Terms and Conditions for the supply of Loadbalancer Software, Hardware and Support Services

PLEASE READ CAREFULLY BEFORE ORDERING OR DOWNLOADING ANY HARDWARE, SOFTWARE OR SUPPORT SERVICES FROM THIS WEBSITE:

This agreement is a legal agreement between you (**Licensee**, **Customer** or **you**) and Loadbalancer.org Limited a company incorporated in England and Wales with registered company number 04633912 and its registered office at Compass House, Compass Road, North Harbour Business Park, Portsmouth, Hampshire PO6 4PS (**Loadbalancer**, **us** or **we**) governing our provision of Services or Deliverables. Orders for any Deliverables, Services are subject to these terms and conditions and by placing an Order you are deemed to have agreed to the acceptance of these terms and conditions.

1   Definitions and interpretation

1.1   In this Agreement the following definitions apply:

Affiliate	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
Applicable Law	means all applicable laws, legislation, statutory instruments, regulations, and governmental guidance having binding force whether local or national or international in any relevant jurisdiction;
Authorised Affiliates	means, in respect of the relevant Service and/or Deliverables, the Affiliates of the Customer (if any) identified in the Order as Authorised Affiliates in respect of that Service and/or Deliverables;
Business Day	means a day other than a Saturday, Sunday or bank or public holiday when banks generally are open for non-automated business in England;
Commencement Date:	the date you submit your Order;
Confidential Information	means any commercial, financial or technical information, information relating to the Services and Deliverables, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to this Agreement;
Control	has the meaning given to it in section 1124 of the Corporation Tax Act 2010;
Controller	shall have the meaning given in applicable Data Protection Laws from time to time;

Customer Data	means all data (in any form) that is provided to Loadbalancer or uploaded or hosted on any part of any Service by the Customer;
Customer Systems	means all software and systems used by or on behalf of the Customer, the Customer's Affiliates, any of its or their direct or indirect sub-contractors, in connection with the provision or receipt any of the Services or that the Services otherwise, link, inter-operate or interface with or utilise (in each case whether directly or indirectly);
Data Protection Laws	means, as binding on either party or the Services: (a) the GDPR; (b) the Data Protection Act 2018; (c) any laws which implement any such laws; and (d) any laws that replace, extend, re-enact, consolidate, or amend any of the foregoing;
Data Protection Supervisory Authority	means any regulator, authority, or body responsible for administering Data Protection Laws;
Data Subject	shall have the meaning in applicable Data Protection Laws from time to time;
Defect	an error in the Services or Deliverables that causes it to fail to operate substantially in accordance with the relevant Documentation;
Deliverables	means the Deliverables as set out in the Order and which the Customer has rented in accordance with this Agreement;
Deliverables Warranty Period	three (3) years from the Commencement Date in respect each piece of Deliverables rented by the Customer as specified in the Order or as otherwise agreed from time to time;
Documentation	the documents provided by Loadbalancer for the Services and Deliverables, in either printed text or machine-readable form, including the technical documentation, program specification and operations manual;

Fees	means the Subscription Fees, Rental Fees and Technical Support Fees as provided in the Order;
Force Majeure	means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under this Agreement including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of this Agreement, strike, lockout or boycott or other industrial action including those involving Loadbalancer's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;
GDPR	means the General Data Protection Regulation, Regulation (EU) 2016/679;
Initial Services Support Term	the duration of the Technical Support Services as selected by the Customer and specified in the Order or otherwise agreed from time to time;
Intellectual Property Rights	means copyright, patents, know-how, trade secrets, trade marks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:

(a)   whether registered or not

(b)   including any applications to protect or register such rights

(c)   including all renewals and extensions of such rights or applications

(d)   whether vested, contingent, or future

(e)   to which the relevant party is or may be entitled, and

(f)   in whichever part of the world existing;

IPR Claim	has the meaning given in clause 20.5.1;
Loadbalancer Personnel	all employees, officers, staff, other workers, agents, and consultants of Loadbalancer, its

	Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time;
Normal Working Hours	between 9am and 5pm in the country of the Customer;
Open-Source Software	open-source software as defined by the Open Source Initiative (http://opensource.org) or the Free Software Foundation (http://www.fsf.org);
Order	means the Customer's order for the subscription of Services and/or rental of Deliverables, in substantially the same form as set out in the Order;
Personal Data	has the meaning given in the applicable Data Protection Laws from time to time;
Personal Data Breach	has the meaning given in the applicable Data Protection Laws from time to time;
Premium Working Hours	twenty-four (24) hours per day;
Processing	has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including **process**, **processed**, and **processes** shall be construed accordingly);
Processor	has the meaning given to it in applicable Data Protection Laws from time to time;
Protected Data	means Personal Data received from or on behalf of the Customer in connection with the performance of Loadbalancer's obligations under this Agreement;
Rental Fee	means in respect of each Deliverable as set out in the Order and to be supplied by the Loadbalancer to the Customer in accordance with this Agreement;
Services	means the Services set out in the Order and which the Customer has subscribed to in accordance with this Agreement.
Service Period	means (subject to clauses 3.2 and 24) the duration of the rental of Deliverables and/ or subscription of Services as selected by the Customer and specified in the Order and as varied in accordance with the Agreement;

Site	the Customer's address where any Deliverables should be delivered as notified to Loadbalancer when the Customer makes an Order.
Software Licence	the licence as granted under clause 6;
Sub-Processor	means any agent, subcontractor or other third party (excluding its employees) engaged by Loadbalancer for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;
Subscription Fee	means, in respect of the subscription of each Service, as set out in the Order;
Technical Support Fee	the fee for the Technical Support Services as specified in the Order.
Territory	worldwide;
Trial Period	A thirty (30) day period during which the Customer may trial the Services without paying a fee;
VAT	means value added tax under the Value Added Tax Act 1994 or any other similar sale or fiscal tax applying to the rental and or subscription of the Service and/or Deliverables.

1.2   In this Agreement, unless the context otherwise requires:

1.2.1   a reference to this Agreement includes this Agreement, the Order, and their respective schedules, appendices, and annexes (if any);

1.2.2   any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement;

1.2.3   a reference to a 'party' means either Loadbalancer or the Customer and includes that party's personal representatives, successors and permitted assigns;

1.2.4   a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns;

1.2.5   a reference to a 'company' includes any company, corporation, or other body corporate, wherever and however incorporated or established;

1.2.6   a reference to a gender includes each other gender;

1.2.7   words in the singular include the plural and vice versa;

1.2.8   any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.9   a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form;

1.2.10   without prejudice to the provisions of clause 22, a reference to legislation is a reference to that legislation as in force at the date of this Agreement or amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under this Agreement;

1.2.11   without prejudice to the provisions of clause 22, a reference to legislation includes all subordinate legislation made as at the date of this Agreement or from time to time under that legislation; and

1.2.12   a reference to any English action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English equivalent in that jurisdiction.

2   Application of these conditions

2.1   this Agreement apply to and form part of this Agreement between Loadbalancer and the Customer. They supersede any previously issued terms and conditions of purchase, subscription, rental, or supply.

2.2   No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of this Agreement except to the extent that Loadbalancer otherwise agrees in writing.

2.3   No variation of this Agreement or to an Order, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Customer and Loadbalancer, respectively.

2.4   Loadbalancer may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Services or Deliverables and are incapable of being accepted by the Customer.

2.5   Marketing and other promotional material relating to the Deliverables and Services are illustrative only and do not form part of this Agreement.

3   Duration

3.1   This Agreement shall, unless otherwise terminated as provided in clause 24 commence on the Commencement Date and shall continue for the Service Period.

3.2   On expiry of the Service Period indicated in the Order for each Services, the Service Period shall automatically renew for a further one month (**Renewal Date**) and thereafter renew each month (**Renewal Period**) until the earlier of:

3.2.1   either party notifies the other party of termination, in writing, before the end of the Service Period, in which case this Agreement shall terminate upon the expiry of the applicable Service Period; or

3.2.2   otherwise terminated in accordance with the provisions of this Agreement; or

3.2.3   the parties agree to enter into a new contract for the supply of Services and (if applicable) Deliverables.

4   Subscription, rental, renewal fees and payment

4.1   The Fees shall be as set out in the Order or, where no such provision is set out, shall be calculated in accordance with Loadbalancer's scale of charges in force from time to time or as advised by Loadbalancer from time to time before the date the Order is placed.

4.2   The Fees and any other charges (including expenses) expressly agreed between the parties in writing shall be paid by the Customer at the rates and in the manner described in the Order.

4.3   During the Renewal Period the Customer is entitled to a discount of Fees, as set out in the Order.

4.4   Loadbalancer shall invoice the Customer:

4.4.1   monthly in advance for all Subscription and/or Rental Fees; and

4.4.2   monthly in advance for all other charges,

4.5   Fees due under this Agreement, and the invoices shall be paid in full without deduction or set-off, in cleared funds within 30 days of receipt of the Loadbalancer invoice. Fees are payable into our nominated bank account by electronic funds transfer unless otherwise notified by us to the Customer in writing in accordance with this Agreement.

4.6   The Fees are dependent on the model and quantity of Services or Deliverables that is selected by the Customer and the level and duration of Technical Support Services selected by the Customer.

4.7   All payments stated in these terms and conditions are net of tax. Each party shall, in addition, pay to the other the amount of any tax, duty or assessment (including any applicable VAT) which such party is obliged to pay and/or collect from the other in respect of any supply under this Agreement.

4.8   Loadbalancer may increase the Fees at each anniversary of the Commencement Date by giving the Customer at least 30 days' notice prior to any such anniversary.

4.9   Loadbalancer shall have the right to charge interest on overdue invoices at the rate of 4% per year above the base rate of Bank of England, calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.

4.10   To the extent this Agreement terminates or expires (other than due to termination by the Customer under clauses 24) the Customer shall not be entitled to any refund or discount of Fees paid for any parts of any month during which the Services cease to be provided.

4.11   The Money Back Guarantee covers all Deliverables and Services. The Customer can make a written request within 90 days of any invoice to request a return, cancelation, and full refund. Returns of Deliverables may incur a reasonable re-stocking fee.

5   Mandatory support

5.1   Mandatory support shall be available for each subscribed Service to the Customer for the duration of the respective Service Period, to the extent and in the manner specified in the Order.

5.2   Loadbalancer shall provide the mandatory support to the Customer during the hours specified in and in accordance with the Order.

5.3   For the avoidance of doubt, if the Customer subscribes to the Service, the cost of the mandatory support is included within the Subscription Fee.

6   Grant and scope of software licence

6.1   For the purposes of this clause only, any reference to software shall mean the software as specified in the Order (**Software)**.

6.2   In consideration of payment of the agreed Fee (save where the Software is used during the Trial Period) and the Customer agreeing to abide by the terms of this Software Licence, and subject to the Customer downloading a Virtual Appliance Platform, we hereby grant to you an non-exclusive, non-transferable, non-sublicensable licence to use the Software and the Documents in the Territory on the terms of this Software Licence for the full period of copyright in the Software commencing on and including the Commencement Date for the term of this Agreement.

6.3   Where the Customer has subscribed to the Services, Loadbalancer grants you a non-exclusive, non-transferable, non-sublicensable licence to use the software and the Documents in the Territory on the terms of this Licence subject to payment of the Subscription Fee.

6.4   The Customer may use the Software with a Virtual Appliance Platform on Deliverables or third party hardware per individual licence granted and use any Documents in support of the use permitted under this clause 6.4.

6.5   The Customer shall be permitted to use the Software during the Trial Period and subject to the restrictions contained in clause 6.6

6.6   Except as expressly set out in this Agreement or as permitted by any local law, the Customer undertakes:

6.6.1   not to copy the Software or Documents except where such copying is incidental to normal use of the Software, or where it is necessary for the purpose of back-up or operational security;

6.6.2   not to rent, lease, sub-license, loan, translate, merge, adapt, vary, or modify the Software or Documents;

6.6.3   not to make alterations to, or modifications of, the whole or any part of the software, nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs (save that it shall be hosted on a Virtual Appliance Platforms); and

6.6.4   not to disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such thing except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of

achieving inter-operability of the Software with another software program, and provided that the information obtained by the Customer during such activities:

    (a)   is used only for the purpose of achieving inter-operability of the Software with another software program; and

    (b)   is not unnecessarily disclosed or communicated without our prior written consent to any third party; and

    (c)   is not used to create any software which is substantially similar to the Software.

6.7   Any Open-Source Software incorporated within the Software is licensed in accordance with the applicable licence terms in force for that software and is not subject to the licence terms set out herein.

7   Changes to services

7.1   Loadbalancer shall be entitled to improve or update the Services without the Customer's prior consent only where such improvement or update is necessary to:

    7.1.1   fix a defect, bug or error;

    7.1.2   remedy a known or foreseeable security vulnerability; or

    7.1.3   comply with Applicable Laws.

7.2   The Customer may request for an increase or decrease to the capacity or licensed features or functionality of the Services, where such change is in relation to Loadbalancer's developed and commercially available features or functionality (**Change Request**).

7.3   Subject to clause 7.2, the Customer shall have the right to issue a Change Request, requesting that Loadbalancer make changes to the Services, by notice in writing to Loadbalancer, and Loadbalancer shall respond to the Change Request within ten working days, or such period as is agreed between the parties, either:

    7.3.1   agreeing to the Change Request and setting out the terms of such agreement including, a full specification of the change to the Services, the time that it will take to perform the proposed changes and a binding statement of any proposed change to the Fees as a result of the Change Request; or

    7.3.2   refusing the Change Request and outlining the reasons for refusal.

7.4   Subject to clause 7.2, a Change Request shall only become binding on the parties to this Agreement where a Change Order, setting out the terms and conditions on which the parties agree that the Change Request will be implemented, is agreed in writing between the parties and signed by authorised representatives of both parties. Unless and until a Change Order is so signed Loadbalancer shall continue to provide the Services in accordance with this Agreement and without any change or modification.

8   Documentation

8.1   From time to time, Loadbalancer shall provide to the Customer copies of the Documentation containing sufficient up-to-date information for the proper use of the Services and Deliverables. Such Documentation may be supplied in electronic form.

8.2   The Customer may make such further copies of the Documentation as are reasonably necessary for the use of the Services and Deliverables and for training the Customer's personnel in use of the Services and Deliverables. The Customer shall ensure that all Loadbalancer's proprietary notices are reproduced in any such copy.

9   Delivery and performance

9.1   The Deliverables shall be delivered by Loadbalancer, or its nominated carrier, to the corresponding Site(s) during Normal Working Hours (at such dates and times as are reasonably agreed by the parties).

9.2   The Deliverables shall be deemed delivered on arrival of the Deliverables at the Site(s) by Loadbalancer or its nominated carrier (as the case may be).

9.3   The Customer shall be responsible for the installation of the Deliverables save where otherwise agreed between the Customer and Loadbalancer.

9.4   Use of Services contained on the Deliverables shall be in accordance with the licences granted at clauses 6.1 and 6.2 and subject to the restrictions contained in clauses 6.5 and 25.

9.5   Time is not of the essence in relation to the performance or delivery of the Deliverables. Loadbalancer shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are indicative only.

9.6   Loadbalancer shall not be liable for any delay in or failure of performance caused by:

       9.6.1   the Customer's failure to make the Location available;

       9.6.2   the Customer's failure to prepare the Location in accordance with Loadbalancer's instructions;

       9.6.3   the Customer's failure to provide Loadbalancer with adequate instructions for performance or delivery; or

       9.6.4   Force Majeure.

9.7   If the Customer fails to accept delivery of the Deliverables Loadbalancer shall store and insure the Deliverables pending delivery, and the Customer shall pay all costs and expenses incurred by Loadbalancer in doing so.

10   Risk and title

10.1   Risk in the Deliverables shall pass to the Customer on delivery.

10.2   Loadbalancer shall retain title and ownership of the Deliverables at all time during the duration of this Agreement. The Customer agrees to pay the Rental Fee or other sums due to Loadbalancer and strictly observes and performs all the terms, conditions and obligations contained in this Agreement. The Customer may be given the option to purchase the Deliverables on such basis title to the Deliverables shall pass to the Customer once Loadbalancer has received payment in full and cleared funds for the Deliverables.

10.3   Until title to the Deliverables has passed to the Customer, the Customer shall:

       10.3.1   hold the Deliverables as bailee for Loadbalancer;

10.3.2 take all reasonable care of the Deliverables and keep them in the condition in which they were delivered;

10.3.3 insure the Deliverables from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting Loadbalancer's interest on the policy;

10.3.4 ensure that the Deliverables are clearly identifiable as belonging to Loadbalancer;

10.3.5 not remove or alter any mark on or packaging of the Deliverables;

10.3.6 inform Loadbalancer immediately if it becomes subject to any of the events or circumstances set out in clauses 24.2.3 to **Error! Reference source not found.**.; and

10.3.7 on reasonable notice permit Loadbalancer to inspect the Deliverables during the Customer's normal business hours and provide Loadbalancer with such information concerning the Deliverables as Loadbalancer may request from time to time.

10.4 If, at any time before title to the Deliverables has passed to the Customer, the Customer informs Loadbalancer, or Loadbalancer reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 24.2.3 to 24.3.3 Loadbalancer may:

10.4.1 require the Customer at the Customer's expense to re-deliver the Deliverables to Loadbalancer; and

10.4.2 if the Customer fails to do so promptly, enter any premises where the Deliverables are stored and repossess them.

11 Deliverables Support and warranty

11.1 Loadbalancer warrants that, for the duration of the Deliverables Warranty Period the Deliverables shall:

11.1.1 conform in all material respects to any sample, their description and to the Order;

11.1.2 be free from material defects in design, material and workmanship;

11.1.3 if Deliverables, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and

11.1.4 it has the right to license all Intellectual Property Rights in and to the Services and Documentation to the Customer and to provide the Technical Support Services to the Customer.

11.1.5 none of the Services or Documentation supplied by Loadbalancer under this Agreement infringes the Intellectual Property Rights of any third party.

11.2 In the event that any item of Deliverables is not of a satisfactory quality and/or fails to operate in accordance with the Documentation (a **Defective Item of Deliverables**) during the Deliverables Warranty Period:

11.2.1 the Customer may provide written notice of this fact to Loadbalancer; and

11.2.2 promptly thereafter:

（i）   Loadbalancer shall at its discretion request a return of the unit for diagnosis and repair; or

(ii)   Loadbalancer shall at its discretion deliver a replacement part to the relevant site; or

(iii)   Loadbalancer shall at its discretion deliver a replacement unit to the relevant Site; and

(iv)   the Customer shall return the Defective Item of Deliverables to Loadbalancer (at such address as Loadbalancer shall reasonably specify).

11.3   Where such notice is given during the Deliverable Warranty Period:

11.3.1 Loadbalancer shall be responsible for the cost of delivering the replacement item of Deliverables to the relevant Site;

11.3.2 The Customer shall be responsible for the cost of returning the Defective Item of Deliverables to Loadbalancer; and

11.3.3 Loadbalancer shall be entitled to charge the Customer for the reasonable value of the replacement Deliverables where the Customer does not return the Defective Item of Deliverables.

11.4   During the Deliverables Warranty Period, Loadbalancer shall ensure that support is available by telephone and/or email (during Normal Working Hours) to provide assistance to the Customer in respect of the following:

11.4.1 remedying Defects in Deliverables; and

11.4.2 providing advice on the use of the Deliverables.

11.5   Subject to clause 15.6, Loadbalancer shall use reasonable endeavours to correct Defects in Deliverables notified to it by the Customer in a timely manner appropriate to the seriousness of the circumstances.

11.6   Some Deliverables may be supported by a third party, for example when supplied on Dell Hardware. In these circumstances the hardware warranty lies with the hardware manufacturer.

11.7   If the customer has purchased next day hardware replacement for Loadbalancer manufactured Deliverables, Loadbalancer shall endeavor to ship similar replacement hardware within 24 hours where possible, with no guarantee of delivery time.

11.8   As the Customer's sole and exclusive remedy, Loadbalancer shall, at its option, correct, repair, remedy, re-perform or refund the Deliverables that do not comply with clause 11.1, provided that the Customer:

11.8.1 serves a written notice on Supplier not later than five Business Days from delivery or performance in the case of defects discoverable by a physical inspection, or within a reasonable period of time from delivery or performance in the case of latent defects;

11.8.2 such notice specifies that some or all of the Deliverables do not comply with clause 11.1 and identifying in sufficient detail the nature and extent of the defects; and

11.8.3 gives Loadbalancer a reasonable opportunity to examine the claim of the defective Deliverables.

11.9   The provisions of this Agreement shall apply to any Deliverables that are corrected, repaired, remedied, or re-performed with effect from delivery or performance of those Deliverables.

11.10   Loadbalancer shall not be liable for any failure of the Deliverables to comply with clause 11.1:

11.10.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Deliverables;

11.10.2 to the extent caused by the Customer's failure to comply with Loadbalancer's instructions in relation to the Deliverables, including any instructions on installation, operation, storage or maintenance;

11.10.3 to the extent caused by Loadbalancer following any specification, instruction, or requirement of or given by the Customer in relation to the Deliverables;

11.10.4 where the Customer modifies any Deliverables without Loadbalancer's prior written consent or, having received such consent, not in accordance with Loadbalancer's instructions; or

11.10.5 where the Customer uses any of the Deliverables after notifying Loadbalancer that they do not comply with clause 11.1.

11.11   Except as set out in this clause 11:

11.11.1 Loadbalancer gives no warranty and makes no representations in relation to the Deliverables; and

11.11.2 shall have no liability for their failure to comply with the warranty in clause 11.1,

and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

11.12   Loadbalancer does not warrant or guarantee that it will be able to rectify all Defects.

11.13   The sole remedy for breach of the warranty under clause 11.1.2 shall be correction of Defects by Loadbalancer in accordance with clause 11.2-11.7(inclusive) of this Agreement and Loadbalancer shall not be liable for any indirect or consequential loss or damage or any loss of profits, business interruption, loss or corruption of data or information or loss of business opportunity, goodwill or reputation arising under or in connection with the Loadbalancer Software or Deliverables.

12   Subscribed services warranty

12.1   Subject to the remainder of this clause 12, Loadbalancer warrants that:

12.1.1   each subscribed Service shall operate materially in accordance with its description in the Order when used in accordance with this Agreement under normal use and normal circumstances during the relevant Service Period; and

12.1.2   it will provide each of the Services with reasonable care and skill.

12.2   The subscribed Services may be subject to delays, interruptions, errors, or other problems resulting from use of the internet or public electronic communications networks used by the parties or third parties. The Customer acknowledges that such risks are inherent in cloud services and that Loadbalancer shall have no liability for any such delays, interruptions, errors, or other problems.

12.3   The warranties in clause 12 are subject to the limitations set out in clause 15.6 and shall not apply to the extent that any error in the Services arises as a result of:

12.3.1   incorrect operation or use of the Services by the Customer, any Authorised Affiliate or (including any failure to follow the Documentation or failure to meet minimum specifications);

12.3.2   use of any of the Services other than for the purposes for which it is intended;

12.3.3   use of any Services with other software or services or on equipment with which it is incompatible (unless Loadbalancer recommended or required the use of that other software or service or equipment]);

12.3.4   any act by any third party (including hacking or the introduction of any virus or malicious code);

12.3.5   any modification of Services (other than that undertaken by Loadbalancer or at its direction); or

12.3.6   any breach of this Agreement by the Customer (or by any Authorised Affiliate).

12.4   The Customer acknowledges that any Open-Source Software provided by the Supplier is provided "as is" and expressly subject to the disclaimer in clause 15.6

13   The Customer's obligations

13.1   The Customer shall co-operate with Loadbalancer in any manner reasonably required by Loadbalancer in order to carry out the Technical Support Services (including provision of information and data, making available suitably qualified employees and contractors of the Customer and, subject to Loadbalancer's compliance with the Customer's normal security requirements):

13.1.1   provide access to the Customer's systems for the purpose of carrying out diagnostics and correction of Defects, provided that such access shall be direct or remote, at the Customer's option, and that, in the latter case, it will be subject to Loadbalancer's compliance with any additional requirements for security and encryption techniques or software which may from time to time be specified by Loadbalancer;

13.1.2   provide such further access for Loadbalancer's staff to the Site(s) as is necessary to carry out Loadbalancer's obligations under this Agreement. The Customer shall obtain for Loadbalancer all permissions necessary to obtain such access.

13.1.3   when Loadbalancer's staff are working at the Site(s), provide facilities and supplies reasonably required by Loadbalancer (such as power and computer consumables).

13.2   The Customer shall comply, as soon as reasonably practicable, with all Loadbalancer's reasonable requests for information or assistance.

14   Indemnity and insurance

14.1   The Customer shall indemnify, and keep indemnified, Loadbalancer and hold harmless Loadbalancer (on Loadbalancer's behalf on behalf of each of Loadbalancer's Affiliates) from and against any losses, damages, liability, Data Protection Losses, costs (including legal and other professional fees) and expenses incurred by Loadbalancer (or any of its Affiliates) as a result of or in connection with the Customer's breach of any of the Customer's obligations under this Agreement.

14.2   The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom or such other country by agreement in writing with Loadbalancer to cover its obligations under this Agreement. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

14.3   This clause 14 shall survive termination or expiry of this Agreement.

15   Limitation of liability

15.1   The extent of the parties' liability under or in connection with this Agreement (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 15.

15.2   Subject to clauses 15.5 and 15.6, Loadbalancer's total aggregate liability to the Customer (however arising) under or in relation to this Agreement shall be limited to 100% of the Fees paid in the 12 months preceding the event (or the first of a series of events) which gave rise to the claim(s).

15.3   Subject to clauses 15.5 and 15.6, Loadbalancer shall not be liable for consequential, indirect or special losses.

15.4   Subject to clauses 15.5 and 15.6, Loadbalancer shall not be liable for any of the following (regardless of whether directly or indirectly such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation):

15.4.1 loss of profit;

15.4.2 destruction, loss of use or corruption of data;

15.4.3 loss or corruption of software or systems;

15.4.4 loss or damage to equipment;

15.4.5 loss of use;

15.4.6 loss of production;

15.4.7 loss of contract;

15.4.8 loss of opportunity;

15.4.9 loss of savings, discount, or rebate (whether actual or anticipated);

15.4.10 harm to reputation or loss of goodwill.

15.5   The limitations of liability set out in clauses 15.2 to 15.4 shall not apply in respect of any indemnities given by the Customer under this Agreement.

15.6   Notwithstanding any other provision of this Agreement, the liability of the parties shall not be limited in any way in respect of the following:

15.6.1   death or personal injury caused by negligence;

15.6.2   fraud or fraudulent misrepresentation;

15.6.3   any other losses which cannot be excluded or limited by Applicable Law;

15.6.4   any losses caused by wilful misconduct.

16   Loadbalancer shall not be liable in respect of any failure or delay in performing its obligations, including any Defects, to the extent that such failure, delay or Defects result from any unauthorised modifications, use or improper installation of the Deliverables and/or Services by or on behalf of the Customer.

17   Loadbalancer shall not be liable in respect of any failure or delay in performing its obligations, including any Defects, to the extent that such failure, delay or Defects result from any defect in or operability of a Virtual Appliance Platform or any other third party software or hardware used in conjunction with the Deliverables or Services.

18   The foregoing limitations will survive termination and/or expiry of this Agreement.

19   Suspension

19.1   Without limiting our other rights and remedies Loadbalancer may suspend access to the Services in part or fully if:

19.1.1   Loadbalancer suspects that there has been any misuse of the Services or breach of this Agreement; or

19.1.2   the Customer fails to pay any sums due to Loadbalancer by the due date for payment.

19.2   Where the reason for the suspension is suspected misuse of the Services or breach of this Agreement, without prejudice to its rights under clause 24.3, Loadbalancer will take steps to investigate the issue and may restore or continue to suspend access at its discretion.

19.3   In relation to suspensions under clause 19.1.2, access to the Services will be restored promptly after Loadbalancer receives payment in full and cleared funds.

19.4   Fees shall remain payable during any period of suspension notwithstanding that the Customer or Affiliates may not have access to the Services.

20   Intellectual property

20.1   All Intellectual Property Rights in and to the Services (including in all Applications, Documentation) belong to and shall remain vested in Loadbalancer or the relevant third-party owner. To the extent that the Customer, any of its Affiliates or any person acting on its or their behalf acquires any Intellectual Property Rights in the Applications, Documentation or any other part of the Services, the Customer shall assign or procure the assignment of such Intellectual Property Rights with full title guarantee (including by way of present assignment of future

Intellectual Property Rights) to Loadbalancer or such third party as Loadbalancer may elect. The Customer shall execute all such documents and do such things as Loadbalancer may consider necessary to give effect to this clause 22.1.

20.2 The Customer may be able to store or transmit Customer Data using one or more subscribed Service and the subscribed Services may interact with Customer Systems. The Customer hereby grants a royalty-free, non-transferable, non-exclusive licence for Loadbalancer (and each of its direct and indirect sub-contractors) to use, copy and other otherwise utilise the Customer Data and Customer Systems to the extent necessary to perform or provide the Services or to exercise or perform Loadbalancer's rights, remedies and obligations under this Agreement.

20.3 The Supplier may use any feedback and suggestions for improvement relating to the Services provided by the Customer, the Authorised Affiliates without charge or limitation (**Feedback**). The Customer hereby assigns (or shall procure the assignment of) all Intellectual Property Rights in the Feedback with full title guarantee (including by way of present assignment of future Intellectual Property Rights) to Loadbalancer at the time such Feedback is first provided to Loadbalancer.

20.4 The Customer hereby waives (and shall ensure all relevant third parties have waived) all rights to be identified as the author of any work, to object to derogatory treatment of that work and all other moral rights in the Intellectual Property Rights assigned to Loadbalancer under this Agreement.

20.5 Subject to clauses 20.6 and 20.9, Loadbalancer shall:

20.5.1 Defend at its own expense any claim brought against the Customer by any third party alleging that the Customer's use of the Services infringes any copyright, database right or registered trade mark, registered design right or registered patent (**IPR Claim**); and

20.5.2 pay, subject to clause 20.7, all costs and damages awarded or agreed in settlement or final judgment of an IPR Claim.

20.6 The provision of clause 20.5 shall not apply unless the Customer:

20.6.1 promptly and in any event within 2 days, notifies Loadbalancer on becoming aware of an actual or threatened IPR Claim and in writing set out full details of any IPR Claim;

20.6.2 makes no comment or admission of liability and take no action that may adversely affect or compromise Loadbalancer's ability to defend or settle the IPR Claim without the prior written consent of Loadbalancer;

20.6.3 gives Loadbalancer sole authority to defend or settle all negotiations and litigation arising from the IPR Claim;

20.6.4 takes all reasonable steps to minimise the losses that may be incurred by it or by any third party as a result of the IPR Claim;

20.6.5 provides Loadbalancer with all reasonable assistance in relation to the IPR Claim (at the Customer's expense) including the provision of prompt access to any relevant premises, officers, employees, contractors, or agents of the Customer;

20.6.6 uses the Deliverables in combination with any other goods or services, which without such combination, no IPR Claim could or would have been made.

20.7 The provisions of clause 15 shall apply to any payment of costs and damages awarded or agreed in settlement or final judgment of an IPR Claim under clause 20.5.

20.8 If any IPR Claim is made or is reasonably likely to be made, Loadbalancer may at its option:

20.8.1 procure for the Customer the right to continue receiving the benefit of the relevant Services; or

20.8.2 modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement, provided the Deliverables remain in material conformance to their Documentation.

20.9 Loadbalancer shall have no liability or obligation under this clause 20 in respect of (and shall not be obliged to defend) any IPR Claim which arises in whole or in part from:

20.9.1 any modification of the Services (or any part) without Loadbalancer's express written approval;

20.9.2 any Non-Loadbalancer materials;

20.9.3 any Customer Data;

20.9.4 any Free or Trial Services (or any Services provided in connection with them);

20.9.5 any Open Source Software;

20.9.6 any breach of this Agreement by the Customer;

20.9.7 installation or use of the Services (or any part) otherwise than in accordance with this Agreement or Loadbalancer's instructions; or

20.9.8 installation or use of the Services (or any part) in combination with any software, hardware or data that has not been supplied or expressly authorised by Loadbalancer.

20.10 The Customer shall indemnify Loadbalancer against all losses, damages, liability, costs, and expenses (including reasonable legal fees) incurred by Loadbalancer in connection with any claim arising from such modification or use.

20.11 Subject to clause 15.6, the provisions of this clause 20 set out the Customer's sole and exclusive remedy (howsoever arising, including in contract, tort, negligence or otherwise) for any IPR Claim.

21 Confidentiality and announcements

21.1 The Customer shall keep confidential all Confidential Information of Loadbalancer and of any Affiliate of Loadbalancer and shall not without prior written consent of Loadbalancer, disclose copy or modify the Confidential Information of Loadbalancer (or permit others to do so) other than as necessary for the performance of its express rights and obligations under this Agreement. The provisions of this clause shall not apply to:

21.1.1 any information which was in the public domain at the date of this Agreement;

21.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of this Agreement or any related agreement;

21.1.3 any information which is independently developed by the Customer without using information supplied by Loadbalancer or by any Affiliate of Loadbalancer; or

21.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of this Agreement.

except that the provisions of clauses 21.1.1 to 21.1.3 shall not apply to information to which clause 21.4 relates.

21.2 The Customer undertakes to:

21.2.1 disclose the Confidential Information of Loadbalancer only to those of its officers, employees, agents, and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement.

21.2.2 procure that such persons are made aware of and agree in writing to observe the obligations in this clause 21; and

21.2.3 be responsible for the acts and omissions of those third parties referred to in this clause 21 as if they were the Customer's own acts or omissions.

21.3 The Customer shall give notice to Loadbalancer of any unauthorised use, disclosure, theft, or loss of Loadbalancer's Confidential Information immediately upon becoming aware of the same.

21.4 To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use is in compliance with and does not conflict with any provisions of clause 22.

21.5 This clause 21 shall survive the termination or expiry of this Agreement for a period of three years.

22   Processing of personal data

22.1 The parties agree that the Customer is a Controller and that Loadbalancer is a Processor for the purposes of processing Protected Data pursuant to this Agreement. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to Loadbalancer in respect of Protected Data (including the terms of this Agreement) shall at all times be in accordance with Data Protection Laws. Nothing in this Agreement relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.

22.2 Loadbalancer shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of this Agreement.

22.3 The Customer shall indemnify and keep indemnified Loadbalancer against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory Authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 22.

22.4 Loadbalancer shall:

22.4.1 only process (and shall ensure Loadbalancer Personnel only process) the Protected Data in accordance with the schedule and this Agreement (including when making any transfer to which clause 22.9 relates), except to the extent:

(a) that alternative processing instructions are agreed between the parties in writing; or

(b) otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and

22.4.2 without prejudice to clause 22.1, if Loadbalancer believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.

22.5 Taking into account the state of technical development and the nature of processing, Loadbalancer shall implement and maintain the technical and organisational measures set out in Part B of the schedule to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.

22.6 Loadbalancer shall:

22.6.1 not permit any processing of Protected Data by any agent, subcontractor or other third party (except its or its Sub-Processors' own employees in the course of their employment that are subject to an enforceable obligation of confidence with regards to the Protected Data) without the prior specific written authorisation of the Customer;

22.6.2 prior to the relevant Sub-Processor carrying out any processing activities in respect of the Protected Data, appoint each Sub-Processor under a written contract containing materially the same obligations as under this clause 22 (including those relating to sufficient guarantees to implement appropriate technical and organisational measures) that is enforceable by Loadbalancer and ensure each such Sub-Processor complies with all such obligations;

22.6.3 remain fully liable to the Customer under this Agreement for all the acts and omissions of each Sub-Processor as if they were its own; and

22.6.4 ensure that all persons authorised by Loadbalancer or any Sub-Processor to process Protected Data are subject to a binding written contractual obligation to keep the Protected Data confidential.

22.7 The Customer authorises the appointment of the Sub-Processors listed in the schedule.

22.8 Loadbalancer shall (at the Customer's cost):

22.8.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to Loadbalancer; and

22.8.2 taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects'

rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.

22.9 Loadbalancer shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to countries outside the United Kingdom or to any International Organisation without the prior written authorisation of the Customer.

22.10 Loadbalancer shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate Loadbalancer's compliance with the obligations placed on it under this clause 22 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this clause 22.10).

22.11 Loadbalancer shall notify the Customer within two (2) Business days and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.

22.12 On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, Loadbalancer shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires Loadbalancer to store such Protected Data. This clause 22 shall survive termination or expiry of this Agreement.

23   Force majeure

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. In such circumstances, the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the Force Majeure event continues for a continuous period of more than 60 days, the party not affected may terminate this Agreement by giving 30 days' written notice to the other party.

24   Termination

24.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, Loadbalancer may terminate this Agreement at any time by giving notice in writing to the Customer.

24.2 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may at any time terminate this Agreement with immediate effect by giving written notice to the other party if:

24.2.1 the other party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

24.2.2 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement;

24.2.3 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

24.2.4 the other party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

24.3 Loadbalancer may terminate this Agreement or any other contract which it has with the Customer at any time if:

24.3.1 the Customer commits a material breach of this Agreement and such breach is not remediable;

24.3.2 the Customer has failed to pay any amount due under this Agreement on the due date and such amount remains unpaid within *14* days after Loadbalancer has given notification that the payment is overdue;

24.3.3 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under this Agreement or receive any benefit to which it is entitled;

24.3.4 the Customer sells any or all of its business; or

24.3.5 there is a change of Control of the Customer.

24.4 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle Loadbalancer to terminate this Agreement under this clause 24, it shall immediately notify Loadbalancer in writing.

24.5 Termination or expiry of this Agreement shall not affect any accrued rights and liabilities of Loadbalancer at any time up to the date of termination.

24.6 Any provision of these terms and conditions which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement (including clauses shall remain in full force and effect.

25   Consequences of Termination

25.1 Immediately on termination or expiry of this Agreement (for any reason), the rights granted by Loadbalancer under this Agreement shall terminate and the Customer shall (and shall procure that each Authorised Affiliate shall):

25.1.1 stop using the Services; and

25.1.2 destroy and irretrievably delete or, if requested by Loadbalancer, return any copies of the Documentation in its possession or control (or in the possession or control of any person acting on behalf of any of them);

25.1.3   return to us any, Deliverables and/or other property belonging to us which are in your possession or under your control (including any documents, materials, works, equipment, and/or other property containing any Confidential Information);

25.1.4   immediately pay any outstanding unpaid invoices and interest due.

26   Notices

26.1   Any notice given by a party under this Agreement shall be in writing and shall be delivered by hand or sent by commercial courier to the other party's registered office from time to time.

26.2   Any notices shall be deemed to have been duly received:

26.2.1   if delivered by hand, on the date and at the time the notice is left at the proper address;

26.2.2   if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

26.3   Any change to the contact details of a party as set out in this Agreement shall be notified to the other party in accordance with clause 26.1 and shall be effective:

26.3.1   on the date specified in the notice as being the date of such change; or

26.3.2   if no date is so specified, five Business Days after the notice is deemed to be received.

26.4   All references to time are to the local time at the place of deemed receipt.

26.5   This clause does not apply to notices given in legal proceedings or arbitration.

26.6   A notice given under this Agreement is not validly served if sent by email.

27   Export controls

27.1   The parties acknowledge that the Deliverables, and Services are subject to export control laws under the laws of any country outside the United Kingdom

The parties shall comply with all applicable laws, rules, and regulations governing export of goods, software, information and other items that apply to the Services in any country outside of the United Kingdom, and shall not export or re-export, directly or indirectly, separately or as a part of a system, the to any country for which an export licence or other approval is required, without first obtaining such licence or other approval. For further information on Loadbalancer's export compliance please see our website:

www.loadbalancer.org/legal/export-compliance

28   Cumulative remedies

The rights and remedies provided in this Agreement for Loadbalancer only are cumulative and not exclusive of any rights and remedies provided by law.

29   Time

Unless stated otherwise, time is of the essence for any date or period specified in this Agreement in relation to the Customer's obligations only.

30 Further assurance

The Customer shall at the request of Loadbalancer, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to this Agreement.

31 Entire agreement

31.1 The parties agree that this Agreement constitutes the entire agreement between them and supersedes all previous agreements, understandings, and arrangements between them, whether in writing or oral in respect of its subject matter.

31.2 Each party acknowledges that it shall have no remedies in respect of, any representation or warranty that is not expressly set out in the. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

31.3 Nothing in this Agreement purports to limit or exclude any liability for fraud.

32 Variation

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and this Agreement and is duly signed or executed by, or on behalf of, each party.

33 Assignment

33.1 The Customer may not assign, subcontract, or encumber any right or obligation under this Agreement, in whole or in part, without Loadbalancer's prior written consent.

33.2 Notwithstanding clause 33.1, the Customer may perform any of its obligations and exercise any of its rights granted under this Agreement through any Affiliate provided that it gives Loadbalancer prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under this Agreement shall be deemed to be an act or omission of the Customer itself.

34 Set off

34.1 Loadbalancer shall be entitled to set-off under this Agreement any liability which it has or any sums which it owes to the Customer under this Agreement.

34.2 The Customer shall pay all sums that it owes to Loadbalancer under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

35 No partnership or agency

The parties are independent persons and are not partners, principal and agent or employer and employee and this Agreement does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

36 Equitable relief

The Customer recognises that any breach or threatened breach of this Agreement may cause Loadbalancer irreparable harm for which damages may not be an adequate remedy.

Accordingly, in addition to any other remedies and damages available to Loadbalancer, the Customer acknowledges and agrees that Loadbalancer is entitled to the remedies of specific performance, injunction, and other equitable relief without proof of special damages.

37   Severance

37.1   If any provision of this a (or part of any provision) is or becomes illegal, invalid, or unenforceable, the legality, validity, and enforceability of any other provision of this Agreement shall not be affected.

37.2   If any provision of this Agreement (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

38   Waiver

38.1   No failure, delay or omission by Loadbalancer in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

38.2   No single or partial exercise of any right, power or remedy provided by law or under this Agreement by Loadbalancer shall prevent any future exercise of it or the exercise of any other right, power, or remedy by Loadbalancer.

39   Compliance with law

The Customer shall comply with Applicable Law and shall maintain such licences, authorisations, and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with this Agreement.

40   Costs and expenses

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature, and performance of this Agreement (and any documents referred to in it).

41   Third party rights

41.1   Except as expressly provided for in clause 41.2, a person who is not a party to this Agreement shall not have any rights under this Agreements (Rights of Third Parties) Act 1999 to enforce any of the provisions of this Agreement.

41.2   Any Affiliate of Loadbalancer shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary this Agreement or any provision of it.

42   Counterparts and electronic signatures

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original agreement and each of which shall constitute one and the same agreement. The counterparts of this Agreement may be executed and delivered by fax, email, and/or electronic

signature (including PDF and DocuSign) by either party. The parties waive all right to challenge the admissibility or authenticity of this Agreement in any court based solely on the absence of an original signature.

43 Dispute resolution

43.1 Any dispute arising between the parties out of or in connection with this Agreement shall be dealt with in accordance with the provisions of this clause 43.

43.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.

43.3 The parties shall use all reasonable endeavours to reach a negotiated resolution through the following procedure:

43.3.1 Within five Business Days of service of the notice, the contract managers of each of the parties shall meet to discuss the dispute and attempt to resolve it.

43.3.2 If the dispute has not been resolved within *five* Business Days of the first meeting of the contract managers, then the matter shall be referred to the chief executives (or persons of equivalent seniority) of each of the parties. The chief executives (or equivalent) shall meet within five Business Days to discuss the dispute and attempt to resolve it.

43.4 Until the parties have completed the steps referred to in clause 43.3, and have failed to resolve the dispute, neither party shall commence formal legal proceedings except that either party may at any time seek urgent interim relief from the courts.

44 Governing law

This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

45 Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).

Signed by ....

for and on behalf of

LOADBALANCER.ORG LIMITED

Signed by ....

for and on behalf of

THE SCHEDULE

Part A
Data processing details

Processing of the Protected Data by Loadbalancer under this Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subjects set out in this Part A of the schedule.

1   **Subject-matter of processing:**

Processing will principally be in respect of processing and transacting orders and post order communication related to the ongoing operation of our products. On occasion we may embark in marketing activities - (marketing is conducted in accordance with GDPR, PECR and other relevant regulations)

2   **Duration of the processing:**

Duration of the business agreement + 5 years (contact details are retained in case of critical security communications)

3   **Nature and purpose of the processing:**

Information on how the business will use customer data is given in our Privacy Policy, accessible through our website (https://www.loadbalancer.org/legal/privacy-policy/)

4   **Type of Personal Data:**

Business contact details only (i.e. email address, postal address, delivery address, phone details)

5   **Categories of Data Subjects:**

Business Customers

6   **Specific processing instructions:**

N/A

THE SCHEDULE

Part B
Technical and organisational security measures

1   Loadbalancer shall implement and maintain the following technical and organisational security measures to protect the Protected Data:

1.1   In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of the Protected Data to be carried out under or in connection with this Agreement, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, Loadbalancer shall implement appropriate technical and organisational security measures appropriate to the risk, including as appropriate those matters mentioned in Articles 32(1)(a) to 32(1)(d) (inclusive) of the GDPR.

The terms and conditions which apply to and govern this Order are the Conditions. The parties agree that all other terms and conditions are expressly excluded.