

# Cloud Solution Framework Agreement – EMEA

This Cloud Solution Framework Agreement sets and out the terms upon which:

- (1) **AMCS** shall supply; and
- (2) **Customer** shall purchase

the Services specified by AMCS in a Proposal (as Services and Proposal are defined below).

AMCS and Customer may each be referred to as a **"Party"** and together as the **"Parties"** to this Agreement

## 1 Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

<b>"Agreement"</b>	means this Cloud Solution Framework Agreement together with the Proposal(s) and any Schedules;
<b>"AMCS"</b>	shall have the meaning specified in clause 18 below;
<b>"AMCS Platform"</b>	the AMCS proprietary platform from which the Services are made available;
<b>"Authorised User"</b>	each employee or a contractor of Customer authorised to access and use the Services by Customer, collectively the <b>"Authorised Users"</b> ;
<b>"Business Day"</b>	a day other than a Saturday, Sunday or public holiday in the Country when its banks are open for business;
<b>"Confidential Information"</b>	all documentation, technical information, software, business information, feedback, pricing of the Services, reports issued from the Services, trade secrets or know how or other materials of a confidential nature disclosed by one Party to the other Party and in connection with this Agreement;
<b>"Country"</b>	means the state or country where Customer is situate, as identified by Customer's address above;
<b>"Currency"</b>	shall have the meaning specified in clause 18 below;
<b>"Customer"</b>	the party entering into this Agreement and a Proposal with AMCS;
<b>"Customer Data"</b>	the data entered into the Services by or on behalf of Customer;
<b>"Documentation"</b>	any document(s) made available to Customer by AMCS online via AMCS' website or such other web address notified by AMCS to Customer from time to time and all materials provided by AMCS, directly or indirectly, to Customer containing a description of, and the user instructions for, the Services as well as information about AMCS' Intellectual Property Rights and/or the Services, including but not limited to usage instructions, videos, online materials, writings, drawings, graphs, charts, photographs and other data compilations in any media whatsoever;
<b>"DPL"</b>	(a) the General Data Protection Regulation (EU 2016/679) and the Data Protection Act 2018 and any amendments thereto; and (b) the terms " <b>Controller</b> ", " <b>Processor</b> ", " <b>Data Subject</b> ", " <b>Personal Data</b> " and " <b>processing</b> " when used in this Agreement will have the meanings set out in the DPL;
<b>"Effective Date"</b>	that date specified in the Proposal (if no date is specified, the Effective Date shall be the date the Proposal is last signed or accepted by any 'click to accept' process by Customer);
<b>"Extended Term"</b>	each successive period of one (1) year;
<b>"Fees"</b>	a collective term for the Subscription Fees, the Professional Services Fees and any other fees due from Customer to AMCS under this Agreement;
<b>"Hours of Coverage"</b>	the hours specified in the Support Services Policy attached to this Agreement;

<b>"Implementation"</b>	the implementation services described in the Proposal, if any;
<b>"Index"</b>	means the then current consumer price index specified in the Proposal or, if not specified, the consumer price index shall be three percent (3%);
<b>"Initial Term"</b>	five (5) years from the Effective Date, unless expressly varied in a Proposal;
<b>"Intellectual Property Rights"</b>	any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions;
<b>"Professional Services"</b>	any consulting, Implementation and/or training services set out in the Proposal or a Work Order;
<b>"Professional Services Fees"</b>	the fees payable by Customer to AMCS for any Professional Services, which fees shall be charged at the rates specified in the Proposal, unless varied in a Work Order;
<b>"Proposal"</b>	means any written document (which may be computer generated and could be referred to, without limitation, as an offer, a quotation or a proposal) that is issued by AMCS to, and accepted by, Customer setting out the commercial terms under which the AMCS' Services specified therein are offered to Customer, AMCS' supply of which shall be subject to the terms of this Agreement;
<b>"Schedule"</b>	means any schedule referenced in the Proposal and/or this Agreement;
<b>"Services"</b>	a collective term for AMCS' provision of the AMCS Platform solution, Implementation Services, Professional Services, Support Services and such other services as are agreed between the Parties either in a Proposal, a Work Order or otherwise agreed in writing signed by the Parties;
<b>"Subscription Fees"</b>	the annual subscription fees payable by Customer to AMCS for the Services, as set out in the Proposal;
<b>"Support Services"</b>	AMCS' standard customer support services to be provided by AMCS to Customer on the terms of the Support Services Policy;
<b>"Support Services Policy"</b>	the terms on which AMCS will provide Support Services to Customer, as set out in Schedule 2 to this Agreement;
<b>"Term"</b>	the Initial Term and any Extended Term;
<b>"User Password"</b>	any encryption key(s), certificate(s), password(s), access code(s), user ID(s) or other login information provided to or used by Customer to enable Authorised Users to access and use the Services and the Documentation in accordance with this Agreement;
<b>"Virus"</b>	anything or any device (including any software, code, file or program) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;
<b>"Work Order"</b>	means a written record, signed by the Parties, setting out the terms on which

Customer and AMCS agree that AMCS shall provide Professional Services to Customer.

- 1.2 Clause and Schedule headings will not affect the interpretation of this Agreement.
- 1.3 Unless the context otherwise requires, words in the singular will include the plural and in the plural will include the singular.
- 1.4 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5 A reference to a statute or statutory provision will include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 Any phrase introduced by the words including, includes, in particular, or for example, or any similar phrase, will be construed as illustrative and will not limit the generality of the related general words.
- 1.7 References to clauses and schedules are to the clauses and schedules of this Agreement and the Proposal.
- 1.8 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.9 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement will prevail.

## **2 Term**

- 2.1 This Agreement will take effect on the Effective Date and continue during the Initial Term. Thereafter this Agreement shall be automatically renewed and continue in effect during successive Extended Term(s) unless either party gives written notice to the other party not later than ninety (90) days before the expiration of the Initial Term or the relevant Extended Term, to terminate this Agreement at the end of the Initial Term or relevant Extended Term, as the case may be, unless this Agreement is terminated earlier in accordance with its provisions.

## **3 Subscription**

- 3.1 During the Term the:
  - (a) Subscription Fees will entitle Customer, solely for Customer's internal business operations, a non-exclusive, non-transferable right to use, and permit Authorised Users to use, the Services, any Deliverables and the Documentation on and subject to the terms of this Agreement;
  - (b) Implementation Fees will entitle Customer to receive the Implementation, as set out in the Proposal;
  - (c) Professional Services Fees, if purchased, will entitle Customer to receive Professional Services on the terms agreed by the Parties in a Work Order and this Agreement; and,
  - (d) AMCS Academy Subscription Fees; if access to AMCS Academy is purchased under this Agreement, AMCS will provide to Customer, solely for Customer's internal business operations, a non-exclusive, non-transferable right to use, and permit the Authorised Users to use, AMCS Academy content.
- 3.2 AMCS will use commercially reasonable endeavours to make the Services available twenty-four (24) hours a day, seven (7) days a week, except for:
  - (a) planned maintenance carried out during the maintenance window of midnight to 2.00 am in the Country; and,
  - (b) unscheduled maintenance performed outside Hours of Coverage, provided that AMCS has used reasonable endeavours to give Customer at least six (6) hours notice in advance.

- 3.3 AMCS will also, at no additional cost to Customer, provide the Support Services during the Hours of Coverage in accordance with AMCS' Support Services Policy in effect at the time that the Services is provided. AMCS may amend the Support Services Policy in its sole and absolute discretion from time to time.
- 3.4 AMCS reserves the right to introduce new or enhanced features and functionalities to the AMCS Platform. Support Services include the right to access such new versions of the Services but any assistance to unlock or configure such new functionality is not included in the Annual Subscription Fee and, if requested by Customer, will be provided and charged as Professional Services.
- 3.5 AMCS shall provide Professional Services to Customer for the Implementation and the Support Services and as may be agreed by the Parties from time to time in a Work Order. All Work Orders shall be subject to the terms of this Agreement together with any additional terms in such Work Order. AMCS will use reasonable efforts to carry out the Professional Services as stated in a Proposal or the Work Order and, except as expressly agreed in the Proposal or a Work Order, Professional Services and the results thereof are provided on a time and materials basis and "as is".

#### **4 Services Access**

4.1 In relation to the Authorised Users, Customer undertakes that:

- (a) it will not allow or suffer a User Password to be used by more than one Authorised User unless it has first been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User will no longer have any right to access or use the Services;
- (b) it will promptly disable an Authorised User's account access to, and use of, the Services when such Authorised User ceases to require access to the Services;
- (c) each Authorised User will keep their User Password secure, shall change their password every sixty (60) days or more frequently and that the User Password is kept confidential;
- (d) it will maintain a written, up to date list of current Authorised Users and provide such list to AMCS within five (5) Business Days of AMCS' written request at any time;
- (e) it will ensure that access to the Services by Authorised Users is appropriate at all times. This shall include approving, maintaining and removing access and User Passwords as required; and,
- (f) it shall implement logical access controls to provide reasonable assurance that unauthorised access to the Services is prevented and/or restricted. If Customer discovers that access and a User Password has been issued to a person who is not an Authorised User, Customer will promptly disable access and the password of, and will not issue a new User Password to, such person.

4.2 Customer will:

- (a) provide AMCS with all necessary timely co-operation and access in relation to the Implementation and this Agreement, including relevant security access information and configuration services; in the event of any delays attributable to Customer, AMCS may adjust any timetable or delivery schedule as reasonably necessary;
- (b) comply with all applicable laws and regulations with respect to its activities under this Agreement including the DPL;
- (c) ensure that the Services are used in accordance with the terms and conditions of this Agreement, and hold AMCS harmless for its acts or omissions as well as those of its contractors and agents;
- (d) ensure that its networks and systems comply with any specifications provided by AMCS and will be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to AMCS' data centres and systems, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to its network connections or telecommunications links or caused by traversing the internet;

- (e) be responsible for configuration and security settings that are maintained by Customer's administrators and shall ensure that these settings are appropriate to Customer's security requirements;
- (f) ensure that the input of Customer Data into the Services considers those that have access to the Services to prevent any breaches of privacy or confidentiality; and,
- (g) obtain and maintain all necessary licenses, consents, and permissions necessary for Customer and its contractors and agents, to use the Services and perform its obligations under this Agreement; and,
- (h) use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, upon becoming aware of any such unauthorised access or use, promptly notify AMCS.

4.3 Customer will not access, store, distribute or transmit any material, in its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or,
- (f) is otherwise illegal or causes damage or injury to any person or property;

and AMCS reserves the right, without liability or prejudice to any other rights or obligations to Customer, to disable Customer's access to any material that breaches the provisions of this clause.

4.4 Customer will not (and will not knowingly permit any third party):

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the AMCS Platform and/or Documentation (as applicable) in any form or media or by any means; attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the AMCS Platform;
- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the AMCS Platform, Services and/or the Documentation;
- (c) use the Services and/or Documentation to provide services to third parties, to publish any benchmarking data, to license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except as expressly contemplated by this Agreement; or
- (d) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided for in this Agreement; nor,
- (e) transmit any Virus(es) into the Services.

## 5 Charges and Payment

5.1 AMCS will invoice and Customer will pay the Fees as stated in the Proposal.

5.2 Where AMCS perform Professional Services under this Agreement, Professional Services Fees shall be invoiced by AMCS on a so-called time and material basis at the rates set out the Proposal unless such rates are expressly

varied in a Work Order. Professional Services Fees are subject to clause 5.4 below and will be payable without any withholding, deduction or off set of any amounts for any purpose.

5.3 All Fees under this Agreement:

- (a) will be payable in the Currency;
- (b) are non-cancellable and non-refundable;
- (c) are exclusive of value added or other sales taxes, which will be added to AMCS' invoices at the appropriate rate required by law; and,
- (d) shall be paid within thirty (30) days from date of invoice (the "**due date**").

5.4 AMCS shall be entitled to make an annual adjustment to the Fees. The Fees shall be reviewed prior to each anniversary of the Effective Date during the Term of this Agreement. The adjustment, following such review, shall be the greater of (a) three percent (3%); or, (b) the Index. Such percentage increase shall be applied to the Fees with effect from the next anniversary of the Effective Date. The then Fees in any year shall be the basis of assessing the adjustment for the subsequent year.

5.5 Should Customer have a bona fide dispute in respect of all or any part of any invoice(s) Customer will notify AMCS, in writing and with sufficient details to allow AMCS to investigate, the nature of the dispute within ten (10) Business Days of its receipt of the invoice. Following any such notice, Customer will be entitled to withhold payment of the amount in dispute without interest but will promptly pay all undisputed amount(s) in accordance with this Agreement. The Parties will cooperate in good faith to resolve any such dispute as amicably and promptly as possible and on settlement of the dispute Customer will make the appropriate payment in accordance with this Agreement.

5.6 If AMCS has not received payment within fifteen (15) days after the due date, and without prejudice to any other rights and remedies of AMCS, it will be entitled to:

- (a) disable Customer's passwords and access to all or part of the Services and AMCS will be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and/or,
- (b) charge interest on a daily basis on such due amounts at the rate of one point five percent (1.5%) of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due and continuing until fully paid, whether before or after judgment.

## **6 Intellectual Property Rights**

6.1 Customer will own all Intellectual Property Rights in and to all the Customer Data and will have sole responsibility for the legality, reliability, integrity, accuracy and quality thereof.

6.2 AMCS and/or its licensors own all Intellectual Property Rights in and to the Services, AMCS Platform and Documentation. AMCS reserves all rights to or in, any Intellectual Property Rights, and to any other rights or licenses not expressly granted herein.

6.3 To the extent that any modifications or improvements to the Services, AMCS Platform or Documentation are carried out under or in connection with this Agreement, whether by AMCS alone or jointly with Customer, all Intellectual Property Rights in and to the underlying ideas and in any resulting improvement or modifications, will be assigned to, will vest with and will be solely owned by AMCS.

## **7 DPL and Customer Data**

7.1 Both parties will comply with all applicable requirements of the DPL. Customer will enter Personal Data (as defined by the DPL) onto the AMCS Platform. To the extent that AMCS is a Processor of Personal Data (as defined by the DPL), it will process such Personal Data in accordance with Schedule 4.

- 7.2 AMCS will follow its archiving procedures for Customer Data as set out in its Back-Up Policy available at [amcsgroup.com, or such other website address as may be notified to the Customer from time to time], as such document may be amended by AMCS in its sole discretion from time to time.
- 7.3 In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy will be for AMCS to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by AMCS in accordance with the archiving procedure described in its Back-Up Policy.
- 7.4 AMCS will not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by AMCS to perform services related to Customer Data maintenance and back-up).

## **8 Confidentiality**

- 8.1 Each Party ("**Receiving Party**") acknowledges that in the course of performing its duties under this Agreement, it may obtain Confidential Information from the other Party ("**Disclosing Party**").
- 8.2 During the Term and thereafter, the Receiving Party will treat all Confidential Information as secret, confidential, and proprietary, and will not disclose or use the same without the prior written consent of the Disclosing Party, other than to the Receiving Party's employees and contractors on a need to know basis for the purpose of performing its obligations under this Agreement, or as required by law. The Receiving Party will implement such procedures as it considers reasonably necessary to prevent the intentional or negligent disclosure to any third party of any Confidential Information. Notwithstanding the foregoing, nothing in this Agreement will prevent the disclosure by the Receiving Party or its employees of information that:
- (a) prior to its disclosure to the Receiving Party, was of general public knowledge;
  - (b) becomes, subsequent to its disclosure to the Receiving Party, a matter of general public knowledge other than as a consequence of a breach by the Receiving Party of any obligation under this Agreement;
  - (c) is made public by the Disclosing Party; or
  - (d) is received in good faith from a third party having the right to disclose it, who, to the Receiving Party's knowledge, did not obtain such information from the Disclosing Party and who imposes no obligation of secrecy on the Receiving Party with respect to such information.
- 8.3 No announcements or press releases concerning the subject matter of this Agreement will be made by either Party without the prior written consent of the other Party.

## **9 Warranties and Disclaimers**

- 9.1 Customer warrants that any Customer Data inputted to the AMCS Platform are:
- (a) owned by Customer or are provided with the express consent from the third party holding any Intellectual Property Rights in or over such material, or, alternatively, are in the public domain, and are not owned by any third party or otherwise covered by Intellectual Property Rights; and,
  - (b) do not breach the rights of any person or entity, including rights of publicity, privacy, or under applicable DPL and are not defamatory.
- 9.2 Customer is solely responsible for determining the suitability of the Services for its use. Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by Customer, and for conclusions drawn from such use. AMCS will have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to AMCS by Customer in connection with the Services, or for any actions taken by AMCS at Customer's direction.
- 9.3 THE SERVICES AND DOCUMENTATION ARE PROVIDED BY AMCS "AS IS".

- 9.4 NOTWITHSTANDING CLAUSE 3.2, AMCS DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.
- 9.5 ALL WARRANTIES, REPRESENTATIONS, CONDITIONS AND ALL OTHER TERMS OF ANY KIND WHATSOEVER IMPLIED BY STATUTE OR COMMON LAW ARE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDED FROM THIS AGREEMENT.

## **10 Limitation of Liability**

- 10.1 Nothing contained in this clause 10 will limit:
- (a) either Party's liability for death or personal injury resulting from that Party's negligence;
  - (b) either Party's liability for fraud; or,
  - (c) Customer's liability for breach of Customer's payment obligations and clauses 4; 6.2, 6.3 and 8.
- 10.2 Subject to clause 10.1, neither Party will be liable in contract, tort (including negligence) or for breach of statutory duty or in any other way for:
- (a) any economic losses (including loss of revenues, profits, contracts, business or anticipated savings);
  - (b) any loss of goodwill or reputation; or
  - (c) any special or indirect or consequential losses in any case, whether or not such losses were within the contemplation of the Parties at the date of this Agreement or were suffered or incurred by either Party arising out of or in connection with this Agreement.
- 10.3 Subject to clause 10.1, AMCS' total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement will be limited in any twelve (12) month period (the first of which will commence on the Effective Date and subsequently on each anniversary thereof) to the Subscription Fees paid to AMCS in respect of the twelve (12) month period in which the claim arose.

## **11 Termination**

- 11.1 Either Party may immediately terminate this Agreement, and Customer's access to the Services, at any time in the event that the other Party:
- (a) commits a material breach of this Agreement which is not capable of remedy;
  - (b) commits a material breach of this Agreement and (if such breach is capable of remedy) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so, save that the period shall be ten (10) days where the breach is not capable of remedy and/or where Customer is in breach of its payment obligations hereunder;
  - (c) makes any assignment of assets or business for the benefit of creditors, or if a trustee or receiver is appointed to administer or conduct its business or affairs, or if it is adjudged in any legal proceeding to be either a voluntary or involuntary bankruptcy.
- 11.2 Termination of this Agreement will not affect the Parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination.
- 11.3 In the event this Agreement expires or terminates for any reason Customer may request AMCS provide an electronic copy of the Customer Data in flat files, human readable format, without charge. If requested by Customer, AMCS can provide Customer with Professional Services to retrieve Customer Data in other formats at a scope and price to be agreed.



11.4 The following clauses will survive any termination of this Agreement: 5, 6, 7, 8, 9, 10, 11.3, 11.4, 14 and 18.

## 12 Force Majeure

12.1 Neither Party will have any liability to the other Party under this Agreement if it is prevented from, or delayed in, performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (excluding any industrial disputes involving its own workforce), act of God, war, riot, terrorism civil commotion, compliance with any law or regulation, fire, flood or storm (each a "**Force Majeure Event**"), provided that:

- (a) a Party affected by the Force Majeure Event ("**Affected Party**") is notified by the Party experiencing the Force Majeure Event ("**Delayed Party**"), including its expected duration; and,
- (b) the Delayed Party uses all reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event,

and that if the period of delay or non-performance continues for thirty (30) days or more, the Affected Party may terminate this Agreement by giving ten (10) Business Days' written notice to the Delayed Party.

## 13 Notices

13.1 Normal communications between the Parties in respect of commercial matters will be conducted by email.

13.2 Any notice or other communication required to be given to a Party under or in connection with this Agreement (such as a termination notice or the like) will be in writing and will be delivered by hand or sent by pre-paid registered post or other next working day delivery service providing proof of delivery, at its principal place of business as set out above.

13.3 Any notice or communication will be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

13.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" will not include e-mail.

## 14 Review of Usage

14.1 Customer shall monitor its own usage of the Services and if at any time the Services then in use by Customer (be it based on the number of users, the number of units in use and/or the turnover processed within the Services) exceeds that which Customer has then purchased Customer will promptly contact AMCS to seek a quotation for, and will purchase, the additional Services required for a minimum period of twelve (12) months.

14.2 With prior written notice (which notice may include email communication) AMCS shall have the right to remotely review Customer's use of the Services and compliance with the terms of this Agreement. AMCS shall bear the expense of any such review. AMCS shall treat as confidential information all information gained as a result of any such review and shall only use or disclose such information as required by law or to enforce its rights under this Agreement.

14.3 If AMCS discovers that Customer's use of the Services exceeds the level then purchased AMCS shall invoice, and Customer will remit to AMCS, the underpaid Fees due to AMCS for a minimum period of twelve (12) months. Where used in this provision, "the underpaid Fees" means the fees stated in the Proposal together with any Index increases applicable under clause 5.4.

14.4 The Services utilise automated systems that continually monitor its availability and usage. The provisions of this clause 14 shall survive the termination of this Agreement.

## **15 Dispute resolution**

- 15.1 Any dispute or claim arising out of or in connection with this Agreement (unless otherwise set forth herein) shall in the first instance be resolved as follows: (a) for a period of thirty (30) days after a dispute arises the respective appropriate officers of the Parties shall negotiate in good faith in an effort to resolve the dispute; and (b) if the dispute has not been resolved at the close of such thirty (30) day period, the matter shall be finally settled by Alternative Dispute Resolution (“**ADR**”) in accordance with the provisions set forth herein.
- 15.2 If the dispute has not been resolved then on the written request of any party it can be referred to an independent mediator, the identity of whom shall be agreed between the parties. In the event the mediator cannot be agreed by the parties within fourteen (14) days of one party’s written request to appoint a mediator, the office of the International Centre for Dispute Resolution (“**ICDR**”) in the Country shall appoint a single independent mediator in accordance with the rules of the ICDR.
- 15.3 The costs of ADR shall be shared equally, ADR shall take place in the Country and in English. In the event that within a period of sixty (60) days of the appointment of a mediator, the mediator is unable to resolve the dispute, the parties may submit the matter to the non-exclusive jurisdiction of the courts of the Country.

## **16 General**

- 16.1 Nothing in this Agreement will be construed to give any Party the power to direct or control the daily activities of another Party, or to constitute the Parties as principal and agent, employer and employee, franchiser and franchisee, partners, joint venturers, co-owners or otherwise as participants in a joint undertaking.
- 16.2 The remedies of the Parties under this Agreement are cumulative and will not exclude any other remedies to which the Party may be lawfully entitled.
- 16.3 The failure of any Party to insist on strict performance of a covenant hereunder or of any obligation hereunder will not be a waiver of such Party’s right to demand strict compliance therewith in the future.
- 16.4 This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument. Any signed counterpart transmitted electronically (in PDF, JPEG, DocuSign or other format) shall take effect as delivery of an executed counterpart of this Contract. This Agreement shall not be effective until each of the Parties has executed and delivered at least one counterpart and each Party hereby covenants and agrees to execute all duplicate or replacement counterparts of this Agreement as may be required.
- 16.5 In the event any provision, clause, sentence, phrase, or word hereof, or the application thereof in any circumstances, is held to be invalid or unenforceable, such invalidity or unenforceability will not affect the validity or enforceability of the remainder hereof, or of the application of any such provision, sentence, clause, phrase, or word in any other circumstances.

## **17 Entire Agreement**

- 17.1 This Agreement constitutes the entire agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.
- 17.2 Each Party acknowledges that in entering into this Agreement it does not rely on, and will have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 17.3 Nothing in this clause will limit or exclude any liability for fraud.
- 17.4 No alteration to or variation of this Agreement will take effect unless and until the same is in writing and signed on behalf of each of the Parties by a duly authorised representative.

## 18 AMCS, Currency, Law and Jurisdiction

18.1 The Currency, the AMCS party with which Customer is contracting, the law, exclusive of its choice of law provisions, that will apply in any dispute or lawsuit and the courts with exclusive jurisdiction over any such dispute or lawsuit is determined by the Country based on the following:

If Country is:	Currency means:	AMCS means:	Governing Law and courts having exclusive jurisdiction are:
Ireland or any country not listed below	EUR	<b>ADVANCED MANUFACTURING CONTROL SYSTEMS LIMITED</b> with its registered office at Block C, City East Plaza, Ballysimon, Limerick, Ireland V94 56R2	Irish law, with the courts of Dublin, Ireland having jurisdiction
Netherlands	EUR	<b>AMCS BV</b> with its registered office at Muiderstraatweg, 15E, 1111 PS, Diemen, The Netherlands.	Dutch law, with the courts of Amsterdam, Netherlands having jurisdiction
Denmark	DKK	<b>AMCS DENMARK A/S</b> with its registered office at Hejrevej 34D, 3, sal, 2400 Kobenhavn NV, Denmark	Danish law, with the courts of Copenhagen, Denmark having jurisdiction
UK	GBP	<b>ADVANCED MANUFACTURING CONTROL SYSTEMS UK LIMITED</b> with its registered office at Gethin House, 36 Bond Street, Nuneaton, CV11 4DA	Laws of England and Wales, with the courts of London, England having jurisdiction
Germany	EUR	<b>RECY SYSTEMS GMBH</b> with its registered office at Weihenstephaner Str. 1, 85716 Unterschleissheim, Germany	German law, with the courts of Munich, Germany having jurisdiction
Sweden	SEK	<b>AMCS GROUP AB</b> with its registered office at Smedstorpsgatan 16, 532 37 Skara	Swedish law, with the courts of Stockholm, Sweden having jurisdiction
Norway	NOK	<b>AMCS NORGE AS</b> with its registered office at Edv. Griegs vei 1, 1410 Kolbotn, Oppegard	Norwegian law, with the courts of Oslo, Norway having jurisdiction
France	EUR	<b>AMCS FRANCE</b> with its registered office at 13 Rue Berthelot, 59000 Lille	French law, with the courts of Lille, France having jurisdiction
USA	USD	<b>AMCS GROUP INC.</b> with its principal place of business at 179 Lincoln Street, Boston, MA 02111	Massachusetts law, with the courts of Boston, Massachusetts having jurisdiction
Canada	CAD	<b>TRUX ROUTE MANAGEMENT SYSTEMS INC.</b> with its registered office at 485 Pinebush Road, Suite 302, Cambridge ON Canada N1T 0A6	The laws of the Province of Ontario, with the courts of Ontario, Canada having jurisdiction
Australia	AUD	<b>AMCS AUSTRALIA PTY LTD</b> with a business address of: Suite 2.01, Unit 4, Orion Business Park, 11-13 Orion Road, Lane Cove, NSW 2066	Australian law, with the courts of Sydney, Australia having jurisdiction
New Zealand	NZD	<b>AMCS GROUP NZ LIMITED</b> with its registered office at 127 Main Highway, Ellerslie, Auckland, 1051, NZ	New Zealand law, with the courts of Wellington, New Zealand having jurisdiction

**SCHEDULE 1  
PROPOSAL**

Each Proposal is hereby incorporated into this Agreement by this reference.

**SCHEDULE 2  
SUPPORT SERVICES POLICY**

**1 SERVICES**

- 1.1 In consideration of and subject to Customer's payment of the Subscription Fees, AMCS will during the Term provide the Support Services in accordance with the Agreement and this Support Services Policy.
- 1.2 AMCS will provide Support Services for all Support Cases during the Hours of Coverage. Support Cases can be logged by Super Users 24/7/365 through the Customer Support Portal.
- 1.3 AMCS undertakes automated monitoring of the AMCS Platform and will promptly address any system down issues identified by such monitoring, even if outside of the Hours of Coverage.

**2 DEFINITIONS**

- 2.1 "**Customer Support Portal**" means AMCS' on-line portal (<https://www.amcsgroup.com/company/global-customer-support/>) through which Customer can submit Support Case(s).
- 2.2 "**Super User**" means an Authorized User who is also authorized by Customer to submit Support Case(s) on behalf of Customer.
- 2.3 "**Support Case**" means an incident reported by a Super User to AMCS requesting Support Services assistance.
- 2.4 "**Support Services**" means provision of AMCS' standard support, break fix and update services (and shall not include any Premium Services, Customer requests or change requests).

**3 LOGGING A SUPPORT CASE**

- 3.1 Super Users may log Support Cases through the Customer Support Portal.
- 3.2 **For P1 Priority Code Support Cases only:** Super Users may also submit any P1 Priority Code Support Case by telephone through the AMCS customer support helpdesk. For any P1 Support Case logged during the Hours of Coverage AMCS will work on a 'work to completion' basis or, until a work-around is provided and/or the priority is lowered.

**4 PRIORITY**

- 4.1 The impact identified by the Customer when logging a Support Case will determine which of the following levels of priority ("**Priority Code(s)**") will apply.

<b>Priority Code</b>	<b>Description</b>
P1	<b>Critical</b> - The problem is impacting the majority of Users and/or Customer's clients, the Services (or significant Services functionality) is unavailable with no work around currently available.
P2	<b>High</b> - The problem is causing a serious business impact, impacting a significant number of Users and/or Customer's clients, performance and/or functionality of the Services is significantly degraded and there is no acceptable workaround currently available.
P3	<b>Moderate</b> - The problem is impacting only a small number of Users and/or Customer's clients and is causing only a minor business impact or is more serious but there is an acceptable workaround currently available

- 4.2 Support Case Priority Codes may be adjusted at any time, depending upon impact to Customer.

**5 TARGET RESPONSE TIME**

5.1 Based on the Priority Code for the Support Case AMCS will respond to and commence work to resolve Support Cases within the response time stated below (“**Target Response Time**”). Save for P1 Priority Calls, Target Response Times are measured within the Hours of Coverage.

Priority Code	Description	Target Response Time
P1	Critical	1 Hour
P2	High	4 Hours
P3	Medium	16 Hours

5.2 Once work to resolve the Support Case is commenced in accordance with the applicable Response Service Level set forth above, AMCS will work diligently and continuously (24x7x365 for P1 Priority Code Support Cases, and during Hours of Coverage for all other Support Cases) until a work around for the Support Case is provided or the Support Case is resolved.

5.3 Customer acknowledges that AMCS’ ability to work continuously may be contingent upon AMCS’ receipt of responses and/or feedback from Customer and that resolution of a Support Case may be delayed if Customer’s response(s) and/or feedback are not provided in a timely manner.

**6 SUPPORT CASE PROCEDURE**

6.1 All P1 Priority Code Support Cases will be on a ‘work to completion’ basis or until a work-around is provided, whereupon the Priority Code will be lowered.

6.2 Super User shall provide a sufficiently comprehensive and clear description of the problem when submitting a Support Case including, to the extent applicable, details of the steps to reproduce the problem and copies of screenshots where appropriate.

6.3 Customer will provide timely responses to all reasonable requests for additional information in relation to the Support Case. Delays in providing requested additional information may delay the Support Case resolution timeline.

6.4 Once the Support Case has been received, AMCS will confirm receipt and commence work in line with the applicable Target Response Time set forth in the table above. The most efficient way to submit or raise a case is via the Customer Support Portal. If a Support Case is raised via telephone, then AMCS will enter the Support Case (and each resolution) into the Customer Support Portal.

6.5 AMCS will investigate each Support Case in order of Priority Code and provide Customer event resolution path progression in accordance with the Priority Codes table above via the Customer Support Portal.

6.6 At any time, Customer can check the current status of a Support Case through AMCS’ Customer Support Portal.

6.7 If the resolution option(s) are not immediately apparent AMCS will provide the Customer with a plan of action in response to the Support Case. Such plan of action will include a description of the required activities and assign appropriate responsibilities and timescales for each activity. In addition, but for P1 Priority Cases only, AMCS will communicate the plan of action to the Customer orally in the first instance.

6.8 AMCS will keep Customer apprised of the status versus plan of action for each open Support Case via the Customer Support Portal.

**1.1.1.**

6.9 Closing a Support Case:

6.9.1 If a Support Case is closed because it has been successfully resolved, AMCS will provide a description of the final solution to Customer within the Customer Support Portal.

6.9.2 If a Support Case has not been successfully resolved, then AMCS will not close the Support Case unless the issue is shown to be outside of AMCS’ responsibility in which case AMCS may close the Support Case irrespective of whether Customer deems the issue is resolved.

6.9.3 If Customer considers that a Support Case has incorrectly been deemed closed by AMCS, Customer shall inform AMCS and provide a brief description of the outstanding issue(s), in which case AMCS will reopen the Support Case.

6.10 AMCS will use reasonable endeavours to have local language speaker(s) available during the Hours of Coverage. But, unless otherwise stated in the Agreement, the primary language of communications between AMCS and Customer will be English.

## 7 UPTIME COMMITMENT

7.1 AMCS will use all reasonable efforts to ensure that the Services are available and functioning in accordance with its specifications for the Uptime.

7.2 “**Uptime**” means that the Services shall be available for ninety-nine point nine percent (99.9%) per annum. Uptime is calculated monthly by dividing the number of minutes in the applicable month during which the Services are available and functioning properly by the total number of minutes in such month.

7.3 Uptime shall exclude any period of time that the Services are not available for any of the following reasons:

7.3.1 AMCS is performing scheduled system upgrades, enhancements or routine maintenance. The timing of system upgrades etc will be coordinated with Customer for appropriate scheduling;

7.3.2 problems caused by defects in Customer Data as uploaded to the AMCS Platform by Customer;

7.3.3 events of Force Majeure;

7.3.4 Customer’s inability to access the internet that is not caused by AMCS;

7.3.5 suspension of Customer’s access to the Services in accordance with the terms of the Agreement;

7.3.6 problems caused by Customer’s or User’s use of the Services where the defined business process is not followed;

7.3.7 problems arising from Customer’s third-party software or applications including any ISP problems;

7.3.8 problems caused by hardware provided by Customer;

7.4 **Business Continuity:** AMCS provides an in-built disaster recovery plan with a guaranteed RPO of five (5) minutes and an RTO target of two (2) hours. Where used in this section: “**RTO**” or Recovery Time Objective means the time taken to reinstate the Service from time of failure; and, “**RPO**” or Recovery Point Objective is the point in time to which the Service will be recovered.

7.5 **Backups:** Databases are deployed with a thirty-five (35) day point-in-time restore capability. This ensures a snapshot of the database can be retrieved from any point over the preceding thirty-five (35) days. Long term backup retention is in place where backups are stored for up to ten (10) years.

7.6 **Archiving:** The extraction of specified Customer Data from the main database and placing it in an archive for future Customer access. The Customer Data to be archived along with the archiving strategy and the retention periods will all be agreed with Customer as part of the Implementation process.

7.7 **Uptime Availability:** AMCS implement Availability Tests to verify Uptime. Such Availability Tests continuously test the health of each environment across multiple geographic locations. Availability Tests are currently automatically conducted every five (5) minutes, mirroring that currently available from Microsoft. If Microsoft increase the frequency of the Availability Tests AMCS shall apply the such same increased frequency to the Availability Tests.

7.7.1 “**Availability Tests**” means the URL ping test and the multi-step web test, the Diagnostic Checks and the Regression Tests:

7.7.2 “**Diagnostic Checks**” review the following Connectivity: between web and data layer, to any required API's, and, to the Reports API and Server as well as version number verification between web and database components.

7.7.3 “**Regression Tests**” verify that a user can: log into the application, log in to the customer portal, navigate to each area of the application, can perform a customer search and, if applicable, that a user can view jobs scheduled at a weighbridge and/or scalehouse.

## 8 EXCLUSIONS

8.1 AMCS will have no obligation to provide Support Services in connection with any Support Case caused or delayed by:

8.1.1 Customer's use of the Services other than in accordance with the terms of this Agreement;

8.1.2 Customer's failure, inability or refusal to allow AMCS' Support Services personnel proper and uninterrupted access to the Services;

8.1.3 software or malware that has affected the customers infrastructure;

8.1.4 any defect or malfunction of the Customer's network systems and/or internet that is not due to any act or omission of AMCS;

8.1.5 use of the Services by any personnel of the Customer who have not been adequately and/or appropriately trained in its use;

8.1.6 Customer's refusal to allow the implementation of any bug fixes or updates previously provided by AMCS to Customer unless a reasonable objection to such implementation has been identified by Customer and accepted by AMCS;

8.1.7 the correction of any fault or problem which is not reported by the Customer to AMCS in accordance with the Support Case procedure; and/or,

8.1.8 either Party being subject to a Force Majeure event.

## 9 MISCELLANEOUS

9.1 If resolution of a Support Case requires a change to the AMCS Platform and/or the Services AMCS will obtain written authorisation (which may include email) to proceed from Customer. AMCS will test any new solution prior to release to Customer.

9.2 AMCS shall, through the Customer Support Portal, provide access to key business metrics including application performance, Services uptime, backlog, individual Support Case status etc.

9.3 The periodic management and performance review process and schedule will be tailored to Customer's requirements. Such process and schedule will be finalised during the Implementation process and on-boarding of Customer.

9.4 Customer and AMCS may periodically review Support Cases undertaken by AMCS to identify if additional Customer training is required or whether Services changes would prevent similar problems occurring.

9.5 AMCS may, in its discretion, investigate the root cause of a Support Cases issue and if, as a result of such investigation, AMCS determine that the issue is due to a factor outside the control of AMCS then AMCS shall be entitled to recover from Customer the cost of such investigation at the quoted Professional Services rates.

9.6 Whilst Customer is encouraged to log requests for enhancements or significant changes to the Services, which are not relating to a defect or inherent error in the Services, or to request Professional Services, such requests are excluded from Support Services. If Customer wishes AMCS to provide such requested enhancements or changes, or to provide Professional Services, these will be delivered separately, as Professional Services, subject to the Parties first agreeing the parameters of the work required by Customer and the cost to be charged by AMCS in providing the same.



9.7 Any Professional Services purchased by Customer shall be provided on the Professional Services terms set out in this Agreement.

**10 ESCALATION PROCEDURE**

10.1 If the Customer is concerned that a request for Services has not been met as set out above, Customer may escalate the issue through the following levels of AMCS' organisation:

Level 1	Support Team Lead on-call
Level 2	Support Manager on-call
Level 3	Regional Head of Customer Support

10.2 Contact details for the above shall be provided to Customer during the on-boarding process.

**SCHEDULE 3**  
**PROFESSIONAL SERVICES**

1. Customer has agreed to purchase the Professional Services for Implementation as detailed in the Proposal. Customer may purchase additional Professional Services from AMCS during the Term of this Agreement.
2. Each Customer request for Professional Services shall be made in writing and shall include such information as is required to allow AMCS to consider, quantify and cost such Professional Services request. AMCS's agreement to Customer's request for Professional Services shall be set out in a Work Order and shall include an estimate of the time and cost of providing such for Professional Services. If AMCS decline a request for Professional Services AMCS shall provide written notice to Customer advising that the Professional Services are not agreed and provide the reason(s) for such non-agreement. Customer may accept AMCS' Work Order by signing and returning the Work Order to AMCS within ten (10) working days of receipt, failing which the Work Order shall be deemed withdrawn.
3. Professional Services within a Proposal or a Work Order are an estimate, actual costs may vary.
4. AMCS shall invoice Professional Services monthly in arrears.
5. On-site Professional Services are provided between 8:00am and 5:00pm at Customer's site, excluding weekends and public holidays ("local hours"). If requested by Customer, work performed or travel required outside of local hours whether on-site or remotely will be invoiced at one point five (1.5) times the standard Professional Services rates. Work performed or travel required at weekends or during public holidays will be invoiced at two (2) times the standard Professional Services rates.
6. Professional Services provided remotely will be provided during the local office hours of the assigned AMCS employee.
7. Unless otherwise stated in a Proposal or Work Order, implementation and/or installation are not included. If required by Customer, these will be provided as Professional Services on a time and material basis.
8. AMCS will use reasonable efforts to carry out the Professional Services which are provided on a time and materials basis and "as is".
9. Professional Services do not include expenses, Customer shall reimburse AMCS for any reasonable and properly incurred out of pocket expenses relating to AMCS' provision of Professional Services which may include travel time to and from Customer's site, lodging, meals, telephone, and shipping, as may be necessary in connection with performance of the Professional Services duties under this Agreement by AMCS.
10. If Customer makes any changes to, postponement or cancellation of, Professional Services after the AMCS has arranged travel will result in a charge to Customer of one hundred percent (100%) of the travel costs and fifty percent (50%) of the personnel costs.

**SCHEDULE 4  
DATA PROCESSING**

**1 Definitions**

- “AMCS Companies”** means Advanced Manufacturing Control Systems Limited and any corporation more than fifty percent (50%) owned by Advanced Manufacturing Control Systems Limited provided such corporation is resident within the European Economic Area;
- "Data Protection Legislation"** means:
- (a) the General Data Protection Regulation ((EU) 2016/679) ("GDPR"), the Data Protection Act 2018 and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in AMCS's jurisdiction; and
  - (b) the terms "**Data Controller**", "**Data Processor**", "**Data Subject**", "**Personal Data**" and "**processing**" when used in this Agreement will have the meanings set out in the Data Protection Legislation.
- “Product(s)”** means AMCS’ product(s) supplied (either as a cloud based product or delivered as an on-premise product where applicable) to Customer under the terms of the Agreement.
- “Purposes”** means those listed in Annex 1.
- “Services”** Means (i) where the Product(s) are provided and operate in the cloud, any automated processing by the Product(s) and AMCS’ provision of support services and/or professional services or (ii) where the Products are provided and operate on-premise, AMCS’ provision of support services and/or professional services, and as each are more specifically described and defined in the Agreement.
- “Third Party Processors”** means those third parties listed in Annex 1 and any that Customer subsequently consents to, in writing.

**2 Effect of Addendum**

- 2.1 To the extent that the Agreement contains any terms or conditions concerning Data Protection Legislation, this Addendum replaces any such terms or conditions.
- 2.2 This Addendum constitutes an amendment to the Agreement in accordance with its terms and forms a part of it. All other provisions of the Agreement shall remain in full force and effect.

**3 Data Protection**

- 3.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation.
- 3.2 The Parties acknowledge that for the purposes of the Data Protection Legislation: (i) where the Product(s) are provided and operate in the cloud, Customer is the Data Controller and AMCS is the Data Processor and (ii) where the Product(s) are provided and operate on-premise, Customer is both Data Controller and Data Processor, whilst AMCS is the Data Processor to the extent Customer seeks the Services.
- 3.3 Customer authorises AMCS to process Personal Data to provide the Services in accordance with the Agreement and Annex 1 hereto and AMCS shall process Personal Data for such purposes in compliance with Data Protection Legislation.

- 3.4 Without prejudice to the generality of clause 3.1, AMCS will, in relation to any Personal Data processed in connection with the performance by AMCS of its Services obligations under the Agreement:
- 3.4.1 process that Personal Data for the Purposes, only in accordance with the terms of the Agreement and any written instructions of the Data Controller;
  - 3.4.2 if AMCS is required by the laws of any member state of the European Union or by the laws of the European Union applicable to AMCS ("Applicable Laws") to process such Personal Data for other purposes, promptly notify Customer of such other purposes before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Processor from so notifying Customer;
  - 3.4.3 subject to clause 3.4.2, not disclose any Personal Data to any third party without the prior written consent of Customer;
  - 3.4.4 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - 3.4.5 ensure that all AMCS' personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - 3.4.6 not transfer any Personal Data outside of the European Economic Area unless with the prior written consent of Customer and the following conditions are fulfilled:
    - (i) Customer or AMCS has provided appropriate safeguards in relation to the transfer;
    - (ii) the Data Subject has enforceable rights and effective legal remedies;
    - (iii) AMCS complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
    - (iv) AMCS complies with reasonable instructions notified to it in advance by Customer with respect to the processing of the Personal Data;
  - 3.4.7 assist Customer, at Customer's cost, in responding to any request from a Data Subject and in ensuring Customer's compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
  - 3.4.8 notify Customer without undue delay on becoming aware of a Personal Data breach;
  - 3.4.9 at the written direction of Customer delete or return (in that format specified in the Agreement or as is produced by using the Product's standard data export facilities) Personal Data and copies thereof to Customer on termination of the Agreement unless required by Applicable Laws to store the Personal Data;
  - 3.4.10 maintain complete and accurate records and information to demonstrate compliance with this clause 3 (including but not limited to contractual arrangements for the transfer of Personal Data outside the EEA) and allow for audits by Customer or Customer's designated auditor in accordance with the audit provision of the Agreement; and,

3.4.11 comply with all reasonable requests of Customer resulting from any such audit described in clause 3.4.10.

#### **4 Appropriate Safeguards**

4.1 AMCS will not appoint any third-party processor of Personal Data under the Agreement, without Customer's prior written consent. Customer hereby consents to the Third-Party Processors processing Personal Data for the Purposes listed in Annex 1 which may include the transfer of Personal Data to such Third-Party Processors.

4.2 Where Customer provides consent pursuant to clause 4.1 AMCS has entered, or will enter, into an agreement with such Third-Party Processor incorporating terms which are substantially similar to those set out in clause 3.4.

4.3 As between Customer and AMCS, AMCS shall remain fully liable for all acts or omissions of any Third-Party Processor appointed pursuant to this clause 4.

4.4 In the event of any loss or damage to Customer Data, Customer's sole and exclusive remedy will be for AMCS to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by AMCS in accordance with the archiving procedure described in its Back-Up Policy.

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### **Annex 1**

#### **Processing, Personal Data and Data Subjects**

##### **1 Processing by the Provider**

1.1 **Scope:** AMCS may act as a Data Processor in fulfilling the following:

1.1.1 standard day to day processing of Customer data for AMCS Cloud based Products

1.1.2 delivering AMCS Product solutions to Customer

1.1.3 software maintenance and resolution of issues

1.2 **Purpose of processing:** AMCS will process data for the following reasons:

1.2.1 **Provision of SaaS Services:** Where AMCS' SaaS Products operate in the cloud, these products host and process data on behalf of Customer using AMCS developed applications.

1.2.2 **Services Delivery:** During delivery of AMCS solutions to Customer, it may be necessary to process data on behalf of Customer, which could include:

1.2.2.1 migration of data to AMCS solution database. This could be from one customer database to another. Such database may be located either in the Cloud or on the Customer's premises.

1.2.2.2 testing of the Product prior to go live.

1.2.2.3 assisting Customer with first runs of key business processes, if required.

1.2.2.4 debugging of solution prior to Customer sign off.

1.2.3 **Software Maintenance:** In order for AMCS to deliver software maintenance services, there will be occasions when AMCS will require access to, and may process, Personal Data in order to satisfactorily resolve issues that arise. Maintenance services may include:

1.2.3.1 **case resolution**- resolving customer issues that may occur during the use of the Product.

1.2.3.2 **upgrading Product** – It is important that product version be kept up to date and software support teams may need access to data in the product upgrade process.

1.2.3.3 **data archiving**- In order to maintain a performing product, it will be necessary to archive data that is no longer required for immediate day to day processing, but may be required to retain for business reasons. In providing this service AMCS software support teams may need access to data in the Product.

1.2.3.4 **performing complex configuration or changes** – Some changes to Customer’s services or pricing will require assistance of AMCS software support teams. In delivering this service the AMCS software support teams may need access to data in the Product.

1.2.3.5 Developing solutions, features or reports.

1.3 **Duration of the processing:**

1.3.1 The duration of processing will vary depending on the task or service being delivered but data will only be retained for as long as is necessary to perform and deliver services.

1.3.2 The data that is processed in SaaS products where data is stored in the cloud is retained on behalf of the Data Controller. The Data Controller will determine how long that this data is retained for.

1.3.3 If it is necessary to copy data in order to perform maintenance support, the data will be deleted as soon as the support task has been completed and verified by the customer in accordance with AMCS’ policies and procedures.

2 **Types of Personal Data**

The Product requires certain Personal Data for effective operation of Customer’s business. Such data allows Customer to manage their customers, and to deliver the products and services their customers purchase. The types of personal data that may be processed by AMCS include:

- 2.1 Name
- 2.2 Address
- 2.3 Phone Numbers
- 2.4 Email Addresses
- 2.5 Bank Details
- 2.6 GPS coordinates

3 **Categories of Data Subject**

The data subjects that AMCS may access or collect data on are as follows:

3.1 **Customer:** During the course of day to day operations AMCS will have access to Personal Data for the Customer personnel with whom they engage. Correspondence with such personnel would typically be retained to document delivery of Services.

3.2 **Customer’s customers:** The companies and individuals who subscribe to the Customer’s products and services, which customer data is entered into the Product in the course of providing such products and services.

4 **Approved Third Party Processors:**

- 4.1 **AMCS Companies**
- 4.2 **iLand** - global cloud service provider

- 4.3 **Microsoft Azure** - global cloud service provider
- 4.4 **DSRC (UK) Limited and Data Software Research Company Private Limited** (India) - software development services
- 4.5 **For All IT (FAIT)** - software delivery partner. Cloud service provider.
- 4.6 **Dariusz Siwek Logistics** (Poland) - software support and development services