

These terms and conditions and the documents referenced in them apply to the relationship between NEC Aspire (as defined below) and you, our Customer. By placing an order for our Software and/or our Services, you are agreeing to these terms as of the date you place your order or the date you receive or utilise our Software and/or Services. Please read them carefully.

If you do not accept these Terms, you must not access, download, install, use, or receive the Software or Services.

## 1. SUPPLY OF SERVICES

1.1 NEC Aspire warrants that during the term of the Contract:

- a) it shall use reasonable endeavours to supply the Services to the Customer, with due care, skill and diligence;
- b) except as provided for in this clause and clause 1.7 below, NEC Aspire will not materially decrease the overall level of functionality applied by it in respect of the Services from that set out in the Proposal.

1.2 NEC Aspire will use all reasonable endeavours to ensure that the Services are provided to the Customer in accordance with the SOW and any applicable SLA agreed between the parties. In the event that any service credits are specified in the SLA, these shall be the sole and exclusive remedy of the Customer for breach of any agreed service levels specified in such SLA.

1.3 Other than as set out in these Terms, all warranties, conditions, terms, undertakings or obligations whether express or implied and including any implied terms relating to quality, fitness for any particular purpose or ability to achieve a particular result are excluded to the fullest extent allowed by applicable law.

1.4 The Services are provided to the Customer for the Customer's own internal business purposes only. The Customer shall not re-sell the Services to any third party for money or money's worth or otherwise provide use of the Services to anyone else unless otherwise agreed between the Parties.

1.5 The Services may contain features designed to interoperate with applications or processes provided by third parties. NEC Aspire cannot guarantee the continued availability of such Services features. The Customer acknowledges that NEC Aspire shall not be in breach of any obligation arising due to the provider of such an application or process ceasing to make it available for interoperation with the corresponding Services features in a manner acceptable to NEC Aspire.

1.6 NEC Aspire may modify any feature or functionality of the Services at any time. NEC Aspire shall provide the Customer with commercially reasonable advance notice, via email, of deprecation of a material feature that affects the Customer. To the extent such modification results in a material reduction of overall functionality without a comparable replacement, the Customer may elect to terminate the Contract by providing notice to NEC Aspire within 30 days of such material reduction.

## 2. END USERS

2.1 The Customer shall:

- a) be liable for the acts and omissions of the End Users as if they were its own;

- b) only provide End Users with access to the Services via the access method provided by NEC Aspire and shall not provide access to (or permit access by) anyone other than an End User; and
- c) ensure that each End User is aware of, and complies with, the obligations and restrictions imposed on the Customer under the Contract, including all obligations and restrictions relating to NEC Aspire's Confidential Information.

2.2 The Customer shall ensure all End Users shall at all times comply with the provisions of the Contract.

## 3. CUSTOMER'S OBLIGATIONS

3.1 The Customer will maintain adequate insurance cover in respect of any loss, corruption, or damage to the Customer Materials.

3.2 The Customer shall:

- a) co-operate with NEC Aspire in all matters relating to the Services;
- b) at all times during the term maintain its hardware and Customer Systems used in connection with the Services in good order and working condition;
- c) provide NEC Aspire, its employees, agents, consultants and subcontractors, with access to the Customer Systems, Customer's premises, office accommodation and other facilities as reasonably required by NEC Aspire;
- d) use all reasonable endeavours to carry out NEC Aspire's reasonable instructions in relation to the Services;
- e) provide NEC Aspire with such information and materials as NEC Aspire may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; and
- f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

3.3 If NEC Aspire's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any of its obligations or responsibilities under the Contract (Customer Default):

- a) without limiting or affecting any other right or remedy available to it, NEC Aspire shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve NEC Aspire from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays NEC Aspire's performance of any of its obligations;
- b) NEC Aspire shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from NEC Aspire's failure or delay to perform any of its obligations; and
- c) the Customer shall reimburse NEC Aspire on written demand for any costs or losses sustained or incurred by NEC Aspire arising directly or indirectly from the Customer Default.

3.4 The Customer shall comply (and shall ensure all End Users comply) with all applicable laws, rules, and regulations governing export that apply to the Services, and shall not export or re-export, directly or indirectly, separately or as a part of a system, the Services, (or any part) to, or access or use the

Services, (or any part) in, any country or territory for which an export licence or other approval is required under the laws of Ireland, the United Kingdom, the United States, the European Union or any of its member states, without first obtaining such licence or other approval. Without prejudice to NEC Aspire's obligations under the Data Processing Schedule, the Customer shall be solely responsible for ensuring its access, importation and use of the Services complies with all export and other laws.

3.5 Customer will not:

- (a) make any Services or any Software available to anyone other than the End Users;
- (b) interfere with, impair or disrupt the Services;
- (c) modify, copy, or create derivative works based on the Services or any part, feature, function or user interface of the Services; or
- (d) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile any Software.

3.6 Except where specified in the SOW as being comprised within the Services, the Customer is solely responsible for taking its own steps to maintain appropriate security (including maintaining reasonable information security practices) for the protection and backup of Customer Material.

3.7 The Customer accepts that where the scope of Services as detailed in the Proposal and/or SOW changes before or during the delivery of the Services, NEC Aspire will implement a change request to update the Proposal and/or SOW which may include changes to the agreed Charges.

#### 4. SOFTWARE

4.1 Unless detailed otherwise in the SOW, NEC Aspire grants to the Customer a limited non-exclusive, non-transferable, non-assignable, non-sub-licensable licence to use the Software (not including any Third Party Product, or Open Source Software) for the term of the Contract solely in connection with the Customer's use of the Services and strictly in accordance with the Contract.

4.2 The Customer acknowledges that the Software may contain Open Source Software. To the extent required by the licences covering Open Source Software, the terms of such licences will apply in lieu of 4.1 above with respect to that component of the Software.

4.3 Where necessary, the parties shall agree acceptance testing including acceptance testing criteria and test data and include in the SOW. Where included in the SOW, the acceptance tests performed by the Customer shall determine whether the Software, in all material respects, operates in accordance with, and conforms to, the specification as set out in the SOW or other relevant document. The date upon which the Customer accepts the Software shall be the Software Acceptance Date. In any case, if the Customer uses the Software in a production environment or in live mode for productive use, it shall be deemed to have accepted the Software.

4.4 The Customer shall not, without NEC Aspire's prior written consent:

- (a) Modify, translate, reverse engineer, decompile or disassemble the Software;
- (b) Create derivative works based upon the Software or any associated documentation;

- (c) Alter, destroy or otherwise remove any proprietary notices or labels on or embedded within the Software; or
- (d) Show or demonstrate the Software to a competitor of NEC Aspire.

#### 5. THIRD PARTY PRODUCTS

5.1 Third Party Products shall not be deemed to be incorporated within the Services. Use of each Third Party Product shall be subject to the applicable Third Party Terms provided by NEC Aspire (or the Third Party Product Provider) to the Customer and as may be supplemented or amended from time to time. The Customer shall at all times comply with the Third Party Terms and any specific terms which NEC Aspire may be required to pass onto the Customer. The Customer agrees to co-operate with any compliance review required by any Third Party Product Provider. To the extent that there is any conflict in respect of any Third Party Product between the Third Party Terms and these Terms, the Third Party Terms shall prevail.

5.2 The Customer authorises NEC Aspire to accept on its behalf any Third Party Terms in respect of any Third Party Products which are used or provided by NEC Aspire for the benefit of the Customer as part of the Services, including when supporting, maintaining, configuring, installing or upgrading Third Party Products as part of the Services.

5.3 The Customer enters into the Third Party Terms for its own benefit and the rights and obligations and other terms of the Third Party Terms are between the Customer and the relevant Third Party Product Provider. The Customer acknowledges and agrees that the Third Party Product Provider and the Customer will deal with each other in respect of any loss or damage suffered by either of them in relation to the Third Party Product. NEC Aspire will not be liable or responsible for such loss or damage.

5.4 Unless agreed otherwise between NEC Aspire and the Customer:

- (a) any processing of personal data by or in connection with the use of a Third Party Product will be subject to the Third Party Terms (not the Data Processing Schedule below), and the Third Party Product Provider shall be the 'data processor' of the Customer in respect of such processing; and
- (b) NEC Aspire will not be liable for such processing of personal data, including any claim arising out of or in connection with a failure by the Third Party Product Provider to comply with the Third Party Terms or any data protection legislation, and claims in respect of the same will be made directly between the Customer and the Third Party Product Provider.

5.5 If the SOW/SLA provides that NEC Aspire will provide support in relation to any Third Party Product and/or Third Party Service, the obligations of NEC Aspire under the SOW/SLA in relation to the provision of this support will be conditional on the agreement of the Third Party Supplier to NEC Aspire providing the said support. In the event that the Third Party Supplier withdraws its agreement to NEC Aspire providing the support as detailed in the SOW/SLA, then NEC Aspire's obligations under the SOW/SLA will terminate as they relate to such support without any liability arising on the part of NEC Aspire.

5.6 The Customer acknowledges that any Third Party Product Provider or NEC Aspire may at any time, and without notice, incorporate licence management features into the Third Party

Product for the purposes of ensuring that licence rights and allocation are not exceeded.

## 6. CHARGES AND PAYMENT

6.1 The Customer shall pay the Charges in accordance with the Proposal and/or SOW and this clause 6. Unless otherwise stated in the Proposal/SOW, the Charges may be invoiced at any time from the Start Date and all invoices issued in respect of the Charges must be paid by the Customer within 30 days.

6.2 Unless otherwise agreed between the Parties and included in the Proposal or SOW, the Charges shall increase on an annual basis with effect from each anniversary of the Start Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period. The first such increase shall take effect on the first anniversary of Start Date and shall be based on the latest available figure for the percentage increase in the Consumer Prices Index.

6.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by NEC Aspire to the Customer, the Customer shall, on receipt of a valid VAT invoice from NEC Aspire, pay to NEC Aspire such additional amounts in respect of VAT as are chargeable on the supply at the same time as payment is due for the supply of the Services.

6.4 If the Customer fails to make a payment due to NEC Aspire under the Contract by the due date, then, without limiting NEC Aspire's remedies under these Terms, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, as provided under the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (S.I. No. 580 of 2012).

6.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) and the Software shall be owned by NEC Aspire and its licensors.

7.2 NEC Aspire or its licensors remain the owners of the Software at all times.

7.3 The Third Party Product Providers remain the owners of the Third Party Product at all times.

7.4 The Customer grants NEC Aspire a fully paid-up, non-exclusive, royalty-free, fully transferable and sub-licensable licence to use, copy and modify the Customer Materials for the purpose of providing the Services to the Customer. The Customer must ensure that all software (including applications) comprised within the Customer Materials is legally licensed for use by it and by NEC Aspire in the performance of the Services.

7.5 The Customer agrees that NEC Aspire may publicly disclose that NEC Aspire is providing Services to the Customer and may use its name and logo to identify the Customer as NEC Aspire's customer in promotional materials, including press releases. NEC Aspire will not without the Customer's

consent use such name or logo in a manner that suggests an endorsement or affiliation.

7.6 If NEC Aspire reasonably believes the Services are reasonably likely to infringe a third party's Intellectual Property Rights, then NEC Aspire may, at its sole option and expense:

- (a) procure the right for the Customer to continue using the Services;
- (b) modify the Services to make them non-infringing without materially reducing their functionality; or
- (c) replace the Services with a substantially similar alternative.

If NEC Aspire considers such remedies not to be reasonably practicable or not commercially reasonable, then NEC Aspire may suspend or terminate the Customer's use of the impacted Services.

7.7 NEC Aspire may agree to indemnify the Customer against claims alleging that the Software supplied under this Contract infringe third party Intellectual Property Rights on the condition that:

- a) Such claim is promptly notified to NEC Aspire;
- b) NEC Aspire is given full control of the defence against the claim including any settlement negotiations;
- c) The Customer does not do anything which may prejudice NEC Aspire's defence or settlement of the claim;
- d) The Customer provides NEC Aspire with all information and assistance reasonably required by NEC Aspire to defend or settle the claim.

7.8 NEC Aspire will not accept liability for any IPR infringement by NEC Aspire Software relating to any claims based wholly or partially on:

- a) Customer's own or any third party's products;
- b) Use or combination of NEC Aspire Software with Customer's own or any third party's products;
- c) Modification of the NEC Aspire Software without prior written authorisation of NEC Aspire; and
- d) Customer's use of NEC Aspire's Software contrary to NEC Aspire's instructions.

7.9 NEC Aspire retains the right to modify or replace infringing Software with non-infringing products at NEC Aspire's option.

## 8. CUSTOMER INDEMNITY

8.1 The Customer shall defend, indemnify and hold harmless NEC Aspire against claims, actions, proceedings, losses, damages, expenses and costs (including court costs and reasonable legal fees) arising out of or in connection with:

- (a) any breach by the Customer of the Contract;
- (b) any misuse of the Services; or
- (c) the Customer's use of the Services otherwise than in accordance with the Contract.

## 9. STAFF AND PERSONNEL

9.1 Where any part of the Services is to be provided at the Customer's premises, the Customer shall ensure that NEC Aspire's staff and contractors have a safe place to work, and the Customer shall notify NEC Aspire of any health and safety rules which apply to the Customer's premises. NEC Aspire will use NEC Aspire's reasonable endeavours to ensure that NEC Aspire's staff and contractors comply with such rules when working on the Customer's premises.

9.2 The Customer shall indemnify NEC Aspire in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by NEC Aspire including all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) anything done or omitted to be done in respect of any of the Customer's employees which is deemed to have been done by NEC Aspire by virtue of TUPE; and
- (b) any claim made at any time by any employee of the Customer (or any supplier of the Customer) who claims to have become an employee of or have rights against NEC Aspire by virtue of TUPE.

9.3 Subject to clause 1.1, NEC Aspire reserves the right to replace and/or rotate personnel delivering the Services to the Customer. Prior to the replacement of any such personnel, NEC Aspire shall give such notice to the Customer as is reasonable in all the circumstances.

## 10. SERVICE SUSPENSION

10.1 By giving reasonable notice to the Customer, or if this is not practicable, such notice as is reasonably practicable in the circumstances, NEC Aspire may suspend the Services (or any part of the Services):

- (a) If NEC Aspire has a reasonable belief that an interruption is necessary to prevent fraud or any other unlawful, illicit or illegal activity taking place;
- (b) due to problems caused by any denial-of-service attack or an intentional attack against the NEC Aspire systems used to provide the Services, designed to overwhelm the capacity of those systems in order to deny or impede users from gaining access to it through the internet. For the avoidance of doubt, the duration of such suspension shall not be included in any calculation of 'unavailability', 'downtime' or similar in any SLA; or
- (c) if NEC Aspire has reasonable grounds to believe that the Customer is in breach of the Customer's obligations (including the Customer's obligation to pay Charges), and the Customer either fails to remedy that breach or fails to demonstrate to NEC Aspire's reasonable satisfaction that no breach took place within 5 Business Days of written notice from NEC Aspire of the suspected breach.

## 11. DATA PROTECTION AND DATA PROCESSING

The parties acknowledge that for the purposes of the Data Protection Laws, the Customer is the data controller and NEC Aspire is the data processor of any personal data comprised in the Customer Data processed by NEC Aspire as part of the Services ('data controller', 'data processor' and 'personal data' being as defined in the Data Protection Laws). The provisions of the Data Processing Schedule below shall apply to the processing of any personal data comprised in the Customer Data.

## 12. CONFIDENTIALITY

12.1 Each party ("Receiving Party") will:

- (a) protect the confidentiality of the Confidential Information of the other party ("Disclosing Party") using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind, but in no event less than reasonable care;
- (b) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of the Contract;
- (c) not disclose Confidential Information of the Disclosing Party to any third party (except, in the case of NEC Aspire, for any Third Party Product Provider or any third party service providers used by NEC Aspire to provide some or all elements of the Service); and
- (d) not authorise any access to Confidential Information of the Disclosing Party by any person other than the Receiving Party's Affiliates, employees, contractors and agents who need such access for purposes consistent with the Contract.

## 13. LIMITATION OF LIABILITY:

13.1 Nothing in the Contract shall limit or exclude NEC Aspire's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be limited or excluded by applicable law.

13.2 Subject to clause 13.1, NEC Aspire shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) any loss arising from corruption of data or damage to equipment or facilities, due to the introduction of a Virus or arising as a result of a problem with the Internet (unless demonstrated by the Customer to be due to NEC Aspire's negligence);
- (f) any loss arising out of the use of or provision of access to any Third Party Product or any Open Source Software, including any Virus therein;
- (g) loss or damage to reputation or goodwill; and
- (h) any indirect or consequential loss.

13.3 The Customer acknowledges that despite the efforts of NEC Aspire, the Services, like any service provided using the Internet, are not immune from unauthorised access. Without prejudice to NEC Aspire's obligations in the Data Processing Terms, the Customer acknowledges and agrees that NEC Aspire shall have no liability in respect of any loss of use or corruption of the Customer Materials or Customer Systems arising in connection with any unauthorised access to it by any third party.

13.4 In no event shall NEC Aspire be liable for any loss or damage that is due to:

- (a) defects or deficiencies in Customer Materials or Customer Systems;
- (b) any failure of the Services that is due to any failure of a Third Party Product;
- (c) any defect or default arising out of or in connection with changes made to the Services which have not been made or expressly approved in writing by NEC Aspire or resulting from what NEC Aspire reasonably considers to be abnormal usage;
- (d) any unauthorised access to any Customer System, except to the extent that the Contract specifies that NEC Aspire is responsible for security of such Customer System and the access results from a breach by NEC Aspire of its security responsibilities in the Contract;
- (e) any failure attributable to the Customer's delay in providing information as reasonably requested by NEC Aspire;
- (f) any failure of the Services that is due to any integration or interoperability issues arising with any third party or Customer systems or legacy systems.

13.5 Subject to clause 13.1, NEC Aspire's total maximum aggregate liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to 100% (one hundred percent) of the total Charges paid under the Contract in the 12-month period immediately preceding the date of the most recent event giving rise to the liability.

13.6 NEC Aspire's liability is conditional on:

- (i) the prompt notification in writing to NEC Aspire by the Customer of any claim or action;
- (ii) the Customer allowing NEC Aspire or its insurers to control the defence of any claim and the Customer co-operating fully with NEC Aspire and providing NEC Aspire with reasonable assistance in the defence and any related settlement negotiations; and
- (iii) the Customer not making any prejudicial statements, references or compromise the ability of NEC Aspire to defend the claims in any way without the written consent of NEC Aspire.

13.7 The limitations on liability extend to any indemnities or warranties which NEC Aspire provides to the Customer under these Terms or otherwise.

13.8 This clause 13 shall survive termination of the Contract.

#### 14. TERM AND TERMINATION

14.1 The Contract shall, unless otherwise terminated as provided in this Condition 14, commence on the Start Date and shall continue for the Term as set out in the relevant Proposal and/or SOW.

14.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within twenty-eight (28) days of that party being notified in writing to do so.

14.3 Without affecting any other right or remedy available to it, NEC Aspire may terminate the Contract with immediate

effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract within 21 days of a reminder sent by NEC Aspire on or after the due date for payment.

14.4 Without affecting any other right or remedy available to it, NEC Aspire may terminate the Contract with immediate effect by giving written notice to the other if the other party becomes the subject of any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors, or 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 is deemed unable to pay its debts as they fall due.

14.5 If the Contract is terminated by NEC Aspire, the Customer will pay any unpaid Charges covering the remainder of the term of the Contract to the extent permitted by applicable law. In no event will termination relieve the Customer of its obligation to pay any Charges payable to NEC Aspire for the period prior to the effective date of termination.

#### 15. CONSEQUENCES OF TERMINATION

15.1 On termination of the Contract:

- (a) the Customer shall immediately pay to NEC Aspire all of NEC Aspire's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, NEC Aspire shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
- (b) the Customer shall cease all use of the Services and the Software.

15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

#### 16. ANTI-BRIBERY AND ANTI-CORRUPTION

16.1 NEC Aspire shall: (i) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption; (ii) have and shall maintain in place throughout the term of the Contract its own policies and procedures to ensure compliance with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption; and (iii) notify the Customer (in writing) if it has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with the performance of this Contract.

#### 17. GENERAL

17.1 **Notices.** Any notice to be given under the Contract shall be delivered by email to the other party at the email address set out in the Proposal or to such other address as either party may notify to the other in accordance with this clause 17.1. Notices are deemed to have been given at the time the email was sent unless received after 5pm in the place of receipt or on a non-Business Day, in which case the notice is deemed to

have been given at 9am the next Business Day. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

**17.2 Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control ("Force Majeure Event"). Without limitation, any failure of the Internet or any communications facilities on which NEC Aspire or its data centre partners rely to provide the Services, and any non-performance by any Third Party Product Provider, or any suppliers or subcontractors of NEC Aspire shall be a Force Majeure Event.

#### 17.3 Assignment and other dealings.

- (a) NEC Aspire may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of NEC Aspire which consent shall not be unreasonably withheld.
- (c) NEC Aspire shall be entitled to novate the benefit and the burden of all or part of the Contract to any third party as part of a corporate reorganisation, merger, or sale of a substantial part of its assets. NEC Aspire shall give reasonable notice to the Customer of its intention to novate the Contract. The Customer shall execute any documents which NEC Aspire reasonably requires in order to effect the novation.

#### 17.4 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

**17.5 Variation.** Except as set out in these Terms, no variation of the Contract shall be effective unless it is in writing and agreed by the parties (or their authorised representatives).

**17.6 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**17.7 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall

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

**17.8 Non-solicitation.** For the duration of Term and any renewal and extension thereof, plus a period of 12 months thereafter, the Customer and NEC Aspire shall not, without the consent of the other party actively solicit or recruit employees of the other party or otherwise encourage such employees to terminate their employment relationship with either company. The Parties agree that violation of this provision will subject the Party to liquidated damages consisting of an amount equal to six (6) month's salary for each employed, solicited or retained person.

**17.9 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Ireland.

**17.10 Jurisdiction.** Each party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

## 18. INTERPRETATION

The following definitions and rules of interpretation apply in these Terms.

### 18.1 Definitions:

**Affiliate:** in relation to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with that party from time to time, where 'control' means beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls and controlled shall be construed accordingly.

**Business Day:** a day other than a Saturday, Sunday or bank holiday in Ireland.

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 6 (Charges and payment).

**Confidential Information:** all information disclosed by or on behalf of either party to the other in any form, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including (in the case of NEC Aspire as disclosing party) non-public aspects of the Services and product road-maps.

**Contract:** the agreement between NEC Aspire and the Customer for the licensing of Software and/or the supply of Services, comprising the Proposal, these Terms (including the Data Processing Terms), any applicable SOW and any applicable SLA.

**Customer:** the legal entity who purchases Services from NEC Aspire as specified in the Proposal and/or SOW.

**Customer Data:** any documents or other individual data files comprised within the Customer Materials, not including any software, applications or operating system.

**Customer Default:** has the meaning set out in clause 3.3.

**Customer Materials:** any operating software, applications, files or material in respect of which the Services are used by or provided to the Customer, including any Customer Data comprised therein.

**Customer Systems:** means the extent of the Customer's operational servers and workstations including applications, in respect of which the Services are provided or received.

**Data Protection Laws:** means, as binding on either party or the Services (i) the General Data Protection Regulation, Regulation (EU) 2016/679 (GDPR); and (ii) the Data Protection Act 2018; and any laws which implement any such laws and any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.

**Denial of Service Incident:** an incident in the Services or a material part thereof are unavailable due to a third party direct or indirect attack on the resources of NEC Aspire or its service providers whether such incident relates directly to the Customer or any other customer of NEC Aspire.

**NEC Aspire:** NEC Aspire Technology Limited, a limited company registered in Ireland under company number 477719, whose registered office is at Unit 111 Q House, 76 Furze Road, Sandyford, Dublin 18, D18 WYH0, Ireland.

**End User:** an individual natural person who is authorised by the Customer to use the Services, including employees, consultants and agents of Customer.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks, 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.

**Open Source Software:** means any 'open source' software, including software falling within the Open Source definition issued by the Open Source Initiative from time to time and any 'free software' as defined by the Free Software Foundation from time to time.

**Proposal:** means a document outlining the Services and/or Software and the commercial terms upon which NEC Aspire proposes to deliver them to the Customer.

**Service Description:** the description of the Services referenced in the Proposal and/or SOW.

**Services:** means the products and services that are ordered by the Customer under a Proposal / SoW including the Software (but not including any Third Party Product or Open Source Software).

**SLA:** any Service Level Agreement applicable to the Services or the SOW. Services will not be subject to any SLA except to the extent specified in the SOW.

**Software:** any software applications or code licensed by NEC Aspire to the Customer.

**SOW:** a scope of work entered into between the Parties and detailing, without limitation, any Software licenced to the Customer by NEC Aspire and the development and/or delivery of Services by NEC Aspire to the Customer.

**Start Date:** is as specified in the Proposal and/or SOW.

**Term:** the period specified as such in the Proposal and/or SOW.

**Terms:** the terms as set out in these, NEC Aspire's General Terms and Conditions.

**Third Party Product:** any software or service used in the provision of the Services or to which the Customer is provided access in connection with the Services, and which is identified in the Proposal and/or SOW as being a Third Party Product.

**Third Party Product Provider:** a third party holding Intellectual Property Rights in any Third Party Product.

**Third Party Terms:** the terms applicable between the Customer and the Third Party Product Provider in respect of a Third Party Product, identified in the Proposal and/or SOW.

**TUPE:** the Transfer of Undertakings (Protection of Employment) Regulations 2003 (SI No. 131/2003) as amended or replaced from time to time.

**Validity of Proposal:** Any Proposal issued by NEC Aspire to the Customer shall not constitute an offer, and is only valid for a period of thirty (30) days from its date of issue unless otherwise provided for in the Proposal.

**Virus:** any program which contains malicious code or infiltrates or damages a computer system without the owner's informed consent or is designed to do so or which is hostile, intrusive or annoying to the owner or user and has no legitimate purpose.

18.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

18.3 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

18.4 A reference to **writing** or **written** includes emails.

18.5 In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) any SOW, (2) the Proposal, (3) these Terms (as may be varied by agreement between the parties) and (4) any applicable SLA.

18.6 These Terms supersede any previous terms and conditions NEC Aspire may have had with you, our Customer. These Terms are subject to review and amendment from time to time. The up to date version will be available on our website, [here](#), and a link to the current version will be provided in the relevant Proposal and/or SOW. It is a matter for you, as the Customer, to ensure that you are aware of the particular Terms that govern any Proposal / SOW / SLA.