General Terms and Conditions for the Provision of Microsoft Cloud Services

1 **Scope of Agreement**

1.1 The Supplier will supply, and invoice the Customer for, Microsoft Cloud Services in accordance with the subscriptions and activity on the Customer Account.

2 **Term**

2.1 This Agreement commences on the date that it is signed by both parties, or once a Microsoft Cloud Service purchase has been made through the Supplier.

2.2 This Agreement remains effective until terminated by either party under clause 16.

3 **Customer Account**

3.1 For the purposes of this Agreement, the Customer is responsible for all activity in the Customer Account including without limitation all subscriptions and licenses and all consumption of Microsoft Cloud Services.

3.2 The Supplier has no obligation, under this Agreement, to supervise or in any way monitor the Customer's requests for subscriptions or additional licenses to Microsoft Cloud Services (or suitability of the Customer's subscriptions), or the Customer's consumption of Azure services.

4 **Supplier Administrator Access**

4.1 The Customer acknowledges and agrees that:

(a) The Customer will receive a link from the Supplier at which the Customer will confirm the Supplier as being its supplier of the Microsoft Cloud Services (unless this has already occurred);

(b) the Supplier and the Distributor will (following confirmation by the Customer under (a) above, unless this has already occurred):

i. be the primary administrator of the Microsoft Cloud Services for the Customer for the term of this Agreement; and
ii. have administrative privileges and access to Customer Data;

(c) the Customer may at any time request additional administrator privileges from the Supplier;

(d) the Customer can, at its sole discretion and at any time during the term of this Agreement, terminate the Supplier's and the Distributor's administrative privileges; and

(e) the Customer appoints the Supplier and the Distributor as its agent for the purposes of interfacing with and providing instructions to Microsoft for the purposes of this Agreement.

5 Subscriptions to Microsoft Cloud Services

5.1 Nothing in this Agreement alters the rights and obligations of the Customer or Microsoft under the Microsoft Customer Agreement between Microsoft and the Customer which is accepted by the Customer (as described in part 6 of the Schedule) in respect of all Microsoft Cloud Services.

5.2 The Customer acknowledges and agrees that Microsoft may send direct communications to the Customer related to the terms of the Microsoft Customer Agreement or the operation or delivery of the Microsoft Cloud Services.

6 Support for Microsoft Cloud Services

6.1 The Supplier is the Customer's point of contact for the Customer for all operational and technical support questions related to the Microsoft Cloud Services. The Supplier's support policies, support hours, incident response time and service levels are described in a separate support services agreement between the Supplier and Customer.

6.2 If the Customer considers that it has a claim on the SLA (the 'SLA" being the service level commitments made by Microsoft to the Customer in respect of the Microsoft Cloud Services), the Customer must submit the claim to Microsoft in accordance with the Microsoft Customer Agreement and notify the Supplier in order for any applicable service credit to be channelled back through the Supplier and applied to your account with the Supplier.

6.3 The Customer acknowledges that the Supplier cannot remedy, and has no obligation to seek to remedy, any defect or purported defect in the Microsoft Cloud Services that may be identified by the Customer and that the remedy (if any) that the Customer may have in relation to such defects is contained in and subject to the Customer's applicable Microsoft Customer Agreement.

7 Adjustments to subscriptions

7.1 The Customer may add to fixed term subscriptions to Microsoft Cloud Services during the subscription term, by requesting the Supplier to make an adjustment or by making an adjustment itself. These adjustments will result in increased subscription costs.

8 Pricing and payment

8.1 The Customer will pay all invoices issued by the Supplier to the Customer under this Agreement in full, without setoff, counterclaim or deduction of any kind, on or before the due date.

8.2 If the Customer wishes to dispute an invoice, it must notify the Supplier in writing prior to the due date of the invoice and provide details of the dispute. The Customer may withhold payment of the disputed part of an invoice only and must pay that part (or any amount subsequently agreed or determined to be the correct amount owing) promptly on resolution of the dispute. A claim by a Customer that seat-based subscriptions added to the Customer Account were not used by the Customer, or that use of Azure services was unintentional or inadvertent will not relieve the Customer from its obligation to pay for the seat-based subscriptions or Azure subscriptions/consumption and will not provide a reason for validly disputing an invoice.

8.3 Without the Supplier waiving any other right or remedy it may have, if any amount due is not paid by the Customer by the due date, the Supplier may:

(a) charge the Customer interest calculated at 1.5% on the balance of the amount due by the Customer from the due date until payment is received in full by the Supplier; and/or

(b) charge the Customer all collection costs reasonably incurred by the Supplier in collection of the amount outstanding (including solicitor and/or collection agency fees); and/or

(c) suspend delivery of further Microsoft Cloud Services until the outstanding amount is paid in full. The Supplier will give 10 Working Days' notice in writing of its intention to suspend delivery under this clause.

9 Taxes

9.1 In addition to the amounts due under clause 8, the Customer will pay the Supplier amounts equal to any applicable government taxes or duties however designated, based on this Agreement (or the Microsoft Cloud Services provided under it), paid or payable by the Supplier in respect of the foregoing, exclusive however of taxes based on the Supplier's income.

10 Customer Data

10.1 Subject to clause 10.2, the Supplier may collect, use, transfer, disclose, and otherwise process the Customer Data as required in its performance of this Agreement.

10.2 The Supplier will only access the Customer Data and disclose the Customer Data to law enforcement or government authorities to the extent required by law. If a request for Customer Data is made by a law enforcement agency or government authority (directly or through Microsoft), the Supplier will redirect the request to the Customer or if redirection is not permitted or feasible in the available time frame and unless legally prohibited from doing so, the Supplier will notify the Customer of the request as soon as practically possible.

10.3 The Customer will, as and to the extent required by law, notify individual users of the Microsoft Cloud Services, that their data may be disclosed to law enforcement or other government authorities (if a request is made by law enforcement or other government authorities). It is the Customer's responsibility to obtain consent from individual users to the potential for disclosure under this clause.

10.4 The Customer consents to Microsoft providing the Supplier and the Distributor with Customer Data and information that the Customer provides to Microsoft for the purposes of the Supplier and the Distributor ordering, provisioning and administering the Microsoft Cloud Services.

11 Personal Data and Data Protection

11.1 The Customer consents to the Processing of Personal Data by the Supplier for the purposes of this Agreement, in accordance with this Agreement including in particular the GDPR Attachment. Before providing Personal Data to the Supplier, Customer will obtain all required consents from third parties (including Customer's contacts, partners, distributors, administrators, and employees) under applicable Data Protection Laws.

11.2 The Customer acknowledges that Processing of Personal Data by Microsoft is addressed in the Microsoft Customer Agreement.

11.3 To the extent permitted by applicable law and subject to applicable contractual rights and obligations, including the rights and obligations in the GDPR Attachment, Personal Data collected by the Supplier under this Agreement may be transferred, stored and processed in the United Kingdom and/or any other country (or countries) in which the Supplier maintains facilities or any other country in which the Supplier's contractors or service providers (including for example Microsoft and other third party vendors) maintain facilities.

11.4 In the event of any Personal Data Breach, the Supplier will comply with its obligations, including notification obligations, (if any), under the Data Protection Laws. The Customer acknowledges that the obligations that Microsoft may have in respect of a Personal Data Breach, where applicable, are addressed in the Microsoft Customer Agreement.

12 Confidential Information

12.1 Each party agrees to:

(a) hold in confidence all Confidential Information disclosed to it by the other party including, but without limitation, information which:

i. comes into its possession as a result of, or in the performance of, this Agreement; or
ii. is confidential and clearly so identified; or
iii. involves business plans or financial and personnel affairs, and

(b) take reasonable steps to:

i. protect the other party's Confidential Information;
ii. use the Confidential Information only for the purposes of this Agreement; and
iii. protect the Confidential Information from unauthorised access or use by, or disclosure to, any third party or misuse, damage or destruction by any person.

12.2 A party may disclose the other party's Confidential Information if and to the extent required by law if it first notifies the other party of the obligation to disclose the Confidential Information, provided that a party is not required to notify the other party under this clause if it is not legally permitted to do so or if the timing within which the party is required by law to disclose the Confidential Information does not permit notification to the other party.

13 Intellectual property

13.1 Refer to the Microsoft Customer Agreement.

14 No warranties

14.1 To the extent permitted by law, all warranties, terms and conditions (including without limitation, warranties and conditions as to fitness for purpose and merchantability) implied by legislation or otherwise, are excluded by the Supplier.

15 Warranty position for Microsoft Cloud Services

15.1 The Supplier will use reasonable endeavours to assist the Customer to deal with Microsoft on any warranty claims in respect of the Microsoft Cloud Services.

15.2 Subject to clause 6 and clause 15.1, the Supplier has no obligations in respect of defects, support requirements or otherwise for the Microsoft Cloud Services including without limitation that in the event of any defect or failure of the Microsoft Cloud Services the Supplier has no obligation to provide any interim hardware, software, other equipment or remedial service.

16 Termination of Agreement

16.1 Except where the Customer has unexpired subscriptions (whether initial term or renewal term) to Microsoft Cloud Services, either party may terminate this Agreement on 30 days' written notice to the other party.

16.2 Either party may terminate this Agreement immediately (or with effect from any later date that it may nominate) by written notice to the other party if the other party ceases business or if one or more Insolvency Events occurs in relation to that other party. For the purposes of this clause, 'Insolvency Event' means, in respect of a party (other than for the purpose of solvent reconstruction or amalgamation):

(a) a receiver, manager or liquidator is appointed over the party's undertaking or assets or the party enters into any assignment, composition or arrangement with its creditors; or

(b) the party is unable to pay its debts when due, or is deemed unable to pay its debts under any law, or suspends payment to its creditors.

16.3 Without limiting any other rights of termination that a party may have, either party may terminate this Agreement on written notice to the other party if the other party:

(a) commits a material breach of any of its obligations under this Agreement; and

(b) fails to remedy that breach within 30 days of prior written notice of such breach.

16.4 This Agreement will automatically terminate if the Supplier's agreement with its distributor under which the Supplier is authorised to resell the relevant Microsoft Cloud Services terminates for any reason.

17 Consequences of termination

17.1 On termination of this Agreement:

(a) where the Customer has fixed term subscriptions for Microsoft Cloud Services, the Customer will pay the Supplier for the full fixed term (excluding any renewal term to which the Customer is not yet committed); and

(b) where the Customer has consumption subscriptions for Microsoft Cloud Services, the Customer will pay for all consumption up until the date of termination.

17.2 On termination of this Agreement the Supplier will issue invoices to the Customer for all amounts specified in clause 17.1 for which no invoice has yet been issued and all such invoices will be due seven days following the date of the invoice. Invoices issued prior to the date of termination will remain due in accordance with the terms of the invoice.

17.3 On termination of a subscription the Customer will have 30 days (unless Microsoft specify a different period) to migrate any Customer Data to either a new subscription or another service.

18 Liability

18.1 The limitations of liability in this clause 18 do not apply to claims by the Customer for bodily injury or damage to real property or tangible personal property for which the Supplier is legally liable.

18.2 The Supplier's liability under this Agreement is limited to direct loss only, to the amount paid by the Customer to the Supplier in the twelve month period preceding the event giving rise to the claim.

18.3 In no event is the Supplier liable to the Customer for the Microsoft Cloud Services, including without limitation in terms of performance, non-performance, availability, non-availability, compliance or non-compliance with specifications of the Microsoft Cloud Services or otherwise. Any right or remedy that the Customer may have in relation to the Microsoft Cloud Services is included or referenced in the Microsoft Customer Agreement.

18.4 In no event is the Supplier liable for any indirect loss or for any loss of profits, lost savings, loss of data, business interruption, incidental or special damages, or for any consequential loss. In addition, the Supplier is not liable for any damages claimed by the Customer based on any third party claim, including, but not limited to, any claim in negligence. In no event is the Supplier liable for any damages caused (whether directly or indirectly) by the Customer's failure to perform its responsibilities under this Agreement.

19 Dispute Resolution

19.1 In the event of any dispute arising between the parties in relation to this Agreement, no party may commence any proceedings relating to the dispute (except where the party seeks urgent interlocutory relief) unless that party has complied with the procedures in this clause 19.

19.2 The party initiating the dispute ("the first party") must provide written notice of the dispute to the other party ("the other party") and nominate in that notice the first party's representative for the negotiations. The other party must within fourteen days of receipt of the notice, give written notice to the first party naming its representative for the negotiations ("Other Party's Notice"). Each nominated representative will have authority to settle or resolve the dispute. The parties will co-operate with each other and endeavour to resolve the dispute through discussion and negotiation.

19.3 If the dispute is not resolved within one month following the date of the Other Party's Notice (or such longer period as may be agreed upon in writing by the parties), either party may utilise any other legal remedies available to it in seeking to resolve the dispute.

20 Non-Solicitation

20.1 Neither party will, without the written consent of the other party, solicit, employ, or otherwise engage the services of, the other party's personnel (including employees and contractors). This clause will apply during the term of this Agreement and for six months after termination of the Agreement.

20.2 A party may as a condition of granting its consent under clause 20.1 above, require the other party to pay to it a fee of 15% of the person's gross annual remuneration to cover the cost of replacing the employee or contractor.

21 Notices

21.1 Notices or other communications are deemed received:

(a) if delivered by hand, on delivery;

(b) if delivered by post:

i. on the third Working Day following posting if sent and received locally (not internationally); and
ii. on the tenth day following posting if posted internationally; or

(c) if sent by email, on sending the email unless the sender receives a delivery notification failure.

22 Force majeure

22.1 Either party may suspend its obligations to perform under this Agreement if it is unable to perform as a direct result of a Force Majeure Event. Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.

22.2 Where a party's obligations have been suspended pursuant to clause 22.1 for a period of 30 days or more, the other party may immediately terminate this Agreement by giving notice in writing to the other party.

23 General

23.1 Independent Contractor. The Supplier is an independent contractor to the Customer and nothing in this Agreement will be taken as constituting the Supplier to be an employee, partner, or agent of the Customer.

23.2 Assignment. Neither the Customer nor the Supplier may assign its rights under this Agreement without the prior written consent of the other party.

23.3 Other agreements. Nothing in this Agreement prevents the Supplier from entering into the same or similar agreements with other customers.

23.4 Survival. All clauses of this Agreement, which by their nature survive the termination of this Agreement will do so.

23.5 Entire agreement: This Agreement constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other

communications between the parties relating to the subject matter of this Agreement. The Microsoft Customer Agreement is a separate agreement between Microsoft and the Customer.

23.6 Further assurances: The parties must each do all such further acts (and sign any documents), as may be necessary or desirable for effecting the transactions contemplated by this Agreement.

23.7 Amendments: Except as specifically provided, no amendment to this Agreement will be effective unless it is in writing and signed by both parties.

23.8 Waiver: No exercise or failure to exercise or delay in exercising any right or remedy by a party will constitute a waiver by that party of that or any other right or remedy available to it.

23.9 Partial invalidity: If any provision of this Agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this Agreement and its application will not be affected and will remain enforceable to the greatest extent permitted by law.

24 Governing Law

24.1 This Agreement is governed by the laws of England and Wales. The parties hereby submit to the non-exclusive jurisdiction of the courts of England and Wales.

25 Interpretation and definitions

25.1 In this Agreement:

"Agreement" means this Cloud Supply Agreement and includes the Schedule and these terms and conditions, and the GDPR Attachment;

"Confidential Information" means any information disclosed in confidence to one party by the other party including without limitation the Customer Data, whether of a business, financial, technical or non-technical nature or otherwise and whether existing in hard copy form, electronically or otherwise but does not include any information which is:

(a) on receipt by the recipient party, in the public domain or which subsequently enters the public domain without any breach of this Agreement;

(b) on receipt by the recipient party, already known by that party (otherwise than as a result of disclosure by the other party);

(c) at any time after the date of receipt by the recipient party, received in good faith by the recipient party from a third party;

(d) required by law to be disclosed by the recipient party;

"Customer Account" means the Customer's account on the Distributor's portal;

"Customer Data" means all data, including all text, sound, video or image files and software, and which may include Personal Data, that is provided to Microsoft by or on behalf of the Customer through use of the Microsoft Cloud Services;

"Data Protection Laws" means the GDPR as incorporated into UK law by the UK Data Protection Act 2018, and the UK Data Protection Act 2018 itself, and includes any statutory modification or re-enactment of such laws for the time being in force;

"Distributor" means the Supplier's distributor, being Microsoft Limited;

"Force Majeure Event" means any war, riot, pandemic, civil emergency, third party strike, natural disaster or other circumstance of a similar nature that is outside of the control of the affected party;

"GDPR" means the EU General Data Protection Regulation 2016/679;

"Intellectual Property" means copyright, patents, designs, trademarks, trade names, goodwill rights, trade secrets, confidential information and any other intellectual proprietary right or form of intellectual property;

"Microsoft Cloud Services" means the Microsoft cloud services for which the Supplier is the relevant Microsoft partner (as recorded by Microsoft), being:

(a) the Transferred Services (if any); and

(b) the services purchased by the Supplier for the Customer as described in part 4 of the Schedule;

"Personal Data" means any information relating to an identified or identifiable natural person, as defined in the Data Protection Laws;

"Personal Data Breach" has the meaning given to that term in the Data Protection Laws (and includes unauthorised access to, unauthorised disclosure of, or loss of, Personal Data), in respect of Personal Data that is Processed by the Supplier under this Agreement);

"Processing" has the meaning given to that term in the Data Protection Laws, in respect of any operation which is performed on Personal Data by the Supplier (whether or not by automated means, and includes but is not limited to collection, recording or storage of the Personal Data), and 'Process' and 'Processed' has/have a corresponding meaning;

"Schedule" means the schedule that precedes these terms and conditions;

"Transferred Services" means Microsoft cloud subscriptions and licenses that were purchased for the Customer by another supplier and that, with the Customer's authorisation, have been transferred to the Supplier in the Microsoft Partner Center (so that the Customer's reseller relationship for those subscriptions and licenses is now with the Supplier);

"Working Day" means a day other than a Saturday, Sunday or public holiday in the UK.

"Supplier" means Abtec Network Systems Ltd.

25.2 **Interpretation**

(a) In this Agreement, reference to the plural includes reference to the singular, and vice versa.
(b) Headings inserted in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.

(c) The word "includes" means ‘includes without limitation’, and “including” has a corresponding meaning.