing is provided promptly thereafter. Client's address for notices is stated on the Order. OXDH's address for notices is stated on the Order. In the case of: (i) any notice by Client alleging a breach of this Agreement by OXDH; or (ii) a termination of this Agreement, Client shall also mail a written notice to OXDH, The Cow Shed, 19 Warf Road, Shillingford, Oxon, England, Attention: Chief Legal Officer and such notices shall identify the Order name (including the Solution being provided thereunder), date, specific parties and OXDH Order Number. Either party may change its address for notices by giving written notice of the new address to the other party.
- 20.2. Parties in Interest.**
- This Agreement shall bind, benefit and be enforceable by and against OXDH and Client and their respective permitted successors and assigns.
  - Client shall not assign this Agreement or any of its rights hereunder, nor delegate any of its obligations hereunder, without OXDH's prior written consent, except such consent shall not be required in the case of an assignment of this Agreement (but not of any individual rights or obligations hereunder) to: (i) a purchaser of or successor to substantially all of Client's business (unless such purchaser or successor is a software, data processing or computer services vendor that is a competitor of OXDH, its parent company or any of its Affiliates); or (ii) an Affiliate of Client, provided in the case of such an assignment, Client guarantees the obligations of the assignee and the use of the Solution is not broadened beyond the Scope of Use. Any assignment by Client in breach of this Section shall be void.
  - Any express assignment of this Agreement, any change in control of Client (or its Affiliate in the case of an assignment to that Affiliate under this Section 20.2 and any assignment by merger or otherwise by operation of law, shall constitute an assignment of this Agreement by Client for purposes of this Section 20.2 (“**Client Assignment**”).
- In the event of a Client Assignment, or any acquisition of additional business by Client, whether by asset acquisition, merger or otherwise by operation of law (collectively with the Client Assignment, “**Client Additional Business Acquisition**”), Client shall give notice to OXDH notifying OXDH if Client desires to use the Solution to process any additional business related to such Client Additional Business Acquisition (“**Acquired Business**”).
- 20.3. Export Laws.** Client acknowledges that the OXDH Solution Details and the services provided by OXDH hereunder and this Agreement are subject to the Export Laws. Client shall not violate the Export Laws or otherwise export, re-export or use, directly or indirectly (including via remote access), any part of the Solution, Confidential Information or services in a manner, or to or for any person or entity, for which a license or other authorization is required under the Export Laws without first obtaining such license or authorization.
- 20.4. Relationship.** The relationship between the parties created by this Agreement is that of independent contractors and not partners, joint ventures or agents.
- 20.5. Entire Understanding.** This Agreement, which includes and incorporates the Order, and any other schedules, exhibits and addenda hereto states the entire **understanding** between the parties with respect to its subject matter, and supersedes all prior proposals, marketing materials, negotiations, representations (whether negligently or innocently made), agreements and other written or oral communications between the parties with respect to the subject matter of this Agreement. In the event of a conflict between the provisions of the OST and an Order incorporating the OST, the terms of such Order shall prevail. Any written, printed or other materials which OXDH provides to Client that are not included in the Documentation are provided on an “as is” basis, without warranty, and solely as an accommodation to Client. In entering into this Agreement each party acknowledges and agrees that it has not relied on any express or implied representation, warranty, collateral contract or other assurance (whether negligently or innocently made), except those expressly set out in this Agreement. Each party waives all rights and remedies which, but for this Section 20.5, might otherwise be available to it in respect of any such representation (whether negligently or innocently made), warranty, collateral contract or other assurance. Nothing in this Agreement shall limit or exclude any liability for fraud or fraudulent misrepresentation.
- 20.6. Modification and Waiver.** No modification of this Agreement, and no waiver of any breach of this Agreement, shall be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. This Agreement may not be modified or amended by electronic means without **written** agreement of the parties with respect to formats and protocols. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement.
- 20.7. Severability, Heading and Counterparts.** A determination that any provision of this Agreement is invalid or unenforceable shall not affect the other provisions of this Agreement. Section headings are for convenience of reference only and shall not affect the interpretation of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
- 20.8. Personnel.** Client acknowledges that: (a) OXDH expends substantial time and money, on an ongoing basis, to recruit and train its senior programmers, trainers, data processing, client support and professional services team personnel (“OXDH Personnel”); (b) OXDH's business is highly competitive, is marketed throughout Europe and in many other locations worldwide, and requires long sales lead times often exceeding one (1) year; and (c) if Client were to hire OXDH Personnel, then OXDH may suffer lost sales opportunities and would incur substantial time and money in hiring and training replacement(s) for those OXDH Personnel. Accordingly, if Client, directly or through one or more subsidiaries or other controlled entities, solicits, entices away, or attempts to entice away from OXDH, any OXDH Personnel who has been directly working with the Client at any time when such

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OXDH Personnel is employed or engaged by OXDH or during the three (3) months after such employment or engagement ends, then Client shall pay to OXDH as liquidated damages (and not a penalty) an amount equal to twelve (12) months of such OXDH Personnel's salary and other compensation (including bonus or commission payments) at the time of leaving his/her employment or engagement with OXDH. This provision will remain in effect during the term of this Agreement and for a period of one (1) year after expiration or termination of this Agreement

**20.9. Certification.** OXDH may issue (but not more than once per annum), and Client will promptly complete and return to OXDH, requests certifying Client's current and past compliance with the Scope of Use and the Export Laws.

**20.10. Language.** It is the express wish of the parties that this Agreement and all related documents be drawn up in English.

**20.11. Jurisdiction and Governing Law.** The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement or its subject matter. If Client is, as of the Order Effective Date, headquartered inside the Americas, then only Section (a) below applies. If Client is, as of the Order Effective Date, headquartered in the European Economic Area, United Kingdom, Croatia and Switzerland then only Section (b) below applies.

- (a) This Agreement and any dispute or claim arising, directly or indirectly, out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by, and shall be construed and enforced in accordance with, the laws of England and Wales excluding choice of law. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute, controversy or claim arising, directly or indirectly, out of or in connection with this Agreement, or the breach, termination or validity thereof (including non-contractual disputes or claims). The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.
- (b) This Agreement and any dispute or claim arising, directly or indirectly, out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by, and shall be construed and enforced in accordance with, the laws of England and Wales excluding choice of law. Each party irrevocably agrees that the any dispute, controversy or claim arising, directly or indirectly, out of or in connection with this Agreement, or the breach, termination or validity thereof (including non-contractual disputes or claims), shall be referred to and finally resolved by the International Court of Arbitration of the International Chamber of Commerce under the Rules of Arbitration of the International Chamber of Commerce ("ICC") for the time being in force, which rules are deemed to be incorporated by reference in this Section. The location and seat of the arbitration shall be: (i) London if Client is headquartered in Europe, Middle East or Africa; and (ii) Singapore if Client is headquartered in Asia Pacific. There shall be one arbitrator. The arbitrator shall be agreed between the parties. Failing agreement, or if the arbitrator selected is unable or is unwilling to act, the appointing authority shall be the ICC. The arbitration proceedings shall be conducted in English. The decision of the arbitrator shall be final and binding upon both parties and shall be enforceable in any court of law. Each of the parties waives irrevocably their right to any form of appeal, review or recourse to any state court or other judicial authority, insofar as such waiver may be validly made. Notwithstanding anything to the contrary in this Agreement, either party may at any time seek an interim injunction or other interlocutory relief in a court of competent jurisdiction in order to protect any urgent interest of such party, including, but not limited to, the confidentiality provisions of this Agreement. The law governing the arbitration agreement contained in this Section, the arbitration, and the conduct and procedure of the arbitration, shall be the laws of England and Wales.