Flintfox Terms of Business

Introduction

Flintfox International Limited and its Affiliates offer a range of intelligent pricing solutions, implementation services and related support services to their clients.

These functional solutions and services relationships between Flintfox and its clients are governed by these Terms of Business and the following legal agreements issued under them:

- Work Orders for specific implementation services and, if relevant, certain additional support services;
- Subscription Orders for Flintfox Application Services; and
- Managed Support Orders for enhanced support services.

Flintfox Terms of Business

1. Definitions and interpretation

1.1 Definitions

"**Affiliate**" means, in relation to a Party:

(a) any company, individual, trust, partnership or limited partnership that directly or indirectly, Controls, is Controlled by, or is under common Control with that Party;

(b) if the Party is a company, its directors, and shareholders;

(c) if the Party is an individual, any Relative of the individual; and

(d) an Affiliate of any person in subclauses (a) to (c) of this definition.

"**Basic Support Services**" means the support services provided in connection with the Flintfox Application Services as set out in clauses 6.1(d) and 7 of these Terms of Business. "**Business Day**" means Monday to Friday in the region nominated by Client as their primary business location, but excludes public holidays in the primary business location.

"**Business Hours**" means 9am to 5pm Monday to Friday in the time zone of the region nominated by Client as their primary business location, but excludes public holidays in the primary business location.

"**Calendar Day**" means any day, including weekends and public holidays.

"**Change of Control**" means in relation to a Party, the occurrence of any of the following:

(a) the sale of all or substantially all of that Party's assets; or

(b) a change in the shareholding of the Party (provided that the Party is not listed on a recognised securities exchange) that results in the person or group of persons who control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings at the date of execution of a Work Order, Subscription Order or Managed Support Order, ceasing to have control of the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings.

"**Change Order**" means the document setting out changes to a Work Order and agreed to in writing by the parties.

"**Client**" means the client as specified in a Work Order, Subscription Order or Managed Support Order.

"**Client Data**" means Data uploaded or sourced from the Client.

"**Client Materials**" means any of documents or other information (whether physical or electronic) or data (including, if applicable, Personal Information), but excluding Client Data or software applications (licensed or proprietary) or methodologies or processes that are provided or made available by the Client to Flintfox, as applicable, relevant to or required by Flintfox for the provision of Services.

"**Client Support Representatives**" means the representatives nominated by the Client in the Subscription Order or Managed Support Order, or otherwise notified to Flintfox by the Client from time to time, that may lodge Support Requests and liaise with the Flintfox Support Team in accordance with clauses 7 and 8 of these Terms of Business.

"**Confidential Information**" means any information of whatever kind disclosed or revealed by the Disclosing Party to the Receiving Party under or in relation to the Flintfox Agreements that:

(a)   is by its nature confidential

(b)   is designated by the Disclosing Party as confidential; or

(c)   the Receiving Party knows or reasonably ought to know is confidential.

including:

(a)   data and records;

(b)   details of each Party's business, properties, clients, finances and accounts;

(c)   the terms of a Work Order, Subscription Order, or Managed Support Order;

(d)   Intellectual Property Rights including trade secrets, know how and other proprietary information;

(e)   where the Flintfox is the Disclosing Party, any part of the Services or Documentation that is not otherwise publicly available; and

(f)   where the Client is the Disclosing Party, the Client Data,

(g)   but does not include information that:

(h)   is published or has otherwise entered the public domain without a breach of this agreement;

(i)   is obtained from a third party who has no obligation of confidentiality to the disclosing party; or

(j)   is independently developed or obtained without breach of this agreement.

"**Control**" means:

(a)   of a company by a person if;

(i) the person determines the composition of the board of directors of the company or has the capacity to do so;

(ii) the board of directors of the company is accustomed to act in accordance with the instructions, directions or wishes of the person; or

(iii) the person holds or owns (alone or with its Affiliates):

(A) the majority of the issued shares of the company;

(B) the majority of the issued shares of the ultimate holding company of the company; or

(C) the majority of any securities or other rights granted by the company which entitle holders to distributions based on the profits, earnings, or net liquidation proceeds of the company;

(b) of a trust by a person if:

(i) the person is the sole trustee of the trust;

(ii) the composition of the board of directors of any trustee company of the trust is determined by the person or the person has the capacity to do so;

(iii) the board of directors of any trustee company of the trust is accustomed to act in accordance with the instructions, directions or wishes of the person; or

(iv) the person holds or owns (alone or with its Affiliates):

(A) the majority of the issued shares of any trustee company of the trust;

(B) the majority of the issued shares of the ultimate holding company of any trustee company of the trust; or

(C) the majority of the units, securities or other rights granted by the trust which entitle holders to distributions from the trust; and

(v) of a partnership or limited partnership by a person if:

(A) the person is the general partner of the partnership;

(B) the person has Control of the general partner of the partnership; or

(C) the person holds or owns (alone or with its Affiliates) the majority of the rights and interests which entitle holders to distributions from the partnership,

and "**Controls**" and "**Controlled**" each have a corresponding meaning.

"**Customised Software Deliverables**" means plugs-in, extensions or other software customisations developed by Flintfox for the Client via a Work Order issued under these Terms of Business.

"**Customised Software Deliverable Warranty Period**" has the meaning set out in clause 16.2.

"**Data**" means data, files or information accessed, used, communicated or stored through the Client's use of the Flintfox Application Services.

["**Defect**" means the Flintfox Base Software code or Customised Software Deliverable code not operating in the way Flintfox had designed or intended, causing the Flintfox Base Software or Customised Software Deliverable to behave in unintended ways or produce incorrect results.]

"**Deliverables**" means software applications or physical or electronic documentation or other materials in the agreed form and as specified in a Work Order that Flintfox creates for and delivers to the Client through Professional Services including Customised Software Deliverables.

"**Design Documents**" means the mutually approved functional design document and technical design document (or equivalent named document(s)) as set out in a Work Order.

"**Device**" means (whether physical or virtual) a server, system, workstation, computer, mobile device or end point upon, which, or, through the Flintfox Application Services are used.

"**Disclosing Party**" has the meaning set out in clause 20.1.

"**Documentation**" means documents and Deliverables delivered to the Client in connection with the Services.

"**Dynamics 365**" means the Microsoft Dynamics 365 suite of enterprise resource planning and customer relationship management software applications.

"**Escalation**" and "**Escalate**" means as the context requires reporting to the designated escalation point that:

(a) for Managed Support Services, Flintfox has failed to meet its contracted Initial Response time or Update obligations;

(b) or

(c) the urgency or impact of the Support Request has changed since the Support Request was logged.

"**Estimate**" has the meaning set out in clause 5.5.

"**Expiry Date**" is the expiry date listed in the applicable Work Order unless otherwise agreed in writing by the parties.

"**Flintfox**" means the entity specified as Flintfox in a Work Order, Subscription Order or Managed Support Order.

"**Flintfox Agreements**" means the Terms of Business and, as applicable, the Work Order(s), Subscription Order(s) and Managed Support Order(s).

"**Flintfox Application Services**" means the Flintfox Application Services subscribed for under a Subscription Order issued under these Terms of Business.

"**Flintfox Application Services Warranty Period**" has the meaning set out in clause 16.3.

"**Flintfox Base Software**" means the base Flintfox Software functionality made available to all clients pursuant to Flintfox Application Services but excluding functionality which is Customised Software Deliverables.

"**Flintfox for Dynamics 365**" means Flintfox Software applications that comprise a suite of trade promotion and revenue management modules built and deployed with Dynamics 365.

"**Flintfox Software**" means Flintfox software (being Flintfox for Dynamics 365 and/or RMx) or third party software provided as part of the Flintfox Application Services (for clarity, including Flintfox Base Software) that enables the access to and use of certain functionality; but excluding, where applicable, Microsoft or other third party branded software functionality.

"**Flintfox Support Team**" means the team within Flintfox attending to Support Requests.

"**Force Majeure Event**" has the meaning set out in clause 17.3.

"**Implemented Solution**" means the completed set of business processes, software application use, the Flintfox Application Service, training resources, and Documentation provided to the Client by Flintfox under the Flintfox Agreements.

"**Initial Response**" means the Support Request has been logged by Client, a ticket number has been assigned, a Flintfox resource has been assigned to the Support Request, and the Support Request is in an Active Status in the Support Portal.

"**Intellectual Property Rights**" means all intellectual property and proprietary rights (whether registered or unregistered) including:

(a)   any patents, utility models, copyrights, trade marks, trade names, brand names, indications of source or appellations of origin, eligible layout rights, domain names, plant variety rights, registered designs and commercial names and designations;

(b)   invention, discovery, trade secrets, product formulas, computer software, know how, Confidential Information, trade secrets, scientific, technical and product information;

(c)   any right to have information; and

(d) applications, letters patent, deed of grant, certificate or document of title for any thing referred to in paragraphs (a) to (d) of this definition and any medium in which nay thing referred to in those paragraphs is stored or embodied

(e) anywhere in the world.

"**Malicious Code**" means any viruses, worms, time bombs, Trojan horses, malware, spyware, ransomware, logic bombs, keystroke loggers, back door or drop dead devices, and other similar code, including any files, code, scripts, agents or programs that are designed or intended to damage, interfere, disrupt, disable, harm, manipulate, amend, alter the operations of, permit unauthorized access to, or modify, any software, hardware, network or other technology.

"**Managed Support Commencement Date**" has the meaning in set out in clause 0.

"**Managed Support Initial Term**" has the meaning in set out in clause 0.

"**Managed Support Renewal Term**" has the meaning in set out in clause 0.

"**Managed Support Services**" means enhanced support services provided under a Managed Support Order executed between Flintfox and the Client.

"**Microsoft**" means Microsoft Corporation.

"**Microsoft Terms and Conditions**" means together the Microsoft Cloud Agreement, Microsoft Online Service Terms, Microsoft SLA and such other terms and conditions governing the relationship between the Client and Microsoft in relation to the Client's use of Microsoft applications in connection with the Flintfox Application Services.

"**Notifiable Privacy Breach**" means the unauthorised or accidental access to, or disclosure, alteration, loss, or destruction of, Personal Information which has caused, or is likely to cause, harm to the affected individuals.

"**Operating System Environment**" means the Client's hosted cloud environment.

"**Out of Scope Work**" has the meaning in clause 0 of these Terms of Business.

"**Parties**" means the parties to these Flintfox Agreements, being Flintfox and the Client, and "**Party**" means any one of them as the context requires.

"**Personal Information**" means information about an identifiable individual.

"**Personnel**" means any employee or consultant or agent of Flintfox or of the Client as the context requires.

"**Professional Services**" means implementation services, the development of customised software and other related services delivered by Flintfox Personnel or resources as set out in a Work Order.

"**Rate Card**" means the rate card set out in the Work Order, or as subsequently updated by Flintfox and notified to the Client with thirty (30) Calendar Days written notice.

"Receiving Party" has the meaning set out in clause 20.1.

"Relevant Data Protection Law" means the data protection and privacy laws applicable to the delivery of the Services.

"**Resolution**" means the correction, elimination or resolution of a Support Request.

"Security Incident" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Client Data transmitted, stored or otherwise processed by or on behalf of Flintfox.

"Service Level" means the Initial Response Times for incidents set out in the Managed Support Order.

"Service Level Incident" has the meaning set out in clause 8.8(a).

"Services" means any and all services provided to the Client by Flintfox pursuant to a Work Order, a Subscription Order, or a Managed Support Order, along with any related applications, software, hardware or documentation provided by Flintfox, including:

(a)   Microsoft Services;

(b)   Flintfox Application Services;

(c)   Professional Services;

(d)   Subscription Services;

(e)   Support Services;

(f)   Flintfox Software;

(g)   Documentation; and

(h)   Deliverables.

"Subscription" means enrolment by the Client for the Flintfox Application Services under these Terms of Business as set out in a Subscription Order.

"**Subscription Commencement Date**" has the meaning set out in clause 0 of these Terms of Business.

"Subscription Order" means a subscription order for Flintfox Application Services issued under these Terms of Business and agreed and executed by the Parties.

"Subscription Initial Term" has the meaning set out in clause 0 of these Terms of Business.

"Subscription Renewal Term" has the meaning set out in clause O of these Terms of Business.

"Subscription Term" means the Subscription Initial Term plus any Subscription Renewal Terms.

"Support Portal" means access by the Client to the Flintfox support web portal where support tickets may be logged, or existing tickets viewed.

"Support Request" means an incident's details entered in the Support Portal that Client must provide to Flintfox including the nature and details of the incident being reported and where appropriate the attempted remediation action taken by the Client and the expected result.

"Support Services" means services for the ongoing support of clients in their utilization of software solutions provided by Flintfox pursuant to a Subscription Order or Managed Support Order.

"Supported Version" means any version of the Flintfox Application Services released not longer than two (2) years prior to the date the Support Request is logged.

"Taxes" means any tax, levy, charge, franchise, impost, duty, fee, rate, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any governmental agency and includes, for the avoidance of doubt, capital gains tax, fringe benefits tax, income tax, value-added tax, goods and services tax, sales tax, use tax, training guarantee levy, profits tax, undistributed profits tax, payroll or employment tax, withholding tax, land tax, import or customs duty, excise, municipal rates, and any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of the above.

"Terms of Business" means these Flintfox Terms of Business.

"Update" means information provided by email to a Client designated email address that sets out identifying details of the Support Request, status, description of progress toward resolution, any blockages or issues to resolution and, where known, the expected time to resolution.

"User" means Client Personnel authorised by the Client to use the Flintfox Application Services.

"Warranty Periods" means the Flintfox Application Services Warranty Period and the Customised Software Deliverable Warranty Period.

"Work Order" means a work order for Professional Services issued under these Terms of Business, including where applicable a Change Order, agreed and executed by the Parties.

1.2   **Interpretation**

In the Flintfox Agreements, headings are for convenience only and do not affect the interpretation of the Flintfox Agreements and, unless the context otherwise requires:

(a)   the singular includes the plural and vice versa, and a gender includes other genders;

(b)   another grammatical form of a defined word or expression has a corresponding meaning;

(c)   a reference to a clause or appendix is to a clause of, or appendix to, the relevant Flintfox Agreement, and a reference to the Flintfox Agreements includes any appendix;

(d)   a reference to a document or instrument (however described) includes the document or instrument as novated, altered, supplemented or replaced from time to time and in any form, whether in paper or electronic form;

(e)   a reference to, or obligations in the Flintfox Agreements which require, payment of money will be a reference to, or deemed to be an obligation requiring, payment of money in immediately available cleared funds or in any other form that the Parties agree in writing;

(f)   a reference to a Party means a Party to the Flintfox Agreements, and a reference to a Party to a document includes the Party's executors, administrators, successors and permitted assigns and substitutes;

(g)   a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

(h)   a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re enactments or replacements of any of them;

(i)   the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;

(j)   a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of the Flintfox Agreements or any part of them; and

if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

2.   General

Terms of Business: These Terms of Business along with the Work Order(s), Subscription Order(s) and Managed Support Order(s) govern the Services provided by Flintfox to the Client.

Agreement to be bound: The Client's entry into a Work Order, Subscription Order or Managed Support Order constitutes its agreement to be bound by these Terms of Business.

Duration: Subject to clause 23.3, the Parties will be bound by these Terms of Business for the duration of any Work Order, Subscription Order or Managed Support Order between the Parties, commencing on the date the Parties execute a Work Order, Subscription Order or Managed Support Order until the Work Order, Subscription Order or Managed Support Order expires or is terminated.

Amendments to Terms of Business: Flintfox may amend these Terms of Business from time to time. Amendments to these Terms of Business will be effective upon Flintfox's posting the updated Terms of Business on Flintfox's website.

2.1 **Cooperation:** The Parties agree to adhere to the principles of good faith, and to act with trust and mutual respect, in relation to the rights and obligations of each Party under the Flintfox Agreements including:

    (i) being fair, reasonable and honest;

    (ii) doing all things reasonably expected of a Party by the other Party to give effect to the spirit and intent of the Flintfox Agreements; and

    (iii) not impeding or restricting the performance of the other Party's responsibilities under this Agreement,

In undertaking their obligations under each of the relevant Flintfox Agreements, the Parties commit to:

    (i) establishing an integrated collaborative team environment to encourage the open, honest and efficient sharing of information between the Parties relating to the Services; and

    (ii) clear communication, early identification of issues and concerns and an outcome focused problem-solving approach.

2.2 **Application:** These Terms of Business shall apply to all Work Orders, Subscription Orders and Managed Support Orders. If there is any conflict between the terms of a Work Order, a Subscription Order, a Managed Support Order and these Terms of Business, the following order of precedence will apply (in descending order of priority):

Work Order or Subscription Order or Managed Support Order; and

Terms of Business.

3. The client's role and responsibilities

3.1 **Client obligations**: The Client agrees to meet its obligations under these Terms of Business, the Work Order(s) the Subscription Order(s) and the Managed Support Order(s).

3.2 **Responsibility for Users**: The Client acknowledges and agrees that they are responsible and liable for:

(a) acts and omissions of all Users under these Terms of Business, the Work Order(s), the Subscription Order(s) and the Managed Support Order(s);

(b) ensuring that all Users' use of the Services complies with applicable laws, these Terms of Business and the Work Order(s), the Subscription Order(s) and the Managed Support Orders;

(c) preventing unauthorised access to, or use of, the Flintfox Application Services, Customised Software Deliverables, and notifying Flintfox promptly if the Client becomes aware of such unauthorised access or use; and

(d) the accuracy, quality and legality, of all Client Data.

3.3 **Responsibility for Client Data**:

Client is solely responsible for the lawful collection, use and provision of all Client Data required for the proper use of, or, in relation to the provision of, the Services.

Flintfox does not collect or retain Personal Information relating to the Client's customers. Flintfox may collect and retain Personal Information relating to the Client, including Client business contact information, for the purposes described in clause 14. Where Flintfox collects and retains Personal Information relating to the Client, Flintfox's use of this Personal Information is subject to clause 21.2.

3.4 **Client prohibited conduct**: The Client agrees not to:

(a) use the Services for any illegal or fraudulent purpose or in violation of any applicable laws;

(b) use the Services to send or store infringing, obscene, threatening, or otherwise unlawful or tortious material, spyware or Malicious Code, including material that violates third party rights (including privacy rights and Intellectual Property Rights);

(c) interfere with security-related features of the Services, including by disabling or circumventing features that detect, prevent or limit use or copying of any content;

(d) modify, translate, reverse engineer, decompile, disassemble, create derivative works, or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms in whole or in part relevant to the Services or Documentation (except to the extent that the activity is expressly permitted by applicable law);

(e) interfere with the operation of the Services or any user's enjoyment of the Services, including by interfering with or disrupting any network, equipment, or server connected to or used to provide the Service; or

(f) sell, resell, license, sublicense, distribute, or otherwise transfer, make available, rent or lease any Service other than as expressly allowed in these Terms of Business, a Work Order, a Subscription Order or a Managed Support Order;

(g) copy or otherwise reproduce, republish or transmit the Services or any part, feature, function or user interface of the Services, or use the Services to access or use any of Flintfox's Intellectual Property Rights except as permitted under these Terms of Business, the Work Order, Subscription Order or Managed Support Order;

(h) remove any proprietary or intellectual property notices or labels from the Services;

(i) interfere with or disrupt the integrity or performance of the Services in whole or in part or of data contained therein;

(j) use the Services in a way that unreasonably degrades the performance of the Services;

(k) alter, circumvent or access the Services (in whole or part) in part in a way that circumvents the contractual usage limits, technical limits or recurring fees;

(l) access the Services in whole or in part in order to build a competitive product or service or to benchmark with a product or service not developed or provided by Flintfox, or in any way modify, translate, or create derivative works based on the Services;

(m) create, market, distribute add-ons or enhancements for, or incorporate into another product, the Flintfox Application Services or Flintfox Software without the prior written agreement of Flintfox; or

(n) attempt to do any of the acts, or assist or permit any person in engaging in any of the acts described in this clause 3.4.

3.5 **Right to injunctive relief**: The Client acknowledges that monetary damages may not be a sufficient remedy for a breach of its obligations under clause 3.40, and that Flintfox will be entitled, without waiving any of its other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction if any such breach occurs.

3.6 **Breaches**: The Client shall immediately notify Flintfox in writing if it becomes aware of any circumstances that may breach the provisions of clause 3.4 and take all reasonable steps to prevent or mitigate such a breach. Notwithstanding these Client obligations, Flintfox may, without notice, take all reasonable remedial action if the Client's actions or any Client Data is likely to have or has any such impacts provided it is acknowledged that Flintfox has no

general vetting obligation to review the Client's actions or Client Data in relation to such impacts.

3.7 **Condition precedent to provision of Services**: To ensure that:

(a) any Services, the Implemented Solution or any component task contemplated therein is completed on a timely basis; and

(b) Flintfox Application Services are capable of being provided as intended,

the Client acknowledges that it must:

(c) provide Flintfox with the necessary Client Materials and other resources (including equipment, server infrastructure (whether via a cloud service provider or on premise (as applicable), operating system environments and amenities);

(d) provide Flintfox access to its environments as necessary or appropriate for the delivery of the Services; and

(e) ensure Client Personnel cooperation in the delivery of the Services.

The Client acknowledges that its timely performance of its obligations under this clause 3.7 is a condition precedent to Flintfox's performance of the Services that, if not discharged, may either cause Flintfox to be unable to deliver the Services and/or the Implemented Solution, or incur additional charges and delays for which the Client shall be responsible. Flintfox is not obligated to provide the applicable Services if the Client's obligations under this clause 3.7 have not been met, and is not liable for any loss or damage caused by any failure to or delay in the delivery of the Services due to the Client not meeting its obligations under this clause 3.7.

4. Flintfox role and responsibilities

4.1 **Flintfox obligations**: Flintfox agrees to meet its obligations under these Terms of Business, the Work Order(s) the Subscription Order(s) and the Managed Support Order(s), as applicable.

4.2 **Flintfox's suspension right**: Flintfox is entitled to immediately and without notice suspend the Services where Flintfox reasonably believes that the Client's, or a User's or Affiliate's actions threaten the security, integrity or availability of the Services.

(a) Flintfox shall not be liable for any loss or damage arising from the suspension of the Services under this clause 4.2.

(b) The Client shall remain liable for all fees due under the Work Order, the Subscription Order and/or the Managed Support Order, during the period of any suspension under this clause 4.2.

(c)   Following resolution by the Client of the issues that gave rise to the suspension, Flintfox shall as soon as reasonably practicable reinstate provision of the Services.

(d)   A suspension of the Services under this clause under this clause 4.2 will be without prejudice to other remedies available to Flintfox.

4.3   **Flintfox telemetry**: The Services transmit data to Flintfox, including usage and performance data. Flintfox will use this data to ensure compliance with the Flintfox Agreements. Flintfox's use of this data may also include:

(a)   providing the Client with suggestions to help the Client discover and use functionality within the Services;

(b)   improving the features of the Services; and

(c)   use of patterns, trends, and other statistical data derived from the data to provide, operate, maintain, and improve Flintfox's products and services.

Flintfox will not use this data or derive information from it for any advertising or other commercial purposes (beyond providing the Client with the Services) without the Client's consent.

5.   Work Orders for Professional Services

Scope: Professional Services to be performed by Flintfox pursuant to these Terms of Business shall be detailed in separate Work Orders and shall be performed on a Work Order specific basis. In each Work Order Flintfox shall mutually agree with Client on the scope of Professional Services and Deliverables to be provided under that Work Order. Any services, customisations, software applications, outputs, products or Client performance requirements (including, but not limited to, non-functional requirements such as performance and response times) that are not expressly set out in a Work Order ("**Out of Scope Work**") will be deemed to be excluded from Flintfox's obligations under a Work Order. Out of Scope Work will not be undertaken until either:

it is added to the scope of an existing Work Order (through a Change Order under clause 5.2 of these Terms of Business); or

it is included in an additional Work Order.

5.1   **Work Order preparation**: The preparation of the first Work Order will be undertaken by Flintfox at no charge to the Client. Flintfox shall invoice the Client for Personnel time incurred in preparing subsequent Work Orders on a time and materials basis, in accordance with the charge out rates in the Rate Card.

5.2   **Change control**: The Client or Flintfox may request a modification or variation to a Work Order. The request must be in writing detailing the change required. The Client and Flintfox agree to give such requests reasonable consideration and respond to the other on its merits within seven (7) Calendar Days. Agreed variations to a Work Order will be documented in a Change Order. Where the request for a variation to a Work Order is

initiated by the Client, Flintfox shall invoice the Client for Flintfox Personnel time incurred in preparing the Change Order on a time and materials basis in accordance with the charge out rates specified in the applicable Work Order.

5.3 **Variation to fees and delivery**: Any Change Order agreed pursuant to clause 5.2 above may result in a variation to Flintfox's fees and/or impact on the timing of delivery of Services. The Client and Flintfox shall agree in writing to the new charges and/or expected impact on delivery timing when entering into the Change Order.

5.4 **Fees for Professional Services:** Flintfox will perform the Professional Services on a time and materials basis and shall maintain detailed records of its charges and expenses in such circumstances. Client may appoint an independent person (at the Client's expense) to inspect the accuracy of such records in the following manner:

(a) on written request based on fourteen (14) Calendar Days' notice;

(b) based on the format and media form as made available by Flintfox; and

(c) with the Client being responsible for the protection of the confidentiality of the information as disclosed to the independent person.

5.5 **Estimate:** The estimated charges set out in a Work Order ("**Estimate**") provide an indication of the charges likely to be incurred by the Client for the delivery of the Services. While every reasonable effort will be made to remain within the Estimate, Services will be billed based on the actual hours expended based on the charge out rates in the Rate Card. The Client acknowledges:

(a) for Customized Software Deliverables an Estimate is prepared based on Flintfox's documented and mutually approved Design documents in relation to the Client requirements;

(b) for other Professional Services an Estimate is prepared based on Flintfox's reasonable knowledge of the Client requirements and information made available by the Client; and

(c) while due care and skill has been used in the preparation of the Estimate, in either case an Estimate cannot not foresee every circumstance that could affect an Estimate.

Flintfox shall advise Client in writing, as soon as practical, if it is likely that the Estimate will be exceeded. It may be that a Change Order is required.

Charge-out rates: Each Work Order will detail the charge-out rate(s) for Flintfox Personnel for the Professional Services being provided in the Rate Card. These charge-out rates may vary depending on the Flintfox Personnel required. These charge-out rates are subject to change at 30 Calendar Days prior written notice.

5.6 **Acceptance of Deliverables**: Deliverables shall be considered to be delivered and accepted:

(a) twenty-one (21) Calendar Days following the release of the code to the Client for Customised Software Deliverables; or

(b) fourteen (14) Calendar Days following delivery to the Client of all other Deliverables,

(c) unless the Deliverables are rejected in accordance with clause 5.7.

5.7 **Rejection of Deliverables**: The Client may reject the Deliverables if they do not comply with the applicable Work Order is not met. The Client may reject the Deliverables by providing notice to Flintfox within:

(a) twenty one (21 Calendar Days following the release of the code to the Client for Customised Software Deliverables; or

(b) fourteen (14) Calendar Days following delivery to the Client of all other Deliverables.

The notice communicating rejection of acceptance shall specify the Deliverables that the Client does not accept and the reason for not accepting them. Flintfox and the Client shall, within seven (7) Calendar Days of Flintfox receiving the notice communication rejection of acceptance, meet and agree to a process and time frame for gaining acceptance for the Deliverables.

6. Subscription Services and Subscription Orders

6.1 **Subscribed services:** When the Client subscribes for Flintfox Application Services through entry into a Subscription Order, the Client is granted:

(a) the right to use the Flintfox Application Services on a non-exclusive, non-transferable basis;

(b) a license to use any Flintfox Software, Flintfox Base Software and Customised Software Deliverables included in the Flintfox Application Services on a non-exclusive, non-transferable basis;

(c) a license to use any other Intellectual Property Rights incorporated into the Flintfox Application Services on a non-exclusive, non-transferable basis (but only to the extent necessary for the Client to enjoy the benefit of these Terms of Business); and

(d) the right to receive Basic Support Services charged on a time and materials basis (unless the Client has a Managed Support Order in place for the Flintfox Application Services covered by the Subscription Order),

during the Subscription Term and subject to the terms of these Terms of Business and the Subscription Order, including without limitation the additional terms applying to the Flintfox

Application Services in this clause 6. Flintfox reserves all other rights in and to the Flintfox Application Services.

Subscription Fees for the Flintfox Application Services: The Subscription fees for the Subscription Initial Term are as set out in the Subscription Order. Flintfox shall inform the Client of the Subscription Fees for the upcoming Subscription Renewal Term at least 45 Calendar Days prior to the commencement of any Subscription Renewal Term.

6.2 **User restrictions**: The Client may only use the Flintfox Application Services:

(a) for the Client's internal business purposes; and

(b) as expressly permitted in these Terms of Business and the Subscription Order. In doing so, Client must comply with any technical and functional limitations in the Flintfox Software.

6.3 **Additional detail of authorised use:** The Client may:

(a) copy and use reports that it generates through use of the Flintfox Application Services. The Client may distribute these reports for internal business purposes only.

(b) retain, create or store backup copies of Client Data generated through the use of the Flintfox Application Services for the purposes of redundancy and archival.

(c) utilize multiple copies of the Flintfox Software provided pursuant to the Flintfox Application Services for its internal development, backup, archival, training and testing purposes provided that such copies are not used in any production environment.

(d) run multiple passive and/or active fail-over or clustered instances of Client's system database for the Flintfox Application Services for the purposes of redundancy, or scalability provided the system database instances must all be copies of the same Client Data.

Any User of Flintfox Application Services may copy and use the Documentation for the Flintfox Application Services for the Client's internal business purposes.

6.4 **Multiplexing:** The Client acknowledges and agrees that hardware or software that the Client uses to pool connections, reroute information, reduce the number of Devices or Users that directly access or use the Flintfox Application Services (or its related software), or reduce the number of Operating System Environments, or Devices or Users the Flintfox Application Service directly manages, will not reduce the number of Subscriptions for the Flintfox Application Services that the Client will need to acquire.

6.5 **Additional functionality:** If during the term of a Subscription Order for Flintfox Application Services the Client requires additional customized software functionality (i.e. Customized Software Deliverables) to be developed as part of the Flintfox Application Services, Flintfox's delivery of this functionality (including the design, development and testing of this

functionality) shall be governed by a supplemental Work Order issued under these Terms of Business.

6.6 **Upgrades and updates:**

Flintfox may from time to time provide Client with updates, supplements or replacements by way of:

Flintfox Base Software version releases.

Flintfox Base Software periodic service packs or authorized software fixes to fix generic bugs that affect all Usersor to ensure compatibility with new versions of supported operating systems

6.7 **User rights and Dynamics 365 instances:** Where the Client subscribes for Flintfox for Dynamics 365, the Client may use Flintfox for Dynamics 365 as defined by the Client's subscribed Dynamics 365 instances with Microsoft. In particular the Flintfox Application Services Subscription is matched with the default Dynamics 365 production instance included in Client's Microsoft online services subscriptions, and every additional Dynamics 365 sandbox or Dev/Test instance associated with the same Microsoft subscription account. Client may only access and use the Flintfox Application Services for the number of Users specified in the Subscription Order. Where these Users are designated as being "Named Users", each User requires a separate Subscription use right and such Subscription use right may not be shared between Users. The Parties agree that the User Subscription rights number required by the Client for Flintfox for Dynamics 365 must be equivalent to the Client's corresponding Microsoft subscription licenses held by the Client with Microsoft. Client agrees to disclose to Flintfox the number of Microsoft online services subscription licenses held by the Client with Microsoft not less than sixty (60) Calendar Days prior to the expiry of the Subscription Initial Term or any Subscription Renewal Term.

6.8 **Client production environment:** Client may access and use the Flintfox Application Services per the applicable Subscription rights in the Subscription Order for the Client's production environment provided that if the Client is using the Flintfox Application Services for more than one production environment the Client must obtain separate Subscription rights for each production environment.

6.9 **Installation of third party software:** The Client acknowledges they may need to obtain a license for, install and use certain third party software in order to use certain functionalities of the Flintfox Application Services. A list of such software can be provided on request as part of the implementation project deliverables.

Flintfox Application Services integration with Dynamics 365:

(a) Where the Client subscribes for Flintfox for Dynamics 365, the Client acknowledges that this is only delivered by Flintfox based on integration with Dynamics 365. The Client is responsible for its direct contract(s) with Microsoft in relation to the Dynamics 365 Online Services use rights, Microsoft Azure cloud services and infrastructure and software support and/or maintenance services. The Client further acknowledges that Flintfox is not responsible for any Dynamics 365 performance

issues or errors that impact performance or availability of Flintfox Application Services.

(b) Microsoft regularly releases platform and application updates to Dynamics 365. Such Dynamics 365 updates may from time to time include changes in the underlying base ERP code that impacts on the operation or performance of Flintfox Base Software and/or Customised Software Deliverables (referred to as Extension Breaking Changes). Flintfox will use reasonable endeavours to ascertain the impact of Dynamics 365 updates on Flintfox Base Software and Customised Software Deliverables, but cannot warrant that any Dynamics 365 update or new Dynamics 365 version release will not contain Extension Breaking Changes.

(c) Clauses 6.7 and **Error! Reference source not found.** of these Terms of Business set out additional terms relating to the Client's integration with Dynamics 365 in this context and the Client's rights and obligations hereunder are subject to and conditioned upon Client's continued compliance with its obligations with respect to its subscribed Microsoft online services and the Microsoft Terms and Conditions.]

Connected Applications

(d) Client acknowledges that Flintfox Application Services may connect to or integrate with other systems, platforms or applications ("**Connected Applications**"). Client is responsible for its direct contract(s) with the provider, licensor or host of any Connected Application in relation to the use rights, cloud services, infrastructure, software support and/ or maintenance services. Client further acknowledges that Flintfox is not responsible for any performance issues or errors in relation to connected applications that impact performance or availability of Flintfox Application Services. Where such issues arise, any Flintfox effort to resolve such issues will be undertaken as Support Services.

(e) Updates or upgrades to Connected Applications may from time to time include changes in the underlying Connected Application code that impacts on the operation or performance of Flintfox Base Software and/or Customised Software Deliverables. Where such issues arise, any Flintfox effort to resolve such issues will be undertaken as Support Services Flintfox cannot warrant that any update or version release of a Connected Application will not contain changes that may adversely effect the functioning of the Flintfox Base Software and/or Customised Software Deliverables.

(f) Client's rights and obligations hereunder are subject to and conditional upon Client's continued compliance with its obligations with respect to any Connected Application.

7. Basic Support Services

Basic Support Services: Basic Support Services include:

(a)   break/fix support services in response to Support Requests raised by Client through the Support Portal on a time and materials basis at the prevailing rates set out in the Rate Card;

(b)   availability to Client of the Support Portal to log Support Requests and provide status of updates, including notes, directly from Flintfox Personnel assigned to resolve them;

(c)   where Client is using a Supported Version of the Flintfox Application Services, resolution activities at no cost to Client of a Support Request determined to be caused by a Defect in Flintfox Base Software;

(d)   where Client is using a Supported Version of the Flintfox Application Services and a fix exists for the Flintfox Base Software Defect in a newer version of Flintfox Base Software, merge into the Client's older and/or customised version of Flintfox Base Software at no cost if the Defect is demonstrated to impact the Client; and

(e)   maintenance of source code branches,

(together, the "**Basic Support Services**").

Flintfox responsibilities:

Flintfox shall provide Basic Support Services in accordance with these Terms of Business and the Subscription Order.

While remotely accessing a Client's hosted cloud system, Flintfox will not make changes to any environment other than that pertaining to the Support Request submitted, without the prior knowledge and consent of one or more of the Client Support Representatives nominated per the Subscription Order.

Basic Support services are provided on a reasonable commercial endeavours basis. Reasonable commercial endeavours means:

An Initial Response will be available only during Business Hours.

Flintfox will issue an Initial Response to a Support request as quickly as Flintfox Personnel are available to respond.

Priority is assigned to Support Requests at Flintfox's sole discretion.

Support Requests are responded to in order of the priority assigned in the Support Request.

7.2   **Client responsibilities:** The Client shall:

(a)   complete a Support Request through the Support Portal to initiate Basic Support Services. The Client acknowledges that:

(i)   notwithstanding the completed requirements which created the Implemented Solution, the Implemented Solution is likely to be the subject of continuous

change and variation by way of business practice, resource training, software enhancement or customization; and

(ii) at the time of making any request for change by way of Support Request, that the status of the Implemented Solution shall be as of the most recent documented Support Request closed with Flintfox prior to the Support Request in question;

(b) reproduce the events of a potential case, including the documentation of the steps that were reproduced in a suitable Client hosted cloud test environment that Flintfox has access to to observe and analyse the behaviour before escalation to the Flintfox Support Team;

(c) identify in the Subscription Order nominated representatives who are the authorized parties entitled to communicate with the Flintfox Support Team (**"Client Support Representatives"**). It is essential that the Client Support Representatives and/or other trained Client Personnel attempt to resolve any Implemented Solution issues prior to a Support Request being initiated. However, should it not be possible to resolve the issues, then the Client Support Representatives should contact the Flintfox Support Team with a fully documented description of the Support Request using the Support Request in the Support Portal. To ensure that Client's request is handled efficiently and effectively contact should only be to the Flintfox Support Team by the Client Support Representatives;

(d) maintain a test environment with recently refreshed production data, in a Client's hosted cloud environment, for reproducing the events of an incident. In an effort to resolve Support Requests in a timely manner the Flintfox Support Team require all Support Requests to have been reproduced, in the Client's hosted cloud test environment, and the steps to reproduce the events of the Support Request to be documented before reporting to the Flintfox Support Team;

provide remote, 'read only', capabilities for access to Client live production environment when the possible resolution of a Support Request can only be diagnosed and/or produced by observing the Implemented Solution in real time on the live production environment;

(e) when requested by the Flintfox Support Team, supply Client Data for the sole purpose of diagnostics and troubleshooting a data related error; and

(f) limit the number of Client users/authorized representatives permitted to initiate a Support Request to the Client Support Representatives.

7.3 **Fees for the Basic Support Services:**

(a) Flintfox shall perform Basic Support Services on a time and materials basis in accordance with the terms set out these Terms of Business and at the charge out rates in the Rate Card.

(b) The Client acknowledges and agrees that the logging of a Support Request by the Client Support Representative provides Client approval for Flintfox to work up to 8 hours on a Support Request at the applicable charge out rates. Prior to the expiry of this approved 8 hours, Flintfox will seek client approval for any further time that may be required to respond to or resolve the Support Request. Client acknowledges that where such approval is not received or Client does not respond to a request for approval, Flintfox may, at its discretion, stop work on the Support Request until a response is received.

7.4 **Exclusions:** Basic Support Services do not include:

(a) Services provided by the Flintfox Support Team to implement, test or deploy Flintfox Base Software updates/releases in the Client's hosted cloud environment. Such Services will be charged at the charge out rates in the Rate Card; or

(b) Professional Services for consulting, development or upgrade or version release tasks and other applicable Online Services. Such Services will be contracted under separate Work Order(s) and/or Subscription Orders between the Client and Flintfox; and

(c) On-site support from a Flintfox Personnel either by a physical visit, or by remote on-site access to the Implemented Solution to complete service for diagnostic (other than an initial investigation), specification, development or change testing;

(d) Education and training on the use of the Implemented Solution.

Such Services will be contracted under an existing or new Work Order, as applicable.

7.5 **Defect fixes:**

A Support Request is deemed to concern a Defect at Flintfox's sole discretion.

If a Defect resulted in incorrect Client Data being generated which has a material adverse effect for the Client, Flintfox will take all reasonable efforts to correct the Client Data as part of the Defect fix provided that the Client is expected to promote the fix to the Client's cloud hosted production environment as quickly as possible and take reasonable steps to avoid incorrect Client Data being generated for an extended period of time.

7.6 **Workarounds:**

In some cases, the best course of action for a Support Request is to provide a temporary workaround if this can be delivered sooner than a permanent Resolution. This results in the return of the Flintfox Application Services to functional or operational status which permits the Client to perform its critical business functions.

If Flintfox determines that no such incident(s) exists, or, if the error was caused by coding or logic embedded in the Flintfox Software or Flintfox Application Services by the Client or by any cause outside of Flintfox's reasonable control, Basic Support Services will be chargeable as set out in clause 7.3(a) of these Terms of Business. Flintfox shall have no obligation to perform any work not

included in the scope of the Basic Support Services before the Parties' reach agreement on such action.]

7.7 **Reservation of Rights:** Flintfox reserves the right to ensure the Client is implementing Flintfox's recommended actions in order to facilitate ongoing success for the use of Flintfox Application Services. Flintfox may require additional training for the Client on a fully chargeable basis or potentially decline to provide Basic Support Services for repeated similar Support Requests where action(s) by the Client to resolve such incidents is not implemented.

8. Managed Support Services

Application: Flintfox offers two kinds of Support Services to customers:

Basic Support Services, which are offered on a time and materials basis; and

Managed Support Services, which offer committed service levels and a monthly fee.

Clients may enter into a Managed Support Order for Managed Support Services under these Terms of Business. Unless a Client enters into a Managed Support Order, only Basic Support Services are available. This clause 8 only applies to Managed Support Services and Managed Support Orders.

Flintfox responsibilities: Flintfox agrees to:

provide the Managed Support Services requested by the Client pursuant to a Support Request in accordance with these Terms of Business and the Managed Support Order;

(a) use commercially reasonable efforts to meet the target performance actions outlined in this agreement in respect to issues reported by the Client; and

(b) while remotely accessing a Client's hosted cloud system, Flintfox will not make changes to any environment other than that pertaining to the Support Request submitted, without the prior knowledge and consent of one or more of the Client Support Representatives nominated per the Subscription Order.

Client responsibilities: The Client agrees to:

(c) complete a Support Request through the Support Portal to initiate Managed Support Services;

(d) identify in the Subscription Order or Managed Support Order nominated representatives who are the authorized parties entitled to communicate with the Flintfox Support Team (**"Client Support Representatives"**). It is essential that the Client Support Representatives and/or other trained Client Personnel attempt to resolve any Implemented Solution issues prior to a Support Request being initiated . However, should it not be possible to resolve the issues, then the Client Support Representatives should contact the Flintfox Support Team with a fully documented

description of the Support Request using the Support Request in the Support Portal. To ensure that Client's request is handled efficiently and effectively contact should only be to the Flintfox Support Team by the Client Support Representatives;

(e) maintain a test environment with recently refreshed production data, in a Client's hosted cloud environment, for reproducing the events of an incident. In an effort to resolve Support Requests in a timely manner the Flintfox Support Team require all Support Requests to have been reproduced, in the Client's hosted cloud test environment, and the steps to reproduce the events of the Support Request to be documented before reporting to the Flintfox Support Team;

(f) provide remote, 'read only', capabilities for access to Client live production environment when the possible resolution of a Support Request can only be diagnosed and/or produced by observing the Implemented Solution in real time on the live production environment;

(g) when requested by the Flintfox Support Team, supply Client Data for the sole purpose of diagnostics and troubleshooting a data related error; and

(h) limit the number of Client users/authorized representatives permitted to initiate a Support Request to the Client Support Representatives.

8.2 **Managed Support Services Fees:**

(a) The Client shall be responsible for and shall pay to Flintfox the fees as described in the Managed Support Order for the selected service level, subject to these Terms of Business and the Managed Support Order.

(b) Flintfox and the Client acknowledge and agree that any applicable Gold or Silver level support tier fee is a non-refundable charge related to the provision by Flintfox of resources to respond to Severity 1 support tickets 24 hours a day, 5 or 7 days a week including on days that are not Business Days or outside of Business Hours.

(c) Flintfox and Client acknowledge and agree that the monthly Fee amount set out in the Managed Support Order is an estimated amount determined by Flintfox and the Client based on the Client's expected use of the Managed Support Services. Where the Client's actual use of the Managed Support Services is greater than estimated hours set out in the Managed Support Order, Flintfox and the Client agree that such hours will be billable to Client by Flintfox on a time and materials basis at the rates specified in the Rate Card at the time the services are provided.

8.3 **Exclusions:** Managed Support Services do not include the engagement of Professional Services for consulting, development or upgrade tasks nor do they include Online Services, Subscriptions or maintenance provided under another existing contract with Flintfox. These are to be covered under separate Work Order(s) or Subscription Order(s). Engagements that are outside of the scope of Managed Support Services provided under a Managed Support Order include but are not limited to:

(a)   on-site support from a Flintfox consultant, either by a physical visit or by remote on-site access to the Implemented Solution to complete service for diagnostic (other than an initial investigation), specification, development or change testing;

(b)   requests that require customized development to restore the Implemented Solution to effective order where the Implemented Solution has already been tested and accepted by the Client and after the expiry of any applicable warranty period under clauses 16.2 and 16.3 of these Terms of Business;

(c)   customized developments that are subject to a fully specified, existing Work Order and charged separately on an agreed price and terms basis;

(d)   customized developments resulting from a client-initiated Support Request that is becomes a Work Order for authorization by the nominated Client Support Representative;

(e)   requests for customized development that add functionality to the Implemented Solution and not previously reported and signed off following a functional specification by a Flintfox consultant;

(f)   education and training on the use of the Implemented Solution; and

(g)   Subscriptions and Online Services. Those rights are covered by the applicable Subscription Orders.

8.4   **Defect fixes:**

(a)   In the event a ticket is deemed by Flintfox to be a Defect within the warranty period, no charges will be invoiced to the Client to analyze, debug, QA or release the fix and/or workaround.

(b)   A Support Request is deemed to concern a Defect at Flintfox's sole discretion.

(c)   If a Defect resulted in incorrect Client Data being generated which has a material adverse effect for the Client, Flintfox will take all reasonable efforts to correct the Client Data as part of the Defect fix provided that the Client is expected to promote the fix to the Client's cloud hosted production environment as quickly as possible and take reasonable steps to avoid incorrect Client Data being generated for an extended period of time.

8.5   **Severity Levels:**

(a)   Incidents for which Support Requests are initiated shall be classified in accordance with the severity level designations below.

Severity Level	Description
1	An error or issue that causes the Live/Production environment to fail to function and/or crash.
2	An error or issue that causes a major function in the maintained software to fail to operate in a material manner but does not render the system on which the maintained software is installed inoperable and there is no workaround available
3	The system does not operate as documented, there is a known workaround, which produces an inconvenient situation
4	There is an error, which is minor or cosmetic in nature and does not result in reduced performance, or an informational question, or a feature request.

(b) Flintfox reserves the right to downgrade the severity level of a Support Request based on Client provided information related to the urgency and impact of the Support Request. The table below sets out the principles that will be applied by Flintfox in determining the severity level of a Support Request.

		Impact			
		Extensive/Widespread Enterprise, Region, or Segment	**Significant/Large** Business Unit, Department, Location	**Moderate/Limited** Few Users	**Minor/Localized** Single User
Urgency	**Critical** Can no longer work	1 - Critical	1 - Critical	2 - High	2 - High
	High Can not perform primary work functions	1 - Critical	2 - High	2 - High	3 - Medium
	Medium Work functions Impared	2 - High	3 - Medium	3 - Medium	3 - Medium
	Low Inconvient	4 - Low	4 - Low	4 - Low	4 - Low

(c) In the event that Flintfox downgrades the severity level of a Support Request, the Support Request will be updated in the Support Portal to reflect the downgraded severity level and notice (by electronic message) of that downgrade will be provided to Client.

8.6 **Initial Response and Resolution Schedule:**

(a) The Managed Support Order shall identify the type of service request, level of severity and the process and urgency of resolution required to return the Implemented Solution to the state of operation prior to the incident arising

(b) In some cases, the best course of action for a ticket is to provide a temporary workaround if this can be delivered sooner than a permanent solution. This results in the return of services to the functional or operational status which permits the Client to perform its critical business functions. The severity level of the Support Request may then be reassessed with a permanent resolution then in accordance with the new severity as per the above resolution schedule.

(c) If Flintfox determines that no such incident(s) exists, or if the error was caused by coding or logic embedded in the software or Online Service by Client or by any cause outside of Flintfox's reasonable control, Client shall pay Flintfox for its services at the consulting rates for Professional Services in the Rate Card. Flintfox shall have no obligation to perform any such out of scope services before the Parties' reach agreement on such action.]

(d) Should an issue, including performance issues, be the subject of a Support Request to Flintfox that subsequently proves unrelated to Flintfox software/code then time spent in its resolution is considered billable activity.

8.7 **Escalation:** Client may Escalate a Support Request where the Initial Response, Update or Resolution service levels set out in the Managed Support Order are not met. A valid Escalation cannot be made for any other reason. Client must allow Flintfox a reasonable amount of time to receive, investigate and respond to an Escalation. A second or subsequent Escalation that occurs within the following timeframes is not valid:

Severity Level	Escalation time
1	2 hours
2	8 hours
3	Third Business Day
4	Fifth Business Day

The process for Escalation is as follows:

(a) Ask the support engineer that Client is working with on the Flintfox Support Team to escalate the incident to their manager

(b) Contact, by email, the regional Escalation address for your region:

(i) APAC_Esc@flintfox.com

(ii)   EMEA_Esc@flintfox.com or

(iii)   NA_Esc@flintfox.com

(c)   Contact, by email, your Client executive sponsor and the Chief Customer Officer on Exec_Esc@flintfox.com

8.8   **Service Credit:**

(a)   If Flintfox fails to provide an Initial Response within the timeframes set forth in the Managed Support Order for severities where service credits apply (a **"Service Level Incident"**), the Client will be entitled to receive a credit equating to 25% of the support services charges for the Support Request where the Initial Response was not achieved.

(b)   Flintfox service credits are the Client's sole and exclusive remedy for any performance or availability issues for any Flintfox Application Services. The Client may not unilaterally offset its Professional Services or support charges for any performance or availability issues.

(c)   Flintfox service credits apply only to fees paid for the Support Request for which a Service Level has not been met.

(d)   Flintfox will pass on any "Service Credit" received by Flintfox pursuant to the Microsoft Online Services SLA to the Client for application against the Client's account.

8.9   **Service Credit Claims**

(a)   In order for Flintfox to consider a claim regarding nonconforming Service Level of the Flintfox Applications Services, the Client must submit the claim to the Flintfox Support Team including all information necessary for Flintfox to validate the claim, including but not limited to:

(i)   a detailed description of the Service Level Incident;

(ii)   information regarding the time and duration of the Service Level Incident;

(iii)   the number and location(s) of affected Users (if applicable); and

(iv)   descriptions of the Client's attempts to resolve the Service Level Incident at the time of occurrence.

(b)   Flintfox must receive the claim by the end of the calendar month following the month in which the Service Level Incident occurred. For example, if the Service Level Incident occurred on February 15th, Flintfox must receive the claim and all required information by March 31st.

(c)   Flintfox will evaluate all information reasonably available to Flintfox and make a good faith determination of whether a service credit is owed. Flintfox will process claims

during the subsequent month and within forty-five (45) days of receipt. The Client must be in compliance with these Terms of Business, the Managed Support Order and the related Subscription Order in order to be eligible for a service credit. If Flintfox determines that a service credit is owed to the Client, Flintfox will apply the service credit to the Client's Professional Services or support charges.

8.10 **Limitations:** Flintfox's obligations under these Terms of Business and the Managed Support Order, and the Client's right to service credits, do not apply to any performance or availability issues:

(a) due to factors outside Flintfox's reasonable control (for example, natural disaster, war, acts of terrorism, riots, government action, or a network or device failure external to Flintfox's data centers, including at the Client's site or between the Client's site and Flintfox's data center);

(b) that result from the use of services, hardware, or software not provided by Flintfox, including, but not limited to, issues resulting from inadequate bandwidth or related to third-party software or services;

(c) caused by the Client's use of a Flintfox Application Service after Flintfox advised the Client to modify its use of the Flintfox Application Service if the Client did not modify its use as advised;

(d) that result from the Client's unauthorized action or lack of action when required, or from Client's employees, agents, contractors, or vendors, or anyone gaining access to Flintfox or Microsoft networks by means of the Client's passwords or equipment, or otherwise resulting from the Client's failure to follow appropriate security practices.

(e) that result from the Client's failure to adhere to any required configurations, use supported platforms, follow any policies for acceptable use, or results from the Client's use of the Flintfox Application Services in a manner inconsistent with the features and functionality of the Flintfox Application Services (for example, attempts to perform operations that are not supported) or inconsistent with our published guidance;

(f) that result from faulty input, instructions, or arguments (for example, requests to access files that do not exist);

(g) that result from Client attempts to perform operations that exceed prescribed quotas or that resulted from Flintfox's throttling of suspected abusive behaviour;

(h) due to Client's use of Flintfox Application Service features that are outside of the associated period of time during which the Flintfox Application Service feature or compatibility with a separate product or service is supported; or

(i) for any Flintfox Application Services reserved, but not paid for, at the time of the Service Level Incident.

8.11   **Reservation of rights in relation to 'fair use':** Flintfox reserves the right to:

(a)   ensure the Client is implementing Flintfox's recommended actions in order to facilitate ongoing success for the use of Flintfox Application Services;

(b)   if necessary, require additional training for Client or Client Personnel, on a chargeable basis, under a Work Order authorized by the Client Support Representative; and

(c)   where action(s) recommended by Flintfox to Client to resolve such incidents are not implemented and failure to implement those actions, in Flintfox's reasonable opinion, leads to repeated, similar requests for assistance, Flintfox may decline, at Flintfox's reasonable discretion, to provide any of the Managed Support Services in response to those repeated, similar requests.

8.12   **Remedies:** client's sole and exclusive remedy under this clause 8 and the managed support order for any errors, unavailability, defects, outages or other problems with the software and/or online services/for any failure to meet service levels shall be the right to receive service credits as set forth in clauses 8.8 to 8.10 and to terminate the managed support order in accordance with clause 13.2.

9.   Fees and payment

9.1   **Terms**: The Client is responsible for and shall pay invoices issued under the Flintfox Agreements.

9.2   **Subscription Order invoices:** Flintfox shall invoice the Client annually in advance for the fees payable under a Subscription Order.

9.3   **Other invoices**: Subject to clause 9.2, invoices for Services provided by Flintfox shall be issued to a Client on a monthly basis unless otherwise agreed in a Work Order or a Managed Support Order.

9.4   **Payment term**: Payment of invoices is due thirty (30) Calendar Days following the date of an invoice.

9.5   **Currency**: All amounts to be paid under the Flintfox Agreements are to be paid in USD unless otherwise agreed in a Work Order, Subscription Order or Managed Support Order.

9.6   **Suspension of Services for failure to pay invoice**: If the Client does not pay an invoice by the due date, Flintfox may, upon thirty (30) Calendar Days' notice in writing to the Client, suspend the Services.   If the Client at any time has multiple invoices that have not been paid by the applicable due date, Flintfox may suspend the Services without further notice. Flintfox shall not be liable for any loss or damage arising from the suspension of the Services under this clause 9.6. The Client shall remain liable for all fees due under the Work Order, Subscription Order or Managed Support Order during the period of this suspension. Following resolution by the Client of the issues that gave rise to the suspension, Flintfox

shall as soon as reasonably practicable reinstate the Services. A suspension of Services under this clause 9.6 will be without prejudice to other remedies available to Flintfox.

9.7 **Dispute of invoice**: If Client disputes any invoice, Client must notify Flintfox in writing of this dispute within twenty (20) Calendar Days of receipt of the invoice. Following this notice, the dispute resolution provisions in clause 22 will apply. Until resolution of the dispute, Client may withhold payment of the disputed amount, but Client shall pay Flintfox the balance of the amount then due and payable under the invoice and not in dispute.

9.8 **Offsets**: The Client must at all times pay all invoices in full without set-off or deduction (other than as set out in clause 9.7) of any kind.

9.9 **Retention of rights**: The right to use Deliverables does not pass to the Client until the Client has paid for the Deliverables provided to it in full.

10. Taxes

10.1 All amounts Client must pay Flintfox under a Flintfox Agreement do not include any applicable Taxes.

10.2 The Client must pay any Taxes payable in respect of a Flintfox Agreement. Flintfox has no responsibility for any assessment nor payment of these Taxes.

11. Termination of a Work Order

11.1 **Termination without cause**

The Client may terminate a Work Order issued under these Terms of Business at any time prior without cause upon giving thirty (30) Calendar Days' notice in writing to the other Party, provided that if payment for any work is outstanding under a Work Order at the expiry of the termination notice period the termination is deemed to only take effect upon receipt by Flintfox of payment for that completed work.

11.2 **Termination with cause**

A Party may terminate a Work Order issued under these Terms of Business immediately on written notice to the other Party if either:

(a) a receiver, receiver and manager, administrator, provisional liquidator or liquidator, trustee or similar official is appointed over any of the other Party's assets or undertakings or an order is made for the winding up or dissolution of the other party or a resolution is passed for the winding up or dissolution of the other Party (except for the purpose of a solvent amalgamation or reconstruction); or

(b) the other Party fails to perform any material term or condition of these Terms of Business, or the Work Order and such failure is:

(i)   not able to be remedied; or

(ii)   not remedied within a period of thirty (30) Calendar Days after receipt of written notice from the non-breaching Party of such failure; or

(c)   if continuing work on the Work Order is, in Flintfox's reasonable opinion, threatening the health and/or safety of a Party's Personnel or resources.

This clause 11.2 is subject to clause 11.3.

11.3   **Pre-termination escalation**

(a)   In accordance with clause 2.1 of these Terms of Business, the Parties commit to:

(i)   establishing an integrated, collaborative, respectful team environment to encourage the open, honest and efficient sharing of information between the Parties relating to the Services; and

(ii)   clear communication, early identification of issues and concerns and a solutions oriented, outcome focused approach.

(b)   If a Party becomes aware of circumstances which may give rise to grounds to terminate a Work Order under clause 11.2(b) or 11.2(c)of these Terms of Business, the Party must bring those circumstances to the attention of the other Party as soon as reasonably practical. The Parties must seek to resolve those circumstances through the process outlined in this clause 11.3 prior to terminating the Work Order under clause 11.2(b) or 11.2(c).

(i)   In the first instance the Flintfox Project Manager will meet with the Client representative of an equivalent level to discuss the issues and seek to resolve the circumstances.

(ii)   If the circumstances are not resolved following the discussions under clause 11.3(b)(i) the relevant Flintfox Professional Services Director will meet with the Client representative of an equivalent level to discuss the issues and seek to resolve the circumstances.

(iii)   If the circumstances are not resolved following the discussions under clause 11.3(b)(ii) the Flintfox Chief Customer Officer will meet with the Client representative an equivalent level to discuss the issues and seek to resolve the circumstances.

(iv)   If the circumstances are not resolved following the discussions under clause 11.3(b)(iii) the Flintfox Chief Executive Officer will meet with the Client CEO to discuss the issues and seek to resolve the circumstances.

11.4   **Reservation of rights**

Termination or expiry of a Work Order under clauses 11.1 to 11.3 shall be without prejudice to a Party's rights arising from a breach of these Terms of Business or Work Order or in negligence or other cause of action that arises prior to the date of termination, and in particular shall not relieve the Client of the obligation to pay invoices due and payable and outstanding on the date of termination.

12. Term & Termination of Subscription Services

Subscription Initial Term: The initial term of a Subscription Order issued under these Terms of Business will commence on the date specified in the Subscription Order (the "**Subscription Commencement Date**") and continue for the period specified in the Subscription Order (the "**Subscription Initial Term**").

Renewal: Following expiry of the Subscription Initial Term, the Subscription Order will automatically renew for successive periods of twelve (12) months (each a "**Subscription Renewal Term**") – unless:

(a) a Party notifies the other Party in writing that it does not wish to renew the Subscription Order at least sixty (60) Calendar Days before the Subscription Initial Term or Subscription Renewal Term expires (as applicable), in which case the Subscription Order will expire at the end of that Subscription Initial Term or Subscription Renewal Term; or

(b) the Subscription Order is terminated in accordance with clauses 12.2 and 12.3.

12.2 **Termination without cause:** The Client may terminate a Subscription Order issued under these Terms of Business without cause during the Subscription Renewal Term with ninety (90) Calendar Days written notice to Flintfox.

12.3 **Termination for cause:** A Party may terminate a Subscription Order with immediate effect on written notice to the other Party if:

(a) a receiver, receiver and manager, administrator, provisional liquidator or liquidator, trustee or similar official is appointed over any of the other Party's assets or undertakings or an order is made for the winding up or dissolution of the other party or a resolution is passed for the winding up or dissolution of the other Party (except for the purpose of a solvent amalgamation or reconstruction);

(b) the other Party materially breaches a material term of these Terms of Business, or the Subscription Order, and such failure is:

(i) not able to be remedied; or

(ii) not remedied within a period of thirty (30) Calendar Days after receipt of written notice from the non-breaching Party of such failure.

For the avoidance of doubt, Flintfox may terminate a Subscription Order with immediate effect on written notice to the Client if:

(c)   the Client fails to pay any amounts owing to Flintfox under the Subscription Order; or

(d)   clause 18.3(c) of these Terms of Business applies.

12.4   **Client obligations on termination:**

(a)   If:

(i)   the Client terminates a Subscription Order without cause under clause 12.2; or

(ii)   Flintfox terminates a Subscription Order for cause under clause 12.3,

any and all prepaid Subscription Fees are forfeited.

(b)   If:

(i)   the Client terminates a Subscription Order for cause under clause 12.2; or

(ii)   Flintfox terminates a Subscription Order without cause under clause 12.3,

any prepaid Subscription fees for the period following the termination date and the end of any transition period under clause 12.5 shall be refunded to the Client.

(c)   Following termination of the Subscription Order, subject to any transition period under clause 12.5, Client will immediately:

(i)   cease all use of the Flintfox Application Services, Flintfox Base Software and any Customised Software Deliverables;

(ii)   uninstall and permanently delete any copies of the Flintfox Base Software and Customised Software Deliverables that have been stored on any Client Operating System Environment;

(iii)   return to Flintfox any copies of any Confidential Information that Client had accessed or received under these Terms of Business. Alternatively, at Flintfox's sole discretion, Flintfox may instruct Client in writing to destroy and certify to the destruction of copies Confidential Information; and

(iv)   except as set out in clause 6.3(a), destroy and delete copies of Documentation.

12.5   **Transition assistance:** Subject to the Client's continued compliance with these Terms of Business including, without limitation, payment of Subscription fees when due and payable (as referred to below), Flintfox shall exercise commercially reasonable efforts to provide Client access to and use of the Flintfox Application Services, including any corresponding Support Services, for up to one hundred eighty (180) calendar days from the date of termination or expiration to assist the Client in completing its migration process to a new solution. For the avoidance of doubt, notwithstanding termination or expiration, the Client shall pay any Subscription fees due and payable for use of the Flintfox Application Services during the transition period.

12.6 **Reservation of rights:** Termination of the Subscription Order by a Party under this clause 12 shall be without prejudice to a Party's rights arising from a breach of these Terms of Business, a Subscription Order or these Terms of Business or in negligence or other cause of action that arises prior to the date of termination and in particular shall not relieve the Client of the obligation to pay undisputed invoices due and payable as at the date of termination.

13. Term & Termination of a Managed Support Order

Term: The initial term of a Managed Support Order issued under these Terms of Business will commence on the date specified in the Managed Support Order (the **"Managed Support Commencement Date"**) and continue for 12 months (the **"Managed Support Initial Term"**). Following expiry of the Managed Support Initial Term, the Managed Support Order will automatically renew for successive periods of twelve (12) months (each a **"Managed Support Renewal Term"**) – unless:

(a) a Party notifies the other Party in writing that it does not wish to renew the Managed Support Order, or that it wishes to vary the Managed Support Order or enter into a new Managed Support Order, at least ninety (90) Calendar Days before the Managed Support Initial Term or Managed Support Renewal Term expires (as applicable), in which case the Managed Support Order will expire at the end of that Managed Support Initial Term or Managed Support Renewal Term; or

(b) the Managed Support Order is terminated in accordance with clause 13.2.

13.2 **Termination for cause:** A Party may terminate a Managed Support Order issued under these Terms of Business immediately on written notice to the other Party if either:

(a) a receiver, receiver and manager, administrator, provisional liquidator or liquidator, trustee or similar official is appointed over any of the other Party's assets or undertakings or an order is made for the winding up or dissolution of the other party or a resolution is passed for the winding up or dissolution of the other Party (except for the purpose of a solvent amalgamation or reconstruction); or

(b) the other Party fails to perform any material term or condition of these Terms of Business, or the Work Order and such failure is:

(i) not able to be remedied; or

(ii) not remedied within a period of thirty (30) Calendar Days after receipt of written notice from the non-breaching Party of such failure; or

(c) if continuing work on the Managed Support Order is, in Flintfox's reasonable opinion, threatening the health and/or safety of a Party's Personnel or resources.

This clause 13.211.2 is subject to clause 13.3.

13.3 **Pre-termination escalation:** If a Party becomes aware of circumstances which may give rise to grounds to terminate a Managed Support Order under clause 13.2(b) or 13.2(c) of these Terms of Business, the Party must:

bring those circumstances to the attention of the other Party as soon as reasonably practical;

commit to the approach outlined in clause 11.3(a); and

seek to resolve those circumstances through the process outlined in clause 11.3(b)(i) to 11.3(b)(iv) prior to terminating the Managed Support Order.

13.4 **Reservation of rights:** Termination of the Managed Support Order by a Party under this clause 13 shall be without prejudice to a Party's rights arising from a breach of these Terms of Business, a Subscription Order or these Terms of Business or in negligence or other cause of action that arises prior to the date of termination and in particular shall not relieve the Client of the obligation to pay undisputed invoices due and payable as at the date of termination.

14. Collection and use of information

14.1 The parties agree that they may collect and retain Personal Information about the other party, and their Personnel and advisors, including, but not limited to, business contact information.

14.2 Each party:

(a) acknowledges that they may receive or process Personal Information received from the other party to extent necessary for the performance of the Services;

(b) agrees that it will comply with, and that it is responsible for its own compliance with, its obligations under Relevant Data Protection Law; and

(c) agrees to notify the other party if a Notifiable Privacy Breach occurs.

15. Mutual representations and warranties

15.1 Each party represents and warrants to the other throughout the period during which the Parties are bound by these Terms of Business that:

(a) **Authority**: it has full power and authority to enter into the Work Order(s), Subscription Order(s) and Managed Support Order(s);

(b) **Authority**: it has full power and authority to be bound by and perform its obligations under the Flintfox Agreements;

(c) **Agreements**: it has not entered into and, while it is bound by the Flintfox Agreements, will not enter into, any agreement that would prevent it from complying with and performing its obligations under the Flintfox Agreements; and

(d)   **Compliance with laws**: it will comply with all applicable laws in its performance of its obligations under the Flintfox Agreements.

16. Flintfox warranties

16.1   **Standard Professional Services Warranty**: Flintfox warrants that:

(a)   the Professional Services will be performed according to the generally accepted standards of skill, care and diligence normally expected of a competent service provider within Flintfox's industry sector in relation to the services provided; and Flintfox shall use Flintfox Personnel that have the requisite skills, expertise and competency required for the provision of the Professional Services.

(b)   If, in the course of providing the Professional Services, Flintfox reasonably discovers or makes a mistake in breach of either of these warranties, Flintfox will immediately discuss this with the Client and Flintfox shall use all reasonable efforts to resolve the mistake.

16.2   **Customised Software Deliverable – Limited Warranty**: Flintfox does not warrant that any Customised Software Deliverable will be error free despite use of every reasonable effort to avoid errors. Flintfox warrants that any Customised Software Deliverable will upon delivery, after completion of Flintfox testing, perform substantially in conformance with the Design Documents as referred to in the applicable Work Order. In the event Client finds a Defect in such Customised Software Deliverable within ninety (90) Calendar Days (the "**Customised Software Deliverable Warranty Period**") of its delivery to the Client, and, where notified to Flintfox in writing within the Customised Software Deliverable Warranty Period, Flintfox will repair the Defect or replace the Customised Software Deliverable at no charge to the Client. If Flintfox cannot repair the Defect or replace such Customised Software Deliverable, Flintfox will refund the Professional Services charges paid for the Customised Software Deliverable under the Work Order and the Client shall uninstall any items for which a refund is provided. If the Client receives supplements, updates, or replacements from Flintfox in relation to the Customised Software Deliverables during the Customised Software Deliverable Warranty Period, they will also be subject to a ninety (90) Calendar Day warranty remedy period commencing from the date of delivery of the supplements, updates, or replacements and in the manner set out in this clause 16.2.

16.3   **Flintfox Base Software and Flintfox Application Services – Limited Warranty**: Flintfox does not warrant that the Flintfox Base Software and Flintfox Application Services will be error free despite use of every reasonable effort to avoid errors. Flintfox warrants that for a period of ninety (90) Calendar Days from the date of execution of the Subscription Order under which the Client subscribes to the applicable Flintfox Application Services (the "**Flintfox Application Services Warranty Period**"), the Flintfox Application Services and Flintfox Base Software will perform substantially as described in the Subscription Order.   If the Flintfox Application Services do not perform substantially as described in the Subscription Order, Flintfox will repair the Flintfox Application Services or replace the Flintfox Base Software provided pursuant to the Flintfox Application Services at no charge

to the Client. If Flintfox cannot repair the Flintfox Application Services or replace the Flintfox Base Software, Flintfox will refund a prorated Subscription fees amount for that part of the Flintfox Application Services Warranty Period that the Flintfox Applications did not perform substantially as described in the Work Order. If the Client receives supplements, updates, or replacements from Flintfox in relation to the Customised Software Deliverables during the Flintfox Application Services Warranty Period, they will also be subject to a ninety (90) Calendar Day warranty remedy period commencing from the date of delivery of the supplements, updates, or replacements and in the manner set out in this clause 16.3.

16.4   From the expiry of the warranty period(s) referred to in clauses 16.2 and 16.3 above, any:

(a)   Defect in the customised software deliverable; or

(b)   Failure of the flintfox application services and flintfox base software to perform substantially as described in the work order,

Reported in writing by the client to flintfox shall be repaired by flintfox on a time and materials basis per the applicable charge out rates under the applicable work order or subscription order.

16.5   The remedies set out in clauses 16.2 and 16.3 shall be the exclusive remedies for breach of the limited warranties set out in clauses 16.2 and 16.3.

16.6   Flintfox has not made nor makes any other express or implied representations or warranties or conditions in relation to the services. To the extent permitted by law, flintfox excludes all implied warranties of merchantability, fitness for a particular purpose, or for non-infringement of intellectual property rights, in relation to the services.

16.7   **Warranty exclusions**:

(a)   If a deliverable includes the production of a document, flintfox will create that document from the information available. However, flintfox does not warrant (and is not liable for) the contents of, accuracy, fit for use or applicability of such information to the extent that such information is provided by the client and/or third parties.

(b)   The flintfox warranties in this clause 16 do not cover problems caused as result of:

(i)   Client actions (or failure to act in accordance with flintfox documentation or instructions);

(ii)   Connected application performance issues;

(iii)   The actions of third parties not acting under flintfox direction or control (including in relation to cloud and/or network infrastructure); or

(iv)   Errors created by reliance on incorrect advice or events beyond flintfox's reasonable control; or

(v)   A force majeure event.

17. Limitation of liability

17.1 **Excluded liability**: flintfox under or in relation to the flintfox agreements shall not be liable to the client in relation to any action claim or proceedings by the client (including in relation to third party claims) for any loss of profit (whether direct or indirect in nature), loss of anticipated revenue or savings, loss of or corruption to data (including client data), or, any indirect, consequential or special losses, damages or costs caused by a breach of a flintfox agreement, or negligence in relation thereto, or any other cause of action.

17.2 **Limitation of liability**: Flintfox's maximum aggregate liability under the flintfox agreements, whether arising out of breach of contract or tort, is limited to the lesser of:

(a) The aggregate fees paid or payable under the applicable work order, subscription order or managed support order during the 12 months before the cause of action arose; or

(b) USD 500,000,

Provided that flintfox shall not be liable for claims in relation to the services it performs or delivers for the client (or its affiliate) in reliance on written plans, instructions or information that flintfox did not prepare.

17.3 **Force majeure**: a party shall not be liable to the other party, nor shall it be deemed to be in default for any failure or delay to observe or perform any of the terms and conditions applicable to the party under a flintfox agreement (other than the payment of undisputed monies due and payable) caused or arising out of any act beyond the reasonable control of that party including (but not limited to) fire, flood, lightning, storm and tempest, earthquake, strikes, lock-outs or other industrial disputes, epidemic of pandemic, acts of war, riots, explosion, government restriction, unavailability of equipment or product or other causes (whether the kind enumerated above or otherwise) (each a "**force majeure event**"), and, where such failure or delay is caused by a force majeure event or events, then, all performance times provided for in a Flintfox agreement shall be extended by deemed agreement for a period commensurate with the period of failure or delay to observe or perform such terms and conditions applicable to a party under the flintfox agreement.

17.4 **Implied terms**: to the full extent permitted by applicable laws, flintfox excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in the flintfox agreements.

17.5 **Consumer laws**: the flintfox agreements are to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, flintfox limits its liability in respect of any claim to, at Flintfox's option, to the supply of the services again.

18. Indemnification

18.1 **Flintfox indemnification**: Flintfox will defend, indemnify and hold the Client harmless against any liabilities, costs or expenses (including reasonable legal fees) in connection with any claim, suit or proceeding ("**Claim**") made or brought against the Client by a third party based upon a claim:

(a) for personal injury (including death) or property damage arising out of negligent acts or omissions of Flintfox Personnel in the performance of a Work Order, Subscription Order or a Managed Support Order; or

(b) related to or arising from any actual or alleged failure by Flintfox to pay when due all its federal, state and local Taxes imposed under tax laws or contributions imposed or required under unemployment insurance or social security laws with respect to Flintfox or its Personnel engaged in performance of a Work Order, Subscription Order or Managed Support Order; or

(c) that any Deliverable or the Flintfox Application Services infringes the Intellectual Property Rights of any third party.

18.2 Clause 18.1 is subject to the Client:

(a) promptly giving written notice to Flintfox of any such Claim, or allegations of circumstances that could give rise to such a Claim;

(b) giving Flintfox sole control of the Claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings;

(c) not admitting any liability or agree to any settlement or compromise of a Claim without the prior written consent of Flintfox;

(d) cooperating with, assisting and acting at all times in accordance with the reasonable instructions of Flintfox in relation to the Claim and any consequent investigations, negotiations, settlement and dispute resolution proceedings.

18.3 If any Deliverable or Flintfox Application Service becomes, or in Flintfox's opinion is likely to become, the subject of an infringement Claim (per clause 18.1(c)), Flintfox may, at its option, either:

(a) procure for Client the right to continue using such Deliverable or other Service;

(b) replace or modify such Deliverable or other Service so that it becomes non-infringing provided that such replacement or modification shall not reduce the features or functionality of such Deliverable or other Service; or

(c) immediately terminate the Client's license to use that Deliverable or Service.

18.4 Notwithstanding the foregoing, Flintfox will have no obligation under clauses 18.1(c) or 18.3 or otherwise with respect to any infringement Claim based upon:

(a) any use of a Deliverable not in accordance with the Flintfox Agreements or applicable Documentation provided by Flintfox;

(b) any use of a Deliverable in combination with other products, equipment, software, or data not supplied or authorised in writing by Flintfox; or

(c) any modification of a Deliverable by any person other than Flintfox or any Personnel authorised by Flintfox in writing.

19. Insurance

19.1 **Coverage**: Flintfox agrees to obtain and maintain, at its own expense, the following coverage:

(a) Commercial General Liability including Products and Completed Operations and Contractual Liability, with a limit of not less than NZD $10,000,000.00 per occurrence;

(b) Professional Liability with a limit of not less than NZD $10,000,000.00 per occurrence;

(c) Cyber risks with a limit of not less than NZD $2,000,000 per occurrence.

(d) Workers' Compensation insurance with statutory limits for the state or states in which Professional Services are to be performed; and

(e) Employers' Liability insurance in the UK and the USA with a minimum limit of USD $1,000,000.00 per accident.

19.2 **Risk**: Risk of loss or damage with respect to all Deliverables, and the obligation to insure against such risks, shall pass from Flintfox to Client when Flintfox delivers Deliverables to the Client.

20. Confidential information

20.1 **Confidentiality**: Each Party (the "**Receiving Party**") may only use the Confidential Information disclosed or revealed by the other Party (the "**Disclosing Party**") for the purposes of performing its obligations or exercising its rights under the Flintfox Agreements. Subject to clause 20.2, the Receiving Party must keep the Disclosing Party's Confidential Information confidential.

20.2 **Permitted disclosures**: The Receiving Party may disclose the Confidential Information of the Disclosing Party:

(a) with the prior written consent of the Disclosing Party

(b) to the extent necessary for the Receiving Party to enforce its rights under a Flintfox Agreements;

(c) to those of its Personnel and professional advisers who need to know such Confidential Information, provided that the Receiving Party ensures that those Personnel and professional advisers keep such Confidential Information confidential; or

(d) to the extent required by applicable laws or by the order of a court or similar judicial or administrative body provided that the Receiving Party:

  (i) notifies the Disclosing Party of such required disclosure promptly in writing on notification that the Receiving Party must disclose; and

  (ii) cooperates with the Disclosing Party, at the Disclosing Party's written request and expense, in any lawful action to lawfully contest or limit the scope of such required disclosure.

20.3 The Receiving Party may disclose the terms of a Work Order, Subscription Order and/or Managed Support Order in connection with the contemplated assignment of the Receiving Party's business or assets, including a Change of Control of the Receiving Party, provided that the Receiving Party ensures that the persons receiving the Confidential Information under this clause 20.3 keep such Confidential Information confidential.

20.4 **Security**: The Receiving Party must take reasonable steps to protect the Confidential Information of the Disclosing Party against unauthorized use or disclosure, and in any event must take steps at least as stringent as those used by the Receiving Party to protect its own confidential information.

20.5 **Return or destruction of Confidential Information**: Upon termination or expiration of a Work Order, Subscription Order or Managed Support Order for any reason, the Receiving Party must immediately return to the Disclosing Party or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control that relates to or was acquired through the entry into or performance of that Work Order, Subscription Order, or Managed Support Order, except where the Receiving Party needs to retain that Confidential Information for the purpose of complying with its obligations under these Terms of Business, any other current Work Orders, Subscription Orders or Managed Support Orders, any law or any court order.

20.6 **Right to injunctive relief**: the Receiving Party acknowledges that monetary damages may not be a sufficient remedy for a breach of its obligations under this clause 20, and that the Disclosing Party will be entitled, without waiving any of its other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction if any such breach occurs.

21. Intellectual property rights

21.1 **Intellectual Property ownership**: The Parties acknowledge and agree that:

(a)   the Flintfox Agreements do not transfer to the Client any Intellectual Property Rights owned by Flintfox, its Affiliates or Flintfox's Licensors prior to entry into the applicable Work Order, Subscription Order or Managed Support Order;

(b)   the Flintfox Agreements do not transfer to Flintfox any Intellectual Property Rights owned by the Client, its Affiliates or the Client's Licensors prior to entry into the applicable Work Order, Subscription Order or Managed Support Order;

(c)   the Intellectual Property Rights in any Services, including for the avoidance of doubt any Deliverables, developed by Flintfox through the provision of the Services to the Client belong to and will automatically vest in Flintfox (or Flintfox's Affiliates, if applicable);

(d)   if the Client provides Flintfox with input, ideas, comments or suggestions relating to the Services (being, together, "Feedback"), all Intellectual Property Rights in that Feedback, and anything created as a result of that Feedback (including new material enhancements, modifications or derivative works), will owned solely by the Client. Flintfox hereby grants the Client an unrestricted, perpetual, irrevocable, non-exclusive, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Services;

(e)   to the extent that any Intellectual Property Rights referred to in clauses 21.1(b) or 21.1(d) vest in the Client, the Client agrees to transfer and hereby transfers these Intellectual Property Rights to Flintfox. The Client agrees to undertake such steps and execute such documents necessary to fulfil the intention of clauses 21.1(b) to 21.1(e) and allow Flintfox to enjoy the full benefits of its rights under this clauses 21.1(b) to 21.1(e); and

(f)   subject to the limited rights expressly granted to the Client under the Flintfox Agreements, Flintfox reserves all rights, title and interest in the Intellectual Property Rights in the Services.

21.2   **Client Data and Client Materials**: Client (and its Affiliate(s) and their suppliers and customers) retain ownership and Intellectual Property Rights in and to Client Data and Client Materials. Client grants to Flintfox and its Affiliates a limited non-exclusive, non-transferable, royalty free license to copy, store, configure, perform, display and transmit the Client Data and Client Materials as necessary to provide the Services, fulfil its obligations under the Flintfox Agreements, or as required by law. Flintfox may not, without Client's written authorization, utilize Client Data or Client Materials for any business purpose other than the performance of Flintfox's obligations under a Flintfox Agreement. Client (and its Affiliate(s) and their suppliers and customers) reserves all rights in and to the Client Data or Client Materials not expressly granted to Flintfox in a Flintfox Agreement, and no other licenses or rights are granted.

22. Resolution of disputes

22.1   **Informal Resolution**: Following the receipt of written notice from one Party to the other Party of a dispute arising out of or otherwise relating to a Flintfox Agreement, the Parties agree to promptly meet in good faith by attending at least one (1) meeting (in person or by conference call) to attempt to resolve the dispute prior to launching a proceeding under clause 22.2.

22.2   Notwithstanding the existence of a dispute, each Party shall continue to perform a Work Order, Subscription Order or Managed Support Order, except to the extent such performance is excused due to nature of the dispute and the applicable dispute resolution process. If a dispute is not resolved within twenty (20) Business Days of receipt of the notice provided under clause 22.1 (unless extended by written agreement) a Party may bring proceedings in either:

   (a)   the courts of the home jurisdiction of the client; or

   (b)   if Flintfox elects (at its sole discretion and acting reasonably), the courts of the United Kingdom or the courts of Delaware, United States of America.

22.3   **Exception to informal dispute resolution process**: A Party may commence proceedings solely for urgent injunctive relief in either:

   (a)   the courts of the governing law jurisdiction (as determined under clause 23.6 of these Terms of Business); or

   (b)   if Flintfox is commencing the proceedings and so elects (at its sole discretion and acting reasonably), the courts of New Zealand, the United Kingdom or the courts of Delaware, United States of America; or

the courts of the location where the actions set out in clauses 22.3(c) to 22.3(e) are occurring or anticipated to occur, to stop:

   (c)   unauthorized use or abuse of or infringement of a Party's Intellectual Property Rights;

   (d)   a breach of the Receiving Party's obligations under clause 20; or

   (e)   a breach of clause 0,

without being first required to engage in the informal dispute resolution process described in clause 22.1 above. In any such case both Parties consent to the applicable forum and jurisdiction.

23. General

23.1   **Severability**: if any provision of the Flintfox Agreements is or becomes unenforceable, illegal or invalid for any reason it shall be deemed to be severed from the Flintfox Agreements without affecting the validity of the remainder of the Flintfox Agreements and

shall not affect the enforceability, legality, validity or application of any other provision of the Flintfox Agreements.

23.2 **Notice**: notices under the Flintfox Agreements must be in writing and must be sent to the address specified in the applicable Work Order, or Subscription Order or Managed Support Order, or an updated address provided by a party to the other by notice under this clause 23.2. A notice will be considered to be received:

(a) on actual delivery, if delivery is by hand;

(b) one day after being sent by overnight pre-paid courier; or

(c) on actual delivery, if by electronic mail to the other party.

23.3 **Survival**: Clauses 3.2, OO, 3.4, 3.5, 3.6, 4.2(d), 8.12, 9, 10, 11.4, 12.6, 13.4, 14, 15, 16, 17, 18, 20, 21, 22, 23.9 and 23.10 of these Terms of Business s survive termination or expiry of the Work Order, or Subscription Order or Managed Support Order.

23.4 **Assignment and sub-contracting**: the Client may not assign all or any of its rights or obligations under the Flintfox Agreements without the prior written consent of Flintfox. Flintfox reserves the right to assign and/or transfer Flintfox's rights and obligations under Flintfox Agreements without your prior consent. Flintfox may engage third party sub-contractors or agents to perform all or any part of the Services. A Change of Control will be deemed an assignment for the purposes of this clause 23.4.

23.5 **Relationship between the Parties**: Nothing in Flintfox Agreements creates any partnership, joint venture, joint enterprise or agency relationship among the Parties.

23.6 **Governing law**: Unless specified otherwise in the Work Order, Subscription Order or Managed Support Order:

(a) where a Work Order, or Subscription Order or Managed Support Order is executed by a Client incorporated in the United States of America, Delaware state law shall govern the interpretation of the applicable Flintfox Agreement(s) and applies to any action, claim or procedure in relation to a breach of that Flintfox Agreement or negligence in relation thereto or other cause of action, regardless of conflict of laws principles; and

(b) where a Work Order, Subscription Order or Managed Support Order is executed by a Client incorporated outside of the United States of America, the law of the country where the Client is incorporated shall govern the interpretation of the applicable Flintfox Agreement(s) and applies to any action, claim or procedure in relation to a breach of that Flintfox Agreement or negligence in relation thereto or other cause of action, regardless of conflict of laws principles.

23.7 **Non-solicitation**: During the term of a Work Order, Subscription Order or Managed Support Order and for a period extending twelve (12) months after the earlier of termination or expiration of a Work Order, Subscription Order or Managed Support Order, the Client and Flintfox each agree that they shall not directly or indirectly solicit, recruit, or hire as an

employee, consultant, or, independent contractor, the Personnel of the other Party. The remedy for any violation of this prohibition shall be liquidated damages in the amount equal to nine (9) times payments made to the Personnel by the Party in the month immediately prior to the violation. The Parties agree that any damages a Party may suffer from any violation of this prohibition would be difficult to determine and that the remedy in this clause 23.7 is a reasonable estimate of such damages. The provisions of this clause 23.7 shall not restrict either:

(a)   the hiring of an employee who responds to an advertisement in public media publications or in other public media;

(b)   the solicitation of a former employee who has not been engaged in the performance of a Work Order for ninety (90) or more Calendar Days

(c)   the engagement by Client of the relevant Personnel with the prior written consent of Flintfox.

23.8   **Waivers**: A waiver by a party of any breach or negligent act or omission of these Terms of Business will not be construed as a waiver of any continuing or subsequent breach or negligent act or omission.

23.9   **Publicity**: A Party may use the other Party's logo, trade mark or name in connection with marketing, advertising, or other publicity (including via social networks) with the agreement of that other Party. Flintfox can use the Client's logo, trade mark or name on its website and promotional materials to indicate that the Client is a customer of Flintfox.

23.10   **Further assurances**: Each Party must, at its own cost, do all things reasonably necessary to give full effect to the Flintfox Agreements and the transactions contemplated by the Flintfox Agreements.

23.11   **Entire agreement**: These Terms of Business, and any Work Orders, Subscription Orders and Managed Support Orders between the Parties shall constitute the whole agreement between the Parties in relation to the subject matter of that Work Order, Subscription Order or Managed Support Order and supersede all prior discussions, representations and understandings, whether written or oral in relation to the same. Each of the parties agrees that in entering into a Work Order, Subscription Order or Managed Support Order that, to the extent permitted by law, it does not rely on, and shall have no right or remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to the Work Order, Subscription Order or Managed Support Order or not) other than as expressly set out in the Work Order, Subscription Order or Managed Support Order. Any legal terms or conditions contained in a Client's purchase order form issued by a Client in connection with the Services or other engagement set out in a Work Order, Subscription Order or Managed Support Order shall be of no force or effect and notwithstanding anything to the contrary that may be contained therein.