



Terms & Conditions



THIS AGREEMENT is between

(1) Landmark Technologies Ltd the “**Supplier**” and (2) the person, firm, company, organisation or entity specified on the Invoice “**Customer**” (together the “parties”).

BACKGROUND:

The Supplier is in the business of providing hardware and software support services and has agreed to provide those services to the Customer under the terms and subject to the conditions of this supply and services agreement (“**Agreement**”).

IT IS AGREED

1. INTERPRETATION

In this Agreement (which expression shall be deemed to include the Schedules hereto):

1.1 Unless there is something in the subject or context inconsistent therewith the following expressions shall have the following meanings:

Authorised Users – those employees and independent contractors of the Customer who are permitted to use the Services under this Agreement.

Business Day – any day which is not a Saturday, Sunday, a public holiday or Good Friday in the Republic of Ireland.

Confidential Information – information that is proprietary or confidential and is either clearly labeled as such or identified as “confidential information” under clause 10.

Customer’s Account Team – the individuals appointed by the Customer from time to time who shall serve as the Supplier’s primary contacts for the Supplier’s activities under this Agreement. The initial members of the Customer’s Account Team at the Effective Date are listed under Schedule 2.

Customer Data – the data inputted into the information fields of the Software by the Customer, by Authorised Users or by the Supplier on the Customer’s behalf.

Customer’s Project Manager – the member of the Customer Account Team appointed in accordance with clause 3.1. The Customer’s Project Manager at the Effective Date is named under Schedule 2.

Cloud Services – the cloud services that the Customer has ordered as more particularly set out under the Managed Services Catalogue and as may be amended from time to time with the prior written agreement of the parties.

Data Protection Law – shall mean the any EU Regulations or Directives on data protection or data privacy to include in particular the General Data Protection Regulation (Regulation (EU) 2016/679) with effect from 25 May 2018 as it may be amended or replaced from time to time.

Effective Date – shall mean the start date for the provision of the Services.

Environment – the Software, the Hardware and

the Network.

Fees – the fees payable to the Supplier, as more particularly described under Schedule 1.

Hardware – means all computer equipment (including Hardware Sales) used by the Customer within the Network and as may be amended from time to time with the prior written agreement of the parties.

Hardware Support – the hardware that the Customer has requested be maintained as more particularly described under the Managed Services Catalogue and as may be amended from time to time with the prior written agreement of the parties.

Hardware Sales – the hardware computer equipment that the Customer has ordered directly from the Supplier or which the Supplier has ordered on behalf of the Customer and which may include installation fees, training and other costs all as set out in the appropriate purchase order as agreed between the Supplier and the Customer.

Maintenance and Support – any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Environment, as more particularly described under the Managed Services Catalogue and as may be amended from time to time with the prior written agreement of the parties.

Network – means the physical and/or virtual computer system (being the Hardware and the Software) of the Customer as more particularly described under the Managed Services Catalogue and as may be amended from time to time with the prior written agreement of the parties and referenced on the Supplier’s CRM system.

Normal Business Hours – 9.00 am to 5.30 pm, each Business Day.

Service Levels – the service levels as set out under the Managed Services Catalogue.

Services – the Software Support, the Hardware Support and the Cloud Services all as more particularly set out in the Managed Services Catalogue and subject to the Service Levels and as may be amended from time to time with the prior written agreement of the parties.

Software – the software that the Customer has requested be provided by the Supplier under this Agreement as more particularly set out under the Managed Services Catalogue and/or as ordered from time to time in the appropriate purchase order as agreed between the Supplier and the Customer.

Software Support – the Software that the Customer has requested be maintained as more particularly described under the Managed Services Catalogue and as may be amended from time to time with the prior written agreement of the parties.

Supplier's Account Team – the individuals appointed by the Supplier from time to time who shall serve as the Customer's primary contacts for the purposes of the Services and for the Customer's activities under this Agreement. The initial members of the Supplier's Account Team as of the Effective Date are listed under Schedule 2.

Supplier's Project Manager – the member of the Supplier's Account Team appointed in accordance with clause 2.5. The Supplier's Project Manager at the Effective Date is listed under Schedule 2.

Virus – anything or device (including but not limited to any software, code, file or programme such as Ransomware, Trojan Horses, Worms and other Viruses and Malware) which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device.

1.2 A reference to writing or written includes e-mail.

2. SUPPLIER'S SERVICES AND STANDARDS

2.1 The Supplier will provide the Services using reasonable skill and care and in accordance with the best practice prevailing among comparable suppliers.

2.2 The Supplier will (and shall procure that its personnel, agents and/or subcontractors shall at all times when it is on the Customer's premises (i) carry out its duties with the minimum inconvenience and disruption to the Customer's operation; and (ii) obey all reasonable instructions given to it by the Customer's employees relating to health and safety matters; and (iii) comply with all security arrangements and conditions applicable at the Customer's premises.

2.3 The Supplier shall in the provision of the Services use personnel who possess a degree of skill and experience which is appropriate to the tasks to which they are allotted and the performance and service levels which they are required to achieve and who shall perform those tasks in a workmanlike and professional manner.

3. CUSTOMER'S ASSISTANCE

The Customer shall at its own expense:

- (a) Provide the Supplier with all necessary co-operation in relation to this Agreement;
- (b) Provide the Supplier with all necessary access to such information as may be required by the Supplier;
- (c) Provide the Supplier with such personnel assistance, including the Customer Account Team and other Customer personnel, as may be reasonably requested by the Supplier from time to time. The Customer shall appoint the Customer Account Team at the Effective Date;
- (d) Provide the Supplier with a Customer Project Manager, who shall have the authority to

contractually bind the Customer on all matters relating to this Agreement;

- (e) Ensure that it promptly executes all documents and does all acts and things reasonably required by the Supplier to give effect to the terms of this Agreement;
- (f) Complies with all applicable Data Protection Law and all other laws and regulations with respect to its activities under this Agreement; and
- (g) Carries out all other Customer responsibilities set out in this Agreement or in any of the Schedules in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any timetable or delivery schedule set out in this Agreement (or as otherwise agreed from time to time) as reasonably necessary.

4. THE NETWORK AND CLOUD SUPPORT

4.1 During the continuance of this Agreement the Customer shall:

- (a) ensure that proper environmental conditions are maintained for the Network and shall maintain in good condition the Hardware, the cables, fittings and accompanying electricity supply;
- (b) promptly notify the Supplier of any changes made by the Customer to the Network;
- (c) keep and operate the Network in a proper and prudent manner in accordance with the manufacturer's or the Supplier's operating instructions and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the Network;
- (d) ensure that the external surfaces of the Hardware are kept clean and in good condition and to carry out any minor maintenance recommended by the manufacturer or the Supplier from time to time as required for the proper and efficient operation of the Hardware;
- (e) save as noted above, not attempt to adjust, repair or maintain the Network and the Customer shall not request, permit or authorise any third party other than the Supplier or the manufacturer to carry out any adjustments, repairs or maintenance of the Network except for appropriate employees of the Customer where such adjustment, repair or maintenance is required to maintain the proper operation of the Network;

- (f) not use in conjunction with the Hardware any accessory, attachment or additional equipment other than that which has been supplied by or approved in writing by the Supplier/manufacturer;
- (g) upon reasonable notice, provide the Supplier with full and safe access to the Network for the purposes of this Agreement;
- (h) provide adequate working space around the Network for the use of the Supplier's personnel;
- (i) ensure in the interests of health and safety that the Supplier's personnel, while on the Customer's premises for the purposes of this Agreement, are at all times accompanied by a member of the Customer's staff familiar with the Customer's premises and safety procedures;
- (j) maintain adequate supplier services contracts in respect of the Network for the duration of this Agreement.
- 4.2 Hardware Sales shall be payable in accordance with clause 6 below.
- 4.3 Prior to the delivery date the Customer shall prepare the installation site ("Site") in accordance with any instructions provided by the Supplier. The Supplier reserves the right to charge the Customer (to include travel and expenses) for any work it may have to conduct to prepare the Site where:
- (a) The Customer fails to comply with the Supplier's reasonable directions in respect of the preparation of the Site;
- (b) Delays are caused which are out of the control of the Supplier, such as by third parties such as telecommunication companies or other third party providers;
- (c) The Customer postpones delivery on the date of delivery for whatever reason.
- 4.4 The charges referred to under clause 4.3 above, shall be calculated upon a time and materials basis at the Supplier's then prevailing rates.
- 4.5 Until the Hardware Sales have been paid in full by the Customer, title in the Hardware Sales shall not pass to the Customer, and until such time, the Customer shall maintain the Hardware Sales (as well as any Hardware that may be on loan to the Customer) in such a way that it can be identified as the property of the Supplier and shall not dispose of it without the Supplier's prior written consent.
- 4.6 In the event the Supplier loans Hardware to the Customer, the Supplier reserves the right to charge the Customer for the use of such equipment. In the event the Customer does not replace such loaned equipment with its own equipment within a reasonable period of time (which in any event shall not be longer than 4 weeks from the date of installation), the Supplier reserves the right to charge the Customer the replacement value of such equipment as well as any other reasonable charges for the installation and removal of the same.
- 4.7 The Customer shall not change, remove or obscure any labels, plates, insignia lettering or other markings which are on the Hardware Sales at the time of their installation.
- 4.8 Risk in the Hardware Sales shall pass to the Customer upon actual delivery, which for the avoidance of any doubt means that it is the Customer's sole responsibility to ensure that Hardware Sales are checked for errors and faults prior to acceptance by the Customer. If there are any problems or inaccuracies with any delivery the Customer must contact the Supplier within 24 hours to advise of the same and the Supplier will use its reasonable endeavours to assist the Customer in resolving any such issues with the provider.
- 4.9 With effect from the actual delivery date up to and including the final payment date, the Customer shall insure the Hardware Sales for their full replacement value with an approved insurance company and shall have the Supplier's interest endorsed on the insurance policy.
- 4.10 If any part of the Hardware Sales, or any Hardware that may be on loan to the Customer shall, after actual delivery be lost, destroyed or damaged, the Customer shall promptly pay the Supplier the cost of such replacement(s) as well as the Supplier's reasonable costs in dealing with the same.
- 4.11 The Supplier shall not be liable for the non-performance of Hardware or Software where in its opinion the non-performance was caused by the use of consumable items not supplied by the Supplier.
- 4.12 If the Supplier connects the Network to any telecommunications system the Customer shall be responsible for obtaining the consent of the owner of that system and for complying with all conditions relating to the same.
- 4.13 Where any data transmission speeds are given by the Supplier in relation to the Network such speeds are at all times subject to any conditions attached to the use of the relevant telecommunication equipment at the speeds indicated and to the capability of such modem or other telecommunication equipment to achieve such speeds. In addition, the Supplier is not responsible for the Customer's network connections or for conditions arising from or related to the Customer's network connections (band width issues, excessive latency, network outages) or caused by the internet.
- 4.14 The Supplier will access the Network to perform remote support and to provide the Services and the Customer hereby provides permission for the same.

5. CUSTOMER DATA AND DATA PROTECTION

- 5.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2 Each party shall take all appropriate technical and organisational measures against unauthorised or unlawful processing of the Customer Data or its accidental loss, destruction or damage.
- 5.3 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement it shall comply with the provisions of Schedule 3 to this Agreement.

6. CHARGES AND PAYMENT

- 6.1 The Customer shall pay the Fees in the amounts and in the manner set out in the Managed Services Proposal for the provision of the Services.
- 6.2 All amounts and fees stated or referred to in this Agreement are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the then appropriate rate.
- 6.3 Each invoice is due and payable upon receipt, with the exception of invoices that are payable by direct debit when invoices are due 14 days from the date of the invoice.
- 6.4 If the Supplier has not received payment by the due date, and without prejudice to any other rights and remedies of the Supplier, the Supplier shall be under no obligation to provide the Services while the invoice(s) concerned remain unpaid, and, interest shall accrue on such due amounts at an annual rate equal to 4% above the base rate of Bank of Ireland, commencing on the due date and continuing until fully paid, whether before or after judgement.
- 6.5 If the Customer cancels any order for Hardware and/or Software the Customer:
- (a) shall be responsible for payment of any re- stocking fee and/or delivery costs levied by the distributor/seller;
 - (b) shall be responsible for payment in full of the order in the event that the sale was considered "final" by the distributor/seller;
 - (c) shall be responsible for any reasonable costs incurred by the Supplier in dealing with the cancellation of the order which in any event shall be no more than 25% of the purchase price for the goods at the time the order was placed.
- 6.6 If the Supplier is prevented or delayed from performing its obligations under this Agreement by reason of any act or omission of the Customer (other than a delay by the Customer for which the

Customer is excused under clause 15) then the Customer will pay to the Supplier all reasonable costs charges and losses sustained or incurred by the Supplier as a result (including without limitation the cost of storage and insurance of the Equipment). The Supplier shall promptly notify the Customer in writing of any claim which it may have under this clause giving such particulars as it is then able to provide.

7. WARRANTIES

- 7.1 Each party hereby represents and warrants to and undertake with the other in relation to itself that it is a company duly incorporated and validly existing under the laws of Ireland and that it has the legal right and full power and authority to execute and deliver, and to exercise their rights (including without limitation all rights in relation to licensing of Software etc.) and perform their obligations under this Agreement.
- 7.2 The Supplier does not control the transfer of data over communications facilities, including the internet, and the Services may be subject to limitations and delays and other problems inherent in the use of such communications facilities and the Supplier cannot and does not warrant that the Customer's use of the Hardware and/or the Software will be uninterrupted or error- free.
- 7.3 Copyright subsists in all Software and all related documentation (whether printed or stored electronically) and whether it is the Supplier's proprietary Software or Software supplied by the Supplier under licence. All Software (and related documentation) is supplied to the Customer only under the terms and conditions of the applicable licence agreement (whether this has been completed and returned to the Supplier or the third party licensor or not). No part of any Software may be copied, reproduced or utilised in any form by any means without the prior approval of the Supplier. Title or ownership to the Software does not transfer to the Customer under any circumstances and it is the sole responsibility of the Customer to comply with all the terms and conditions of the any licence agreement and the Customer is hereby notified that any failure to comply with such terms and conditions may result in the revocation of its licence to use the Software.
- 7.4 In addition, the Supplier is the installer and not the author of any anti-virus software (or indeed, any other Software) that may be installed on the Network and cannot be held responsible for the failure of the same, which shall be the sole responsibility of the provider of the Software.
- 7.5 The Supplier does not warrant that the Hardware Sales and/or the Software will achieve any particular performance criteria unless the Supplier has specifically stated such criteria in writing subject to specified tolerances and the environmental conditions specified by the Supplier and/or the manufacturer are maintained.
- 7.6 Except as expressly provided in this Agreement no warranty condition undertaking or term express or implied statutory or otherwise as to the condition quality performance merchantability durability or fitness for purpose of the Hardware Sales and/or

the Software is given or assumed by the Supplier and all such warranties conditions undertakings and terms are hereby excluded.

8. MEETINGS AND CHANGE CONTROL

8.1 The Customer's Project Manager and the Supplier's Project Manager shall meet at times to be agreed in order to discuss matters relating to this Agreement.

8.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Fees arising from the change; and
- (c) any other impact of the change on the terms of this Agreement.

8.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to its charges and any other relevant terms to take account of the change.

9. NON SOLICITATION

While this Agreement is in force and for a period of 12 months from its termination for any reason, the Customer shall not actively solicit or canvass the employment of any person employed by or acting on behalf of the Supplier who was assigned to work on the Network in the preceding 12 month period. If the Customer is in breach of this condition, the Customer (recognizing that the Supplier will suffer damage) will pay to the Supplier by way of liquidated damages and not by way of penalty a sum equal to the gross annual sum paid to that person as a salary or for services by the Supplier in the immediately preceding 18 month period.

10. CONFIDENTIALITY

10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement (which, for the avoidance of any doubt will include IT reviews etc provided to the Customer by the Supplier once marked by the Supplier as being "Confidential Information"). A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party; or
- (b) was in the other party's lawful possession before the disclosure; or
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
- (d) is independently developed by the

receiving party, which independent development can be shown by written evidence; or

- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

10.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

10.5 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

10.6 This clause 10 shall survive termination of this Agreement, however arising.

11. INDEMNITY

11.1 The Supplier shall indemnify the Customer against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services, provided:

- (a) the Supplier is given prompt notice of any such claim;
- (b) the Customer provides reasonable co- operation to the Customer in the defence and settlement of such claim, at the Supplier's expense; and
- (c) the Supplier is given sole authority to defend or settle the claim.

12. LIMITATION OF LIABILITY

12.1 This clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub- contractors) to the Customer in respect of:

- (a) any breach of this Agreement;
- (b) any use made by the Customer of the Services,
- (c) the Hardware Sales; and
- (d) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

12.2 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the

Customer by the Supplier in connection with the provision of the Services, or any actions taken by the Supplier at the Customer's direction or in respect of Hardware Sales; and

- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.

12.3 Nothing in this Agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

12.4 Subject to clause 12.3 above, the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, data, loss of business, depletion of goodwill and/or similar losses or loss of or corruption of data or information to include by way of a Virus, or pure economic loss, or for any special, indirect or consequential loss costs, damages, charges or expenses however arising under this Agreement.

12.5 The Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to a refund of Fees paid in the previous 12 months of the Agreement prior to any claim being made.

13. TERM AND TERMINATION

13.1 This Agreement and the provision of the Services shall commence on the Effective Date and shall continue for the period(s) as set out under clause 4 of Schedule 1.

13.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement if:

- (a) The Supplier fails to fulfil in any material respect its obligations under this Agreement and does not cure such failure within thirty (30) days of receipt of such written notice from the Customer.
- (b) the other party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach; or
- (c) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
- (d) an order is made for the appointment of an

examiner or other like officer to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction or formal steps are taken for the appointment of a liquidator of the other party; or

- (e) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or

- (f) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

- (g) the other party ceases, or threatens to cease, to trade; or

- (h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

13.3 On termination of this Agreement for any reason:

- (a) all licenses granted under this Agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party.
- (c) where assets of the Supplier used in the provision of the Services are located on the Customer's premises the Customer will promptly grant all necessary rights of access to enable the Supplier to remove such assets in a reasonable time (which in any event shall not be longer than 7 days);
- (d) the Supplier may destroy or otherwise dispose of any of the Customer Data (or any Hardware and/or Software the Supplier may be storing on behalf of the Customer) in its possession unless the Supplier receives, no later than three Business Days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of such items. The Supplier shall then use reasonable commercial endeavours to deliver the items to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay in advance all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- (e) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

14. DISPUTE RESOLUTION PROCEDURE

14.1 Either party may call an extraordinary meeting of the parties by service of not less than 5 days' written notice and each party agrees to procure that the Customer's

Project Manager and Supplier's Project Manager shall attend all extraordinary meetings called in accordance with this Clause.

- 14.2 The members of the relevant meeting shall use their best endeavours to resolve disputes arising out of this Agreement. If any dispute referred to a meeting is not resolved at that meeting then either party, by notice in writing to the other, may refer the dispute to senior officers of the two parties who shall co-operate in good faith to resolve the dispute as amicably as possible within 14 days of service of such notice. If the senior officers fail to resolve the dispute in the allotted time, then EITHER the Dispute Resolution Procedure shall be deemed exhausted OR the parties shall, within that period, on the written request of either party enter into an alternative Dispute Resolution Procedure with the assistance of a mediator agreed by the parties or, in default of such Agreement within seven days of receipt of such request, appointed, at the request of either party, by the Centre for Dispute Resolution or such other similar body as is agreed.
- 14.3 The parties shall then submit to the supervision of the mediation by the Centre for Dispute Resolution or similar body for the exchange of relevant information and for setting the date for negotiations to begin.
- 14.4 Recourse to this Dispute Resolution Procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly, all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until 21 days after the parties have failed to reach a binding settlement by mediation (at which point the Dispute Resolution Procedure shall be deemed to be exhausted).
- 14.5 If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be reduced to writing and, once signed by the duly authorised representative of each of the parties, shall remain binding on the parties.
- 14.6 The parties shall bear their own legal costs of this Dispute Resolution Procedure, but the costs and expenses of mediation shall be borne by the parties equally.
- 14.7 While the Dispute Resolution Procedure referred to in this clause 14 is in progress and any party has an obligation to make a payment to another party or to allow a credit in respect of such payment, the sum relating to the matter in dispute shall be paid into an interest bearing deposit account to be held in the names of the relevant parties at a clearing bank and such payment shall be a good discharge of the parties' payment obligations under this Agreement. Following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the

interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

15. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (involving the workforce of the Supplier), failure of a utility service or telecommunications network necessary for the operation of the Hardware, act of God, war, riot, pandemic, flood, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm provided that the Customer is notified of such an event and its expected duration.

16. WAIVER

A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

17. SEVERANCE

- 17.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18. ENTIRE AGREEMENT

- 18.1 This Agreement, and any documents referred to in it, constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter they cover.
- 18.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

19. ASSIGNMENT AND SUB-CONTRACTING

- 19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 19.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 19.3 The Supplier may perform any or all of its obligations under this Agreement through agents

or sub-contractors, provided that the Supplier shall remain liable for such performance.

20. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any.

21. NOTICES

- 21.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by email to the other party's email address as notified to each other.
- 21.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid, certified or registered post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

22. GOVERNING LAW AND JURISDICTION

- 22.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of the Republic of Ireland.
- 22.2 The parties irrevocably agree that the courts of the Republic of Ireland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1**Fees, Users, Charges, and Duration of Agreement****1. FEES**

- 1.1 The Fees are to be invoiced one month in advance of the Effective Date of the Services and shall be payable by monthly Direct Debit on the 14th or next working day of the month the invoice is issued in.
- 1.2 In the event that the Supplier reasonably expects that the actual cost will exceed the amounts specified, any work to be completed in additional man-days shall first be approved in writing by both the Supplier and the Customer and shall be charged at the rates set out below.
- 1.3 The Supplier reserves the right to increase the Fees provided that (i) such Fees may not be increased more than one time per annum and (ii) such increase may not exceed five percent (5%) over the prior year's fees, and, (iii) any such increase may not be applied within the Initial Term (as defined on Page 1)

2. ADDITIONAL AUTHORISED USERS

- 2.1 The Customer shall have the ability to create and grant access to additional individual Authorised Users.
- 2.2 Any additional Authorised Users requested by the Customer shall be requested in writing. The Supplier shall evaluate such requests and respond to the Customer with approval or disapproval of the request, together with a quote for any additional set-up or ongoing costs to the Customer for creating and granting access to such additional Authorised Users. On the Customer's acceptance of such approval and quotation, the Supplier shall provide access based on a mutually agreeable schedule.

3. CHARGES

3.1 Out of Normal Hours Charges

All work undertaken by the Supplier out of Normal Working Hours shall be considered as overtime and shall be charged as per clause 3.2 below.

3.2 Additional Charges

All project or consultancy activities beyond the scope of clause 1.1 above may be requested by the Customer and agreed with the Supplier under the terms of clause 8 of the Agreement (being, Change Control).

All project or consultancy will be equated to 7.5 hours (1-person day) excluding expenses during Normal Business Hours, as further detailed below:

Resource Role - Professional Services	Chargeable Rate
CTO / Director Level / Enterprise Technical Consultant	€ 950 per 7.5hr day
Senior Technical Consultant	€ 850 per 7.5hr day
Technical Consultant	€ 750 per 7.5hr day
<p>Professional Services</p> <ul style="list-style-type: none"> - All consultancy is equated to 7.5 hours (1-person day) - Work will be completed off site and on site as necessary - All time required will be billed - Min. Charge .5 day - Excluding expenses - During Normal Business Hours, as further detailed below: <p>NOTE:</p> <ol style="list-style-type: none"> 1. Normal business hours are Monday-Friday (9:00am - 5:30pm). Excluding Public & Bank Holidays. 2. Normal Working Day for the Professional Services Team is 7.5 hours per day. (any hours thereafter are considered out of hours and an overtime rate is applicable). 3. The minimum charge is .5 day 4. Notwithstanding the above, for all hours over 7.5 consecutive hours the min overtime rate applies. 	
* From 6pm to 8am on normal working day	2 x Daily/Hourly Rate
* All other weekend times and/or Irish national holidays (incl. Good Friday)	

4. DURATION AND TERMINATION OF THE AGREEMENT

The term of this Agreement shall commence on the Effective Date and shall continue for the Initial Term and shall thereafter automatically renew for successive 12 month periods unless a party provides to the other party written notification of non-renewal at least three months' notice prior to the expiration of the then current term.

Notification of non-renewal by the Customer shall be sent by email to customerservice@landmark.ie and shall state the Customer's name, the applicable purchase order and the proposed date of termination.

Schedule 2

Personnel

1. SUPPLIER PERSONNEL

1.1 The Supplier’s Account Team shall be as follows:

Account Manager	vCIO	Supplier Project Manager
Ken Kelleher	Ken Kelleher	Jason Moore (Operations Manger)
		Chris O'Reilly (Service Delivery Manager)

2. CUSTOMER PERSONNEL

2.1 The Customer’s Account Team shall be as follows:

Executive Sponsor	Project Representative	Customer Project Manager	Support Representative(s)
All staff or as notified by Customer.	All staff or as notified by Customer.	All staff or as notified by Customer.	All staff or as notified by Customer.

**Schedule 3
Data Protection**

- 1.1 The Supplier shall use best industry practice to preserve the integrity of all data, material and information provided to the Supplier, or made available to the Supplier by the Customer or on behalf of the Customer by a third party in connection with the supply of the Services (the "Data").
- 1.2 In respect of the Data:
- 1.2.1 the Intellectual Property Rights in the Data shall remain the property of the Customer, its licensors or the relevant third party;
 - 1.2.2 the Supplier shall use the Data solely to the extent necessary for the supply of the Services; and
 - 1.2.3 the Supplier shall comply with all written reasonable directions issued by the Customer from time to time relating to the use of the Data in connection with the supply of the Services.
- 1.3 The Supplier acknowledges that in providing Services under this Agreement, the Supplier may process personal data within the meaning of the Data Protection Law on behalf of the Customer. In such circumstances, the Supplier acknowledges that the Customer is the data controller and the Supplier is the data processor, as each term is defined under Data Protection Law and the Supplier agrees that:
- 1.3.1 it will only process such personal data in accordance with the documented instructions of the Customer, including with regard to transfers of personal data to a third country and solely as strictly necessary for the performance of its obligations under this Agreement;
 - 1.3.2 it shall ensure that the persons authorised by the Supplier to process such personal data are bound by appropriate confidentiality obligations;
 - 1.3.3 it shall implement such technical and organisational security measures as are required to comply with data security obligations under the Data Protection Law;
 - 1.3.4 where any sub-contractor of the Supplier will be processing such personal data on behalf of the Customer, the Supplier shall ensure that a written contract exists between the Supplier and the sub-contractor containing provisions at least equivalent to those imposed on the Supplier in this Schedule. In the event that any sub-processor fails to meet its data protection obligations, the Supplier shall remain liable to the Customer for the performance of the sub-processors obligations;
 - 1.3.5 it shall inform the Customer within three (3) business days of receiving a request from a data subject to exercise their rights under the Data Protection Law and promptly provide such co-operation and assistance as may be required to enable the Customer to deal with such request in accordance with the provisions of the Data Protection Law;
 - 1.3.6 it shall assist the Customer in ensuring compliance with its obligations in respect of security of personal data under the Data Protection Law;
 - 1.3.7 it shall: (i) at the choice of the Customer, delete or return all such personal data to the Customer when the Supplier ceases to provide service relating to data processing; and (ii) save as required by Applicable Law, delete all existing copies of such personal data unless EU law or the laws of an EU Member State require storage of the personal data;
 - 1.3.8 it shall: (i) make available to the Customer all information reasonably necessary to demonstrate compliance with the obligations laid down in this Schedule; and (ii) allow for and assist with a reasonable number of audits, including inspections, conducted by the Customer or another auditor mandated by the Customer, including its data security obligations under the Data Protection Law (all on the provision of reasonable written notice) provided however that the Customer shall be entitled, at its discretion, to accept adherence by Supplier to an approved code of conduct or an approved certification mechanism to aid demonstration by Supplier that it is compliant with the provisions of this Schedule 3.
 - 1.3.9 it shall notify the Customer without undue delay after becoming aware of any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed and provide the Customer with such co-operation and assistance as may be required to promptly mitigate against the effects of, and promptly comply with any reporting obligations which may apply in respect of, any such breach; and
 - 1.3.10 no such personal data shall be transferred outside of the European Economic Area ("EEA") by the Supplier or any of its agents or sub-processors without the prior written consent of the Customer.
- 1.4 In the event that transfers of data outside of the EEA have been permitted by the Customer under clause 1.3.10 and the mechanism that is used to facilitate those transfers under the Data Protection Law is declared invalid by any relevant authority, the Supplier shall cease such transfers and work with the Customer to put in place an alternative mechanism.

1.5 The processing of Data by the Supplier under this Agreement shall be in respect of the following categories:

•**Subject Matter:** The subject matter of the processing of the Data shall relate to the Supplier's provision of the Services.

•**Nature and Purpose:** The nature and purpose of the processing shall relate to the holding of Customer contact information and VAT numbers as well as end user details of the Customer all held within Customer servers incidental to solving software issues. No sensitive personal data is intentionally collected or processed.

•**Duration of Processing:** The processing of the Data shall be for the term of this Agreement, and for the purpose of and only to the extent required to provide the Services, provided that such Data shall not be processed for longer than is necessary for the purpose for which it was collected or is being processed (except where a statutory exception applies).

•**Data Subjects:** The data subjects shall include employees of the Supplier and sub-contractors (as applicable), as well as employees and the end users of the Customer.

1.6 The Supplier may process the following types and categories of Data:

- (a) contact information - subject email addresses, subject name, subject title and related attributes required to send an email
- (b) location information - subject location
- (c) reporting information - analytics and other reporting data which provides aggregated information from the system
- (d) system security information - other information critical to the secure fulfilment of the Services (including IP address data for access validation, password information for user authentication, and other security data elements)

1.7 The Customer may, from time to time, make reasonable requests for amendments to this Schedule 3 by written notice to the Supplier as the parties reasonably consider necessary to reflect the nature of the Services and as required to comply with all applicable Data Protection Laws in force from time to time.