

# BOARDPAD SUBSCRIPTION AGREEMENT (Hosted Version) (BC) (with RC)

## Parties:

<b>ICSA BOARDROOM APPS LIMITED</b> Waterman House 41 Kingsway London WC2B 6TP  (“IBAL”)	<b>INTELLECTUAL PROPERTY OFFICE</b> Concept House Cardiff Road Newport South Wales NO10 8QQ  (“Subscriber”)
Email Address: [REDACTED]	
Meeting Organiser(s): [REDACTED]	
<b>DATE OF AGREEMENT:</b>	

## SCHEDULE ONE

BoardPad Software	No	Fee
BoardPad Fee	n/a	[REDACTED] (annual - recurring)
Delegate Fee (1-26 at [REDACTED] per user includes 1 administrator 27-41 at [REDACTED] per user plus 3 Administrators free of charge)	44	[REDACTED] (annual - recurring)
Hosted Fee	n/a	[REDACTED] (annual – recurring)
<b>ANNUAL SUBSCRIPTION FEE</b>		<b>£16,625</b>
<i>Consultancy Services Fee (if any)</i>	<i>n/a</i>	- ( <i>non-recurring</i> )
<b>Initial Period:</b> 3 years		

<b>RATE CARD</b>	
<b>Ad hoc services</b>	<b>Daily fee</b>
<b>Additional training/consultancy (if requested)</b>	[REDACTED] : daily rate ([REDACTED] : half day)
<b>Restoration/Return of Subscriber Data (if requested)</b>	[REDACTED]

**THIS AGREEMENT** has been executed by the duly authorised representatives of the parties

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Position: \_\_\_\_\_

Position: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

**For and on behalf of  
ICSA BOARDROOM APPS LIMITED**

**For and on behalf of  
SUBSCRIBER**

# Terms and Conditions

## Background

- a) BoardPad™, which is available on the Apple iPad and the Windows 8/RT platform, is a meeting & document collaboration solution that turns devices into secure digital board and meeting packs, that can be accessed online or offline from any location. By using BoardPad Connect™, an administration platform for BoardPad, meeting organisers can manage meetings, compile electronic board papers and distribute them instantly.
- b) This Agreement licences the use of BoardPad annually using a Tablet on a hosted basis, together with the provision of support and associated services.
- c) The Subscriber wishes to use BoardPad in its business operations, and IBAL has agreed to provide BoardPad to the Subscriber on the terms set out in this Agreement.

IT IS AGREED as follows:-

### 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the meanings ascribed below:

<b>"Agreement"</b>	means these terms and conditions, together with Schedules or any appendices attached hereto
<b>"Authorised Datacentre"</b>	means IBAL's datacentre in the UK situated at SunGard Availability Systems UK Limited, LTC Hounslow, London or such other suitable data centre facility as may be approved by the parties in writing acting reasonably from time to time
<b>"Bespoke Development"</b>	means any modification of BoardPad developed by IBAL specifically for the Subscriber, at the Subscriber's request. IBAL may make an additional charge for supporting and maintaining any such modifications subject to such charge being agreed in advance by the parties in writing
<b>"Best Industry Practice"</b>	means the exercise of that degree of skill, care and timeliness as would be expected from a leading company within the relevant industry or business sector
<b>"BoardPad"</b>	means the software programs customised for use with Tablets, together with any Update or Bespoke Development, such software including templates, scripts, portals, tools and customised web pages required to provide Delegates with a fully customised web-based application enabling, inter alia, electronic meeting agenda pack and other meetings' material to be accessed (on-line and off-line), viewed and annotated using a Tablet
<b>"BoardPad Documentation"</b>	means all instruction manuals, guides and other similar documentation supplied by IBAL now or hereafter relating to BoardPad
<b>"BoardPad Fee"</b>	means the annual fee set out in Schedule One for the right to use BoardPad
<b>"BoardPad Package"</b>	means BoardPad and BoardPad Documentation
<b>"Business Days"</b>	means any day other than a Saturday, Sunday or a public holiday in England
<b>"Business Hours"</b>	means the hours of business in a Business Day
<b>"Commencement Date"</b>	means the date from which BoardPad is available for use by the Subscriber as set out in Schedule One
<b>"Confidential Information"</b>	<p>means all information (however recorded or preserved) disclosed by a party or any of its Group Companies or their employees, officers, representatives or advisers (together its <i>Representatives</i>) to the other party and that party's Representatives concerning:</p> <ul style="list-style-type: none"><li>• the terms of this Agreement;</li><li>• any information relating to:<ul style="list-style-type: none"><li>• the business, affairs, customers, clients, suppliers, plans of the disclosing party, or of a Group Company; and</li><li>• the operations, processes, product information, know-how, designs, assets, research, plans, services, ideas, inventions, methodologies, marketing, financial, trade secrets or software of the disclosing party or of a Group Company</li></ul></li></ul> <p>(in relation to IBAL, Confidential Information also includes specifications, source code and object code relating to BoardPad and in relation to the Subscriber, includes Subscriber Data and Subscriber Personal Data in whatever form, whether in writing, orally or disclosed by other means, visually or in any other medium)</p>
<b>"Consultancy Services"</b>	means, where requested by the Subscriber, configuration, customisation, bespoke implementation and training services for BoardPad where not included in the Subscription Fee or set out in a Schedule
<b>"Consultancy Services Fee"</b>	means the non-recurring fee, if any, for Consultancy Services as set out in Schedule One
<b>"Data Controller"</b>	means the same as the term of this name set out in the Data Protection Act 1998
<b>"Data Processor"</b>	means the same as the term of this name set out in the Data Protection Act 1998

<b>"Data Protection Legislation"</b>	means the UK Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003), the European Communities (Electronic Communications Networks And Services) (Privacy And Electronic Communications) Regulations 2011 (SI 336/2011) and any other regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the UK Information Commissioner
<b>"Data Subject"</b>	means the same as the term of this name set out in the Data Protection Act 1998
<b>"Delegates"</b>	means those persons nominated by the Subscriber from time to time, the number of which is set out in Schedule One, licensed to use BoardPad for the purpose of viewing, editing and updating Subscriber Data, as appropriate, such persons being restricted to directors, officers, employees, agents, representatives or contractors of the Subscriber or a member of the Subscriber Group
<b>"Delegate Fee"</b>	means the annual fee charged to the Subscriber for each Delegate licensed to use BoardPad as set out in Schedule One
<b>"DP Incident"</b>	means any incident where Subscriber Personal Data or Subscriber Data, in manual or electronic form, which was disclosed by the Subscriber and/or a member of the Subscriber Group, or obtained by IBAL in the course of the provision of the Subscription Service, has been or could have been put at risk of unauthorised disclosure, loss, destruction or alteration
<b>"Fault" or "Faulty"</b>	means a computer program fault event, commonly referred to as "bug", resulting in BoardPad materially failing to perform in accordance with the relevant specification or the BoardPad Documentation
<b>"Fees and Charges"</b>	means the aggregate of the annual recurring and non-recurring fees shown in Schedule One; and "Fees and Charges" shall mean any one or more elements of these as appropriate
<b>"Force Majeure"</b>	means any circumstances outside the reasonable control of IBAL or the Subscriber including without limitation fire, flood, storm, war, terrorist act, riot, severe unexpected or unpreventable loss of power or significant unexpected or unpreventable interruption to telephone services
<b>"Group Company"</b>	means a group undertaking in either the Subscriber Group or the IBAL Group, as appropriate
<b>"Hosted Fee"</b>	means the annual fee set out in Schedule One for hosting Subscriber Data on BoardPad at an Authorised Datacentre and maintaining the hosted application
<b>"Hosting Service"</b>	means hosting the Subscriber Data using an Authorised Datacentre and allowing the Subscriber online access to BoardPad using a standard web browser
<b>"IBAL"</b>	ICSA Boardroom Apps Limited (company number 08163009)
<b>"IBAL Group"</b>	means IBAL and any of its subsidiaries, its ultimate holding company and any subsidiary of its ultimate holding company, and any associated company of IBAL ("associated company" being as defined in section 449 of the Corporation Taxes Act 2010), where holding company and a subsidiary mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights
<b>"IBAL Personnel"</b>	means officers, employees, agents and contractors of any member of the IBAL Group
<b>"Implementation Services"</b>	means the services set out in Schedule 3, these services including project management, standard training (but only for those Delegates licensed on the Commencement Date) and initial setup services, the fee for Implementation Services being included in the BoardPad Fee and the Delegate Fee
<b>"Initial Period"</b>	means the minimum duration of this Agreement as set out in Schedule One
<b>"Intellectual Property Rights"</b>	means any patents (including supplementary protection certificates), trade marks, service marks, domain names, registered designs, utility models, design rights, moral rights, topography rights, rights in databases, copyrights, inventions, trade secrets, the sui generis rights of extraction relating to databases, know how, business or trade names, get up, and all other intellectual property and neighbouring rights and rights of a similar or corresponding character in any part of the world (whether or not registered or capable of registration) and all applications and rights to apply for or for the protection of any of the foregoing
<b>"iPad™"</b>	means the <i>Apple iPad™</i> , a tablet computer from Apple used by IBAL for use with BoardPad under this Agreement (iPad is a trademark of Apple Inc., registered in the U.S. and other countries), including any generation or version of the same
<b>"Meeting Organiser(s)"</b>	means those Delegate(s) nominated by the Subscriber from time to time to administer dealings with IBAL concerning BoardPad

<b>"Previously Scheduled Interruption"</b>	means the performance of server maintenance, security or emergency works to the Subscription Service which have previously been notified to the Subscriber in accordance with Clause 6.8
<b>"Proprietary Software"</b>	means any third party software in respect of which IBAL is not the licensor and does not own the Intellectual Property Rights, which is made available by IBAL for use by the Subscriber or any member of the Subscriber Group in relation to BoardPad. Where the principal terms of licences for third party software provided by IBAL to the Subscriber differ materially from this Agreement, the terms of the third party software will either be appended to this Agreement as a separate schedule or otherwise made available to the Subscriber in accordance with Clause 7.1(f)
<b>"Quarter"</b>	means a period of three (3) months, the first such period starting on the Commencement Date and being adjusted to end on 31 December, 31 March, 30 June or 30 September, whichever date shall be nearest to the end of the three (3) month period, with subsequent periods ending on a multiple of three (3) months thereafter
<b>"Rate Card"</b>	means the daily and half daily fees to be charged by IBAL to the Subscriber for the provision of Consultancy Services (if requested by the Subscriber) and the restoration of Subscriber Data (if requested by the Subscriber)
<b>"Retail Prices Index"</b>	means the retail prices index (all Items, excluding mortgages) published by the UK Office for National Statistics from time to time, or failing such publication, any other index that the parties agree most closely resembles such index
<b>"Schedule One"</b>	means the first schedule included at the beginning of this Agreement, as amended by written agreement between the parties from time to time, such schedule specifying, inter alia, and to the extent applicable, the BoardPad Fee, the maximum number of Delegates, the Delegate Fee, the Hosted Fee, the Consultancy Services Fee (if any), the Rate Card, the Initial Period and any other fees and arrangements, as applicable
<b>"Schedule Two"</b>	means the second schedule to this Agreement, which sets out the Service Levels in the form of target response & repair times, together with an escalation procedure
<b>"Schedule Three"</b>	means the third schedule to this Agreement, which sets out the Implementation Services
<b>"Service Levels"</b>	means the standards of performance to be achieved by IBAL as set out in Clauses 5 & 6 and in Schedule Two
<b>"Services"</b>	means the Subscription Service and the Consultancy Services, together with any services, functions, and responsibilities not specifically described in this Agreement but that are reasonably required for the proper performance and provision of services by IBAL under this Agreement
<b>"Subscriber"</b>	means the Subscriber as defined in Schedule One
<b>"Subscriber Data"</b>	means all information, material, data and documents generally, text, drawings, images or sounds (together with any database made up of any of these) (" <i>Data</i> ") which are embodied in any electronic magnetic optical or tangible media supplied to IBAL, or any Data otherwise provided to IBAL, by or on behalf of the Subscriber or any other member of the Subscriber Group, or Data which IBAL generates, processes, stores or transmits pursuant to this Agreement, through BoardPad or otherwise, including but not limited to any Subscriber Personal Data
<b>"Subscriber Group"</b>	means the Subscriber and any of its subsidiaries, its ultimate holding company and any subsidiary of its ultimate holding company, and any associated company of the Subscriber (associated company being as defined in section 449 of the Corporation Tax Act 2010), where holding company and subsidiary mean a "holding company" and a "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights
<b>"Subscriber Personal Data"</b>	means any personal data (as the term is defined in the Data Protection Act 1998) transferred or disclosed to IBAL by or on behalf of the Subscriber Group pursuant to this Agreement
<b>"Subscriber Intellectual Property"</b>	means any Intellectual Property Rights owned by or licensed to the Subscriber or any member of the Subscriber Group, including but not limited to, all Intellectual Property Rights subsisting in the Subscriber Data
<b>"Subscription Fee"</b>	means the annual subscription fee set out in Schedule One

<b>"Subscription Service"</b>	means the provision of the following services: <ul style="list-style-type: none"> <li>i) licence for the right to use the BoardPad Package;</li> <li>ii) hosting Subscriber Data on BoardPad using an Authorised Datacentre;</li> <li>iii) Support Services;</li> <li>iv) Implementation Services (first 3 months of year one only - non recurring); and</li> <li>v) Updates</li> </ul>
<b>"Support Services"</b>	means those annual support services set out in Clause 5, which are included in the BoardPad Fee
<b>"Tablet"</b>	means iPad and any other tablet or device supported by IBAL from time to time
<b>"Term of the Agreement"</b>	means the Initial Period and continuing thereafter until this Agreement is terminated by either party in accordance with Clause 10
<b>"Update"</b>	means any improved, modified or corrected version of BoardPad, and any applications commissioned by IBAL for Tablets, where made available generally to the Subscriber, the charge for which is included in the BoardPad Fee
<b>"Uptime Percentage"</b>	means the percentage figure calculated in accordance with Clause 6.3
<b>"Virus"</b>	means any worm or other program, sub program, routine, or device designed or intended to enter other software and modify, corrupt or disable the same and/or replicate itself

- 1.2 Words in the singular shall include the plural and vice versa.
- 1.3 A reference to one gender shall include a reference to the other gender.
- 1.4 A reference to any party shall include that party's personal representatives, successors or permitted assigns.
- 1.5 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts.
- 1.6 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 References to "Agreement" shall include the Schedules.
- 1.8 A reference to "writing" or "written" includes faxes but not e-mails unless otherwise stated in this Agreement.
- 1.9 References to "clauses" of "Clauses" are to the clauses or Clauses of this Agreement.
- 1.10 Any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding such terms.

## **2. SUBSCRIPTION SERVICE**

- 2.1 In consideration for the payment of the Subscription Fee, IBAL shall provide the Subscription Service to the Subscriber subject to the terms of this Agreement.

## **3. SCOPE OF THE SUBSCRIPTION SERVICE**

- (a) Delegates, including Meeting Organiser(s), are licensed to use BoardPad with Tablets, desktop computers and laptops.
- (b) The maximum number of Delegates permitted to use BoardPad is set out in Schedule One.
- (c) Updates, once installed by IBAL, shall become part of BoardPad for all purposes of this Agreement.
- (d) The Subscriber shall not alter, modify, disassemble, reverse engineer or de-compile BoardPad (except to the extent permitted by law) or merge BoardPad into any other software without the prior written consent of IBAL provided that this Clause 3(d) shall not restrict the Subscriber's right to use data created by, or supplied to, the Subscriber by any third party.
- (e) If the Subscriber wishes to increase the number of Delegates licensed to use BoardPad under this Agreement, the Subscriber shall notify IBAL in writing (which shall include an email) of the details at least five (5) Business Days before the increase is required, and shall pay an additional pro-rated Delegate Fee in respect thereof as from the date that such increase is effective as determined in accordance with the Rate Card.
- (f) The Subscriber shall use BoardPad only for its intended purpose and save as permitted by this Agreement, shall not use it to provide remote computing, time sharing, network or telecommunications services other than to Delegates.
- (g) The Subscriber shall not be entitled to use BoardPad in connection with the provision of services to companies not forming part of the Subscriber Group unless separate licensing arrangements have been agreed by IBAL in writing beforehand, and the Subscriber may not sub-license, rent, sell or resell BoardPad or any element of the BoardPad Documentation in any way in whole or in part either temporarily or permanently except as expressly authorised in writing by IBAL.

- (h) This Agreement does not assign, transfer or grant to the Subscriber any right, title or interest in any Intellectual Property Rights in BoardPad, and IBAL reserves all rights not expressly granted to the Subscriber.
- (i) Notwithstanding anything to the contrary in this Agreement, the Subscriber including its Delegates, shall not be permitted to allow a third party to have access to or otherwise use BoardPad, or any part of it, where such third party is, or could reasonably be determined to be, a competitor, directly or indirectly, of IBAL.

#### **4. SECURITY**

- 4.1 Subject always to the provisions of Clauses 15 and 16 (*Confidentiality* and *Data Protection* respectively), IBAL shall at all times:
- (a) maintain the confidentiality, security and integrity of all Subscriber Data in accordance with Best Industry Practice, including maintaining appropriate administrative, physical and technical safeguards;
  - (b) host the Subscriber Data at an Authorised Datacentre only;
  - (c) not alter, store, copy, disclose or use the Subscriber Data, except as is strictly necessary for the performance of Services or as otherwise expressly authorised by this Agreement;
  - (d) ensure that all IBAL Personnel comply with all reasonable policies and procedures of the Subscriber regarding data access, privacy and security, as shall be notified to IBAL by the Subscriber in writing from time to time, and in particular, that IBAL Personnel do not access the Subscriber Data except to provide the Services;
  - (e) not delete, or remove any proprietary notices or other notices contained within or relating to, the Subscriber Data;
  - (f) keep and maintain the Subscriber Data free from any corruption or the introduction of any Viruses in accordance with Best Industry Practice;
  - (g) make backups of the Subscriber Data each Business Day and deposit the same in a secure facility within the UK for restoration purposes, such backups being retained for a period of not more than 3 months before being destroyed (the "*Backup Retention Period*");
  - (h) upon written request, which shall include by email, from the Subscriber, restore the Subscriber Data to an earlier date, subject to such request being made within the Backup Retention Period and to payment of the standard restoration fee set out in the Rate Card (unless any IBAL or any IBAL Personnel shall have been responsible for the loss, corruption, damage or deletion of the Subscriber Data in which case there shall be no charge);
  - (i) notify the Subscriber as soon as reasonably practicable, but in any event within 48 hours of becoming aware of any Subscriber Data being lost, becoming corrupted, damaged or deleted accidentally or by any person other than the Subscriber; and
  - (j) provide IBAL Personnel with such information access as is reasonably necessary to perform the tasks and functions for which such personnel are responsible.

#### **5. SUPPORT SERVICES, CONSULTANCY SERVICES & IMPLEMENTATION SERVICES**

- 5.1 IBAL shall provide the following services to the Subscriber in accordance with Best Industry Practice:
- (a) 24x7x365 service desk support, and where practicable all responses shall be immediate;
  - (b) correction as soon as reasonably practicable of all Faults in BoardPad that may become apparent to IBAL or which are notified to IBAL by the Subscriber during the Term of the Agreement; and
  - (c) Updates.
- 5.2 The Support Services shall not include the diagnosis and rectification of any Fault arising from the failure by the Subscriber to implement reasonable recommendations in respect of, or solutions to, Faults previously notified in writing/email by IBAL.
- 5.3 IBAL agrees to provide the Consultancy Services as agreed by the parties in consideration of the payment of the Consultancy Services Fee.
- 5.4 IBAL shall provide the Implementation Services within three (3) months of the Commencement Date. If the Subscriber is not able to accept delivery by IBAL of the Implementation Services within the three-month period, IBAL shall be under no obligation to provide these services unless IBAL shall have been responsible, in whole or in part, for the delay. Where the three-month period is so extended, the Subscriber must permit IBAL to deliver the Implementation Services as soon as possible, failing which IBAL shall be released from this requirement.
- 5.5 The standard Delegate training delivered by IBAL as part of the Implementation Services is applicable only to those Delegates licenced under this Agreement on the Commencement Date and is subject to Clause 5.4.

#### **6. DOWNTIME WARRANTIES**

- 6.1 Without prejudice to those Service Levels in Schedule Two, IBAL shall provide BoardPad to the service level specified in this Clause subject to the terms of this Agreement. The Subscriber shall notify IBAL of any material period in which BoardPad is unavailable to the Subscriber, and IBAL shall be entitled to investigate and verify such non-availability.
- 6.2 IBAL warrants that BoardPad will (excluding any period of Force Majeure and Previously Scheduled Interruptions) have an Uptime Percentage of not less than 98% every Quarter.

6.3 The Uptime Percentage will be calculated in accordance with the following formula:

$$U\% = \frac{S-D}{S} \times 100$$

Where:

“U%” = Uptime Percentage;

“S” = the number of hours in a relevant Quarter;

“D” = downtime, being the number of hours in a relevant Quarter during which BoardPad was not available to the Subscriber and/or not working materially in accordance with the BoardPad Documentation (excluding from such hours any period of Force Majeure and Previously Scheduled Interruptions falling within the scope of Clause 6.8);

6.4 If the warranty in this Clause is breached in any Quarter during the Term of this Agreement, IBAL agrees by way of liquidated damages to pay an amount equal to the percentage reduction in the Quarter’s Subscription Fee calculated in accordance with Clause 6.3 and Clause 6.6 within 21 days of notification.

6.5 Any such payment or set off shall be received or made and accepted by the Subscriber in full and final settlement of any and all liability of any member of the IBAL Group and any IBAL Personnel in respect of the failure to provide Subscription Services during the period in question, and no member of the IBAL Group or any IBAL Personnel shall have any further or other liability whether for damages or otherwise arising out of or in connection with such failure.

6.6 The reduction in the preceding sub-clause will be calculated in accordance with the following table:

<b><u>BoardPad Availability during the relevant Quarter</u></b>	<b><u>Reduction in Quarter's Subscription Fee</u></b>
Where U% is greater than 97% but less than 98%	████
Where U% is equal to or greater than 96% and less than or equal to 97%	████
Where U is equal to or greater than 95% and less than 96%	████
Where U% is equal to or greater than 94% and less than 95%	████
Where U% is equal to or greater than 93% and less than 94%	████
Where U% is less than 93%	████

6.7 IBAL shall not be responsible for failure or delay in providing the Subscription Service if arising from one or more of the following reasons:

- (a) a faulty Tablet;
- (b) the Subscriber being in material breach of its obligations under this Agreement;
- (c) neither the Meeting Organiser(s) nor any other suitable person from the Subscriber being available when reasonably required by IBAL to assist in the rectification of the Fault; or
- (d) unreasonable delay by the Subscriber in notifying a failure to IBAL unless IBAL was already aware of the Fault or ought reasonably to have been aware of the Fault.

6.8 Previously Scheduled Interruptions, together with interruptions to the access of BoardPad due to Force Majeure, shall not constitute downtime. IBAL shall use all reasonable endeavours to perform Previously Scheduled Interruptions outside of peak usage hours and in such a way as to minimise the potential impact on the Subscriber, and will provide the Subscriber with at least 5 (five) Business Days prior written notification of such works. However, there may be occasions where the nature of the work is such that this notice period cannot be observed or exceptionally that no notice can be given.

6.9 The inability of one or more Delegates to access BoardPad shall not constitute downtime if other Delegates are simultaneously able to gain access or if IBAL can secure such access over a standard browser (as this demonstrates the Fault is not with BoardPad).

## **7. SUBSCRIBER RESPONSIBILITIES**

7.1 In addition to the obligations of the Subscriber as otherwise specified in this Agreement, the Subscriber shall be responsible for:

- (a) appointing an individual or individuals to act as Meeting Organiser(s), who for the avoidance of doubt must be Delegate(s);
- (b) setting up Delegates within BoardPad;
- (c) ensuring that Delegates are aware that all Faults and queries concerning the operation of BoardPad should be referred in the first instance to the Meeting Organiser(s) unless such person(s) are unavailable or IBAL has otherwise agreed different arrangements with the Subscriber;

- (d) any Viruses and disabling or harmful devices that the Subscriber or any member of the Subscriber Group may download or otherwise experience where introduced by the Subscriber or any other person other than by IBAL;
- (e) supplying to IBAL promptly any information that IBAL may reasonably request to confirm that the Subscriber or any member of the Subscriber Group is acting within the terms and conditions of this Agreement;
- (f) using Proprietary Software in accordance with relevant licensor terms and conditions where provided by IBAL or otherwise made available to the Subscriber, in the absence of which such software shall be subject *mutatis mutandis* to the terms applying to BoardPad as set out in this Agreement;
- (g) maintaining its own compatible computer system, including Tablets, software and communications lines, and any public lines required by the Subscriber to access BoardPad (IBAL has no responsibility for, or liability with respect to, any equipment belonging to the Subscriber); and
- (h) providing IBAL Personnel with such information access as is reasonably necessary to perform the Services.

## **8. OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

- 8.1 The Subscriber acknowledges that all Intellectual Property Rights embodied in BoardPad (including Updates and Bespoke Developments) and the BoardPad Documentation shall be, and shall remain, the sole property of IBAL or its licensors (as the case may be).
- 8.2 IBAL acknowledges that all Intellectual Property Rights embodied in the Subscriber Intellectual Property shall be, and shall remain, the sole property of the Subscriber or its licensors (as the case may be).

## **9. FEES AND CHARGES**

- 9.1 The Fees and Charges set out in Schedule One are fixed for the duration of the Initial Period.
- 9.2 Notwithstanding anything to the contrary in this Agreement, IBAL shall be entitled to invoice for the Fees and Charges when BoardPad is provided or is otherwise made available to the Subscriber.
- 9.3 The Fees and Charges for the first year shall be invoiced by IBAL on or near to the Commencement Date and shall be payable within 30 days of either the date the VAT invoice is received by the Subscriber or the Commencement Date, whichever is the later. The Fees and Charges for the second and future years shall be billed annually in advance on the anniversary of the previous annual invoice. All invoices may be sent by email.
- 9.4 All Fees and Charges are exclusive of any taxes, import and other duties, including VAT (or equivalent), and the Subscriber shall pay the amount thereof in addition to such fees.
- 9.5 IBAL shall be entitled to increase its Fees and Charges after the Initial Period by up to, but not more than, either 5% invoiced for the previous year or by the percentage increase in the Retail Prices Index for that year, whichever shall be the greater. If an increase in Fees and Charges is proposed, IBAL must notify the Subscriber not later than two (2) months prior to such fee being invoiced, unless the annual increase proposed is either the same as or less than 2.5% of Fees and Charges for the immediate preceding year or equal to the percentage increase in the Retail Prices Index for the same period, in which case IBAL shall not be required to give any such notice.
- 9.6 In addition to Fees and Charges, the Subscriber shall pay the reasonable travel, accommodation and other out-of-pocket expenses actually and properly incurred by IBAL Personnel when attending any of the Subscriber's premises at the Subscriber's request for any reason (other than where such expenses are incurred by the need to carry out remedial work caused by IBAL or any IBAL Personnel's, default, negligence or corrections) provided such expenses are only incurred following:
  - (a) notification by IBAL to the Subscriber of its request to incur such expenses accompanied by IBAL's reasons for incurring such expenses; and
  - (b) receipt by IBAL of the Subscriber's written permission, which shall include by email, to incur such expenses.
- 9.7 If any sum payable to IBAL under this Agreement is in arrears for more than thirty (30) days after the due date and is not being genuinely disputed, IBAL reserves the right without prejudice to any other right or remedy to charge interest on such overdue sums on a day to day basis from the original due date until paid in full at a rate for the time being specified pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 (as amended), and/or (at the option of IBAL) to suspend provision of the Subscription Service or any part of it until payment is made in full.
- 9.8 IBAL shall be entitled to charge an additional fee for attending to a Fault if IBAL can demonstrate the Fault is due to the act, negligence or default of the Subscriber or any person other than IBAL or IBAL Personnel.

## **10. TERM AND TERMINATION**

- 10.1 This Agreement shall take effect on the Commencement Date and, unless terminated in accordance with Clause 10.1.1 or 10.1.2, shall continue for the Initial Period and thereafter unless and until terminated (after the Initial Period has expired) by either party giving to the other not less than one month's written notice of termination, such termination to expire either at the end of the Initial Period or on the first or any subsequent anniversary of the Initial Period, as appropriate.

- 10.1.1 This Agreement may be terminated by the Subscriber during the Initial Period, for any reason, on giving prior written notice to IBAL, providing that if the Agreement is terminated under this clause in the:
- (a) first year, termination shall take effect on the first anniversary of the Commencement Date;
  - (b) second year, termination shall take effect on the second anniversary of the Commencement Date;
  - (c) third year, termination shall take effect on the third anniversary of the Commencement Date.
- 10.1.2 This Agreement may additionally be terminated at any time:
- (a) by IBAL forthwith on giving notice in writing to the Subscriber if the Subscriber shall fail to pay any sum properly due and payable under the terms of this Agreement (other than as a consequence of any default on the part of IBAL or due to a genuine dispute) and such sum remains unpaid for thirty (30) days after written notice from IBAL that such sum has not been paid; or
  - (b) by either party forthwith on giving notice in writing to the other if the other commits a material or persistent breach of any terms of this Agreement, and (in the case of a breach capable of being remedied) shall have failed to remedy the breach within thirty (30) days after receipt of the request in writing from the other to do so; or
  - (c) by either party forthwith on giving notice in writing to the other if the other party is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or has a receiver or administrative receiver appointed over it or any part of its assets, or passes a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction or if made vexatiously), or a court of competent jurisdiction makes an order to that effect, or becomes subject to an administration order, or enters into any voluntary arrangement with its creditors, or ceases or threatens to cease, to carry on business, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction; or
  - (d) by the Subscriber forthwith on giving notice in writing or by email should the Uptime Percentage be less than 93% in any Quarter (as such terms are defined in Clause 6.3); or
  - (e) by the Subscriber forthwith on giving notice in writing or by email should there be two occurrences in any twelve (12) month period of a Fault occurring that had a material impact on the Delegates' use of BoardPad when meetings took place; or
  - (f) by the Subscriber in the event of a Force Majeure event that continues for a period of 60 days or more.
- 10.2 Should this Agreement be terminated during the Initial Period by IBAL pursuant to any of Clauses 10.1.2(a) to 10.1.2(c) (inclusive), the Subscriber shall be liable to pay to IBAL the aggregate Fees and Charges for the Initial Period, less any Fees and Charges already paid to IBAL without prejudice to IBAL's other rights or remedies.
- 10.3 Should this Agreement be terminated by the Subscriber pursuant to any of Clauses 10.1.2(b) to 10.1.2(e) (inclusive), the Subscriber shall be entitled to a pro-rated refund equivalent to the unused portion of the Fees and Charges paid to IBAL.
- 10.4 On termination of this Agreement for any reason:
- (a) IBAL shall return all Subscriber Data in its possession (excluding backups which shall be destroyed within one month of termination) to the Subscriber in a form that is accessible and can be utilised by the Subscriber, as reasonably determined, failing which in an industry standard format. Unless this Agreement is terminated by the Subscriber pursuant to Clause 10.3, IBAL shall be entitled to make a charge in accordance with the Rate Card for returning the Subscriber Data; and
  - (b) the Subscriber shall destroy to the extent reasonable all existing copies of each part of the BoardPad Documentation.
- 10.5 Any provisions of the Agreement, which either expressly or by their nature extend beyond the expiry or termination of this Agreement, shall survive such expiration or termination.
- 10.6 Any termination of this Agreement (howsoever occasioned) shall be without prejudice to the rights and remedies, accrued or otherwise, of either party, nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into, or to continue in, force on or after such termination.

## **11. WARRANTIES**

- 11.1 IBAL undertakes, warrants and represents on an ongoing basis unless stated otherwise in this Agreement that:
- (a) it shall provide the Services in accordance with the Service Levels;
  - (b) it has, and will continue to hold, all consents and regulatory approvals necessary to provide the Services to the Subscriber and has the requisite power and authority to enter into and perform this Agreement;
  - (c) it shall discharge its obligations under this Agreement using personnel of required skill and experience, and with all due skill, care and diligence in accordance with Best Industry Practice;
  - (d) the version of BoardPad made available by IBAL pursuant to this Agreement will be the currently supported version of BoardPad, including Updates, and shall conform to the specification in the BoardPad Documentation; and

(e) if the Subscriber discovers a Fault that substantially affects the Subscriber's use of BoardPad and notifies IBAL of the error, IBAL shall endeavour to correct the same in accordance with Clause 5 and Clause 11.2.

- 11.2 Without prejudice to Clause 5, the existence of non-material errors in BoardPad shall not constitute a breach of this Agreement. If the Subscriber discovers a Fault that affects the Subscriber's use of BoardPad and notifies IBAL of the error within two years of the Commencement Date, IBAL shall use all reasonable endeavours to correct, or procure the correction of, the Fault, provided always that such non-compliance has not been caused by any modification, variation or addition to BoardPad not made by or agreed by IBAL or IBAL Personnel, and that such non-compliance has not been caused by the incorrect use, abuse or corruption of BoardPad, or by use of BoardPad with equipment with which it is incompatible (unless otherwise approved by IBAL in writing) or by the introduction of any Virus other than by IBAL.
- 11.3 In respect of all software other than any Bespoke Development, the Subscriber accepts that the BoardPad Documentation was neither designed nor produced to its individual requirements and that the Subscriber was responsible for the selection of BoardPad. Save to the extent set out in Clause 11.2, IBAL does not warrant that BoardPad is error free.
- 11.4 Save as set out in this Clause 11, all conditions, warranties, terms and undertakings express or implied, statutory or otherwise in respect of BoardPad are hereby excluded but for the avoidance of doubt this exclusion shall not apply to the warranties implied by law, or any other liability which may not be excluded by law.
- 11.5 Unless reduced to writing and set out in this Agreement, no representation, information or advice given by IBAL shall bind IBAL or in any way increase the scope of the warranty or liability set out herein.

## **12. ASSIGNMENT AND SUBCONTRACTING**

- 12.1 IBAL may assign/novate its rights or obligations to any company in the IBAL Group on giving prior written notice to the Subscriber, such notice to include those details reasonably required by the Subscriber. An assignment shall not be considered to be between companies in the IBAL Group if the companies are only in the IBAL Group for reason, directly or indirectly, of a previous change of control (as defined in section 1124 of the Corporation Tax Act 2010) of IBAL, in which case Clause 12.2 shall apply to the proposed assignment.
- 12.2 This Agreement cannot be assigned/novated by IBAL to a company outside of the IBAL Group without the prior written consent of the Subscriber, such consent not to be unreasonably withheld or delayed. Any such consent may be conditional upon IBAL agreeing with the Subscriber to procure that the assignee enters into a contract with the Subscriber agreeing to be bound by the terms and conditions hereof as if the assignee were the original party.
- 12.3 The Subscriber may assign/novate its rights or obligations to any company in the Subscriber Group on giving prior written notice to IBAL, such notice to include those details reasonably required by IBAL. An assignment shall not be considered to be between companies in the Subscriber Group if the companies are only in the Subscriber Group for reason, directly or indirectly, of a previous change of control (as defined in section 1124 of the Corporation Tax Act 2010) of the Subscriber, in which case Clause 12.4 shall apply to the proposed assignment.
- 12.4 This Agreement cannot be assigned/novated by the Subscriber to a company outside of the Subscriber Group without the prior written consent of IBAL, such consent not to be unreasonably withheld, delayed or conditioned. Without limitation, IBAL shall be entitled to withhold consent if by reason of the assignment IBAL considers that there would be a material risk of the infringement of its Intellectual Property Rights or the assignment is not reasonably in IBAL's commercial interests. Any such consent may be conditional upon the Subscriber agreeing with IBAL to procure that the assignee enters into a contract with IBAL agreeing to be bound by the terms and conditions hereof as if the assignee were the original party.
- 12.5 IBAL shall have the right to sub-contract its obligations hereunder to such other organisation and/or individual subject to, where the sub-contracting is material, receiving the Subscriber's prior written consent, such consent not to be unreasonably withheld, delayed or conditioned. IBAL shall remain liable for the performance thereof and any breach of this Agreement. The need to seek the consent of the Subscriber under this clause shall not apply if IBAL is sub-delegating any of its activities or functions to ICSA Software International Limited, being a fellow group undertaking of IBAL, or to the Authorised Datacentre for hosting the Subscriber Data.

## **13. LIABILITY AND EXCLUSIONS**

- 13.1 Neither party excludes liability for any death or bodily injury resulting from their negligence, fraud, fraudulent misrepresentation or any other liability that cannot be excluded or limited at law.
- 13.2 Notwithstanding anything in this Agreement to the contrary, neither party shall be liable to the other for any special, indirect, economic or consequential damage or loss, including loss of business, business opportunity, anticipated savings, profits or goodwill howsoever caused (including loss suffered as a result of an action brought by any third party) whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, even if such loss was reasonably foreseeable or one party had been advised by the other of the possibility of incurring the same.
- 13.3 IBAL shall not be liable to any entity in the Subscriber Group for any loss or damage to their business, property or staff howsoever caused by IBAL, or by IBAL Personnel, attending their premises or otherwise howsoever except where any such loss or damage arises by reason of negligence or wilful acts by any IBAL Personnel.
- 13.4 Subject to Clause 13.1, the aggregate liability of IBAL in respect of any and all breaches of this Agreement or otherwise arising from the use of BoardPad or any other services supplied under this Agreement for any one or more occurrences shall not in any event exceed £2,000,000 (two million sterling) in the aggregate, save that nothing in this Agreement shall be taken to exclude or limit the liability of IBAL in respect of any liability arising under Clause 14 (*Intellectual Property Rights Indemnity*), Clause 15 (*Confidential Information*) and Clause 16 (*Data Protection*).

#### **14. INTELLECTUAL PROPERTY RIGHTS INDEMNITY**

- 14.1 IBAL shall indemnify the Subscriber against any claim by any third party that the normal use by the Subscriber of BoardPad (excluding where provided any Proprietary Software) infringes the Intellectual Property Rights of such third party, such indemnity not to be subject to the limit of liability set out in Clause 13.4.
- 14.2 The Subscriber agrees to:
- (a) notify IBAL as soon as possible after receiving any such claim;
  - (b) not to do anything to prejudice IBAL's defence of such claim; and
  - (c) give IBAL all reasonable assistance, at IBAL's cost, in relation to such claim.
- 14.3 IBAL's indemnity in Clause 14.1, shall include any costs, demands, expenses, charges and liabilities reasonably incurred by the Subscriber arising directly out of such claim or flowing from any breach by a member of the IBAL Group relating to the ownership or use of Intellectual Property Rights in BoardPad.
- 14.4 IBAL shall not be liable for any infringement by the Subscriber of the Intellectual Property Rights of any third party to the extent that such infringement arises directly out of the use, copying or processing of Subscriber Data for the purpose of providing the Services in which case the Subscriber shall indemnify IBAL against all actions, proceedings, costs, claims and expenses reasonably incurred by IBAL in respect thereof.
- 14.5 If any claim for infringement occurs for which IBAL provides an indemnity to the Subscriber, IBAL may in its sole discretion with reference to the Subscriber:
- (a) defend any such claims and make settlements thereof;
  - (b) modify or amend the BoardPad Documentation to avoid infringement;
  - (c) replace BoardPad with software of similar or better capability;
  - (d) repay the Fees and Charges, or an equitable part thereof, having regard to the proportion which the infringing part of BoardPad bears to the BoardPad application.

#### **15. CONFIDENTIAL INFORMATION**

- 15.1 Each party hereto shall keep the other party's Confidential Information confidential and use the same care and discretion, but in no event less than reasonable care and discretion, to prevent disclosure, publication or dissemination of the other party's Confidential Information as it employs with similar information of its own and shall not use, reproduce, distribute, disclose or otherwise disseminate the Confidential Information except and solely and strictly for the performance of its obligations under this Agreement.
- 15.2 Each party agrees to the disclosure of its Confidential Information to the other party's Group Companies' employees, agents and contractors where there is a bona fide need to know the same, but only to the extent necessary for the purpose of fulfilling obligations under this Agreement and provided always that such persons or entities are made aware of the confidential nature of the Confidential Information and are placed under confidentiality obligations at least equivalent to those set out in this Agreement. Each party shall be responsible for breaches of this clause by any such person or entity to whom it discloses the other party's Confidential Information as if those breaches were its own.
- 15.3 Confidential Information does not include any data or information which:
- (a) was already known to the receiving party and was not received by the receiving party from the disclosing party; or
  - (b) has become generally known to the public through no wrongful act or breach of these terms by the receiving party; or
  - (c) has been rightfully received by the receiving party from a third party without restriction on disclosure and without, to the knowledge of the recipient, a breach of an obligation of confidentiality running directly or indirectly to the other party hereto; or
  - (d) has been disclosed pursuant to a requirement of a governmental agency, stock exchange regulatory authority, or of law without similar restrictions or other protection against public disclosure, or is required to be disclosed by operation of law in which case the disclosing party shall, subject to any overriding legal duty, promptly notify the other party of such disclosure to the extent legally permissible; or
  - (e) is independently developed by the receiving party without use, directly or indirectly, of the Confidential Information.
- 15.4 Neither party shall make any public disclosures relating to this Agreement nor the subject matter of this Agreement without the written agreement of the other party, except for any disclosure strictly required to satisfy any legal, accounting or regulatory requirements.
- 15.5 Each party undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of this Clause 15 by its employees, agents and contractors. This obligation shall extend to companies in the Subscriber Group (in the case of the Subscriber) and to companies in the IBAL Group (in the case of IBAL).

- 15.6 The BoardPad Documentation includes Confidential Information owned by IBAL or of those from whom it derives title and the Subscriber accepts that it owes a duty of confidence in relation to all such Confidential Information. The Subscriber Data includes Confidential Information owned by the Subscriber or of those from whom it derives title and IBAL accepts that it owes a duty of confidence in relation to all such Confidential Information.
- 15.7 Each party shall limit access to the other party's Confidential Information on a need-to-know basis, and shall maintain adequate security measures to safeguard the other party's Confidential Information from theft and unauthorised access.

## **16. DATA PROTECTION**

- 16.1 The parties shall comply at all times with the Data Protection Legislation and shall not perform their obligations under this Agreement in such a way as to cause either party to breach Data Protection Legislation. IBAL shall as soon as practicable, but in any event within 48 hours of discovery, notify the Subscriber in the event that it becomes aware of any DP Incident or any other breach by IBAL of the Data Protection Legislation in connection with this Agreement. In such event, IBAL shall provide the Subscriber with the resources and assistance reasonably required by the Subscriber, including such information as may be requested by it in relation to the DP Incident and/or for the Subscriber to notify the relevant Data Subjects of the DP Incident, where necessary.
- 16.2 With respect to the parties' rights and obligations under this Agreement, the parties agree that for the purposes of processing Subscriber Personal Data, the Subscriber is the Data Controller, and that IBAL is the Data Processor in respect of Subscriber Personal Data included in Subscriber Data.
- 16.3 IBAL shall:
- (a) process Subscriber Personal Data only on behalf of the Subscriber, only for the purposes of performing this Agreement, and only in accordance with instructions either set out in this Agreement or received in writing from the Subscriber from time to time;
  - (b) not otherwise modify, amend or alter the contents of the Subscriber Personal Data or disclose or permit the disclosure of any of the Subscriber Personal Data to any third party unless specifically authorised in writing by the Subscriber;
  - (c) at all times comply with the provisions of the Seventh Data Protection Principle set out in the Data Protection Act 1998 and, in so doing, provide on prior written request from the Subscriber, a written description of the technical and organisational methods employed by IBAL for processing Subscriber Personal Data and the methods to implement technical and organisational measures to protect the Subscriber Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure, and shall ensure that such measures shall provide a level of security appropriate to the risk represented by the processing and having regard to the nature of the Subscriber Personal Data that is to be protected;
  - (d) take reasonable steps to ensure the reliability of any IBAL Personnel who have access to the Subscriber Personal Data;
  - (e) ensure that only those IBAL Personnel who need to have access to Subscriber Personal Data are granted access to such data and only for the purposes of the performance of this Agreement and all IBAL Personnel required to access the Subscriber Personal Data are informed of the confidential nature of the Subscriber Personal Data and comply with the obligations set out in this Clause 16;
  - (f) not publish, disclose or divulge any of the Subscriber Personal Data to any third party (including for the avoidance of doubt the Data Subject) unless directed to do so in writing by the Subscriber;
  - (g) notify the Subscriber within 5 (five) Business Days if it receives:
    - (i) a request from a Data Subject to have access to that person's personal data; or
    - (ii) a complaint or request relating to the Subscriber's obligations under any Data Protection Legislation; or
    - (iii) any other communication relating directly or indirectly to the processing of any personal data in connection with this Agreement;
  - (h) provide the Subscriber with full co-operation and assistance in relation to any complaint or request made in respect of any Subscriber Personal Data, including by:
    - (i) providing the Subscriber with full details of the complaint or request;
    - (ii) complying with a data access request within the relevant timescales set out in the Data Protection Legislation but strictly in accordance with the Subscriber's instructions;
    - (iii) providing the Subscriber with any personal data it holds in relation to a Data Subject making a complaint or request within the timescales required by the Subscriber; and
    - (iv) providing the Subscriber with any information reasonably requested;
  - (i) permit the Subscriber and/or its external advisers (subject to reasonable and appropriate confidentiality undertakings, the availability of IBAL's staff at peak demands and to reasonable prior written notice being received by and acknowledged in writing by IBAL) to inspect and audit IBAL's data processing activities and those of its agents, subsidiaries and contractors and comply with all reasonable requests or directions by the Subscriber to enable the Subscriber to verify and procure that IBAL is in compliance with its obligations under this Agreement, subject to IBAL's reasonable costs of assisting with such inspections and audits being borne by the Subscriber; and

- (j) not transfer Subscriber Personal Data outside the European Economic Area without the prior written consent of the Subscriber and, where the Subscriber consents to such transfer, to comply with:
    - (i) the obligations of a Data Controller under the Eighth Data Protection Principle set out in the Data Protection Act 1998 by providing an adequate level of protection to any Subscriber Personal Data that is transferred; and
    - (ii) any reasonable instructions notified to it by the Subscriber.
- 16.4 The Subscriber acknowledges that IBAL is reliant on the Subscriber alone for direction as to the extent IBAL is entitled to use and process the Subscriber Personal Data; consequently, IBAL shall be entitled to be fully indemnified for liability by the Subscriber in circumstances where a Data Subject makes a claim or complaint with regards to IBAL's actions to the extent that such actions directly result from instructions received from the Subscriber.
- 16.5 IBAL shall at all times during and after the duration of this Agreement, indemnify the Subscriber and keep the Subscriber indemnified against all direct losses, costs or expenses and other liabilities reasonably incurred by, awarded against, or agreed to be paid by, the Subscriber arising from any breach of IBAL's obligations under this Clause 16 except and to the extent that such liabilities have resulted from the Subscriber's instructions, such indemnity not being subject to the limit of liability set out in Clause 13.4.

## **17. ENTIRE AGREEMENT**

- 17.1 This Agreement contains the entire understanding between the parties with respect to the Services to be provided by IBAL and no statements of intention, indications of future performance or other inducements to enter into this Agreement, oral or written, not contained herein shall bind either party. The parties acknowledge that they do not rely on any representation in entering into this Agreement. The parties agree that they will have no remedy in respect of any untrue statement made upon which they relied in entering into this Agreement other than those set out therein, and that their only remedies for any untrue statement can be for breach of contract (except that this shall not exclude any liability for any statement made fraudulently by either party).
- 17.2 No variation of this Agreement shall be valid unless it is in writing and signed by duly authorised representatives of both parties.

## **18. INSURANCE**

- 18.1 IBAL shall maintain in force at least the following insurance policies with reputable insurance companies to cover potential liabilities in connection with this Agreement:
- (a) professional indemnity insurance with an aggregate limit of at least £2,000,000 (two million);
  - (b) public and product liability insurance of at least £5,000,000 (five million);
  - (c) employer's liability insurance of at least £10,000,000 (ten million); and
  - (d) cyber insurance with minimum cover of at least £1,000,000 (one million).

## **19. COPIES**

- 19.1 The Subscriber may make additional copies of BoardPad Documentation sufficient for its operational needs.
- 19.2 The copying of BoardPad Documentation is forbidden except as expressly authorised in Clause 19.1.

## **20. GENERAL**

- 20.1 The waiver by either party of any breach or default by the other of any of the provisions of this Agreement shall not be construed as a waiver of any succeeding breach of the same or any other provisions nor shall any delay or omission to exercise any right power or privilege operate as a waiver of any breach or default by the other.
- 20.2 If any provision of this Agreement (or part of any provision) is found to be illegal, invalid or unenforceable, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- 20.3 All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient set out in this Agreement or such other address as the recipient may designate by notice given in accordance with the provisions of this Clause 20.3. Any such notice may be delivered personally, or by first class pre-paid letter, or by facsimile transmission, or by email and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and if by facsimile transmission when dispatched and no error message having been received in relation to the same, and if by email one hour of being sent if this can be reasonably demonstrated by the sending party.
- 20.4 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, or constitute one party the agent of the party, nor authorise one party to make or enter into any commitments for or on behalf of the other party.
- 20.5 This Agreement may be executed in counterpart, each of which when executed and delivered shall constitute an original of this Agreement, but both counterparts shall together constitute the same Agreement. No counterpart shall be effective until each party has executed at least one counterpart. Facsimile, electronic or digital signatures shall be a permissible means of either party executing this Agreement, in counterpart or otherwise.
- 20.6 This Agreement shall be governed by and construed in all respects in accordance with the Laws of England and Wales. Any dispute that may arise between the parties concerning this Agreement or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be determined by the English Courts and the parties hereby submit to the exclusive jurisdiction of the English Courts for such purpose.

20.7 No third party is granted rights pursuant to the Contracts (Rights of Third Parties) Act 1999 in relation to this Agreement save where otherwise provided.

**SCHEDULE TWO  
PART 1  
BOARDPAD TARGET REPAIR TIMES**

<b>Call Priority</b>	<b>Target Repair Time</b>
<b>Critical:</b> <ul style="list-style-type: none"> <li>• BoardPad crashes.</li> <li>• BoardPad is inoperable or unavailable to Delegates.</li> <li>• A significant function of BoardPad is unavailable and there is no workaround.</li> </ul>	Within two (2) Business Hours of the Fault being reported. (A Fault shall be deemed to be reported upon receipt of a telephone call or email to the support team during Business Hours, whichever is the earlier.)
<b>Other:</b> <ul style="list-style-type: none"> <li>• non-critical function inoperable but a workaround can be put in place.</li> <li>• Fault(s) causing negligible consequences.</li> </ul>	Future release within a reasonable timeframe.

**SCHEDULE TWO  
PART 2  
RESPONSE TIME & ESCALATION PROCEDURE**

		<b>Target Response Times and Escalation</b>		
		<b>Response Time</b>	<b>Escalation Level 1</b>	<b>Escalation Level 2</b>
<b>A</b>	<b>Critical</b>	<b>30 Minutes</b> Local Support	<b>2 Business Hours</b> Local Board Support Manager	<b>1 Business Day</b> Group Technical Director Ph: +44 207 497 5511
<b>B</b>	<b>Non-Critical</b>	<b>4 Business Hours</b> Local Support	<b>1 Business Day</b> Local Board Support Manager	<b>NA</b>

## SCHEDULE THREE

### IMPLEMENTATION SERVICES

**PLEASE NOTE THAT THE SERVICES SET OUT IN THIS SCHEDULE THREE MUST BE PROVIDED IN THE THREE MONTH PERIOD IMMEDIATELY FOLLOWING THE COMMENCEMENT DATE, AND THAT UNLESS IBAL IS OR WAS RESPONSIBLE FOR SOME OR ALL OF THE IMPLEMENTATION SERVICES NOT BEING PROVIDED IN THIS PERIOD, IBAL SHALL NOT BE UNDER ANY OBLIGATION TO PROVIDE THESE SERVICES.**

This schedule sets out the recommended approach and activities for the implementation for BoardPad. These activities are grouped in the phases listed below.

#### **PHASE 1 REQUIREMENTS: SET-UP & TRAINING**

##### **1. Project Kick-Off Consultation**

- a. IBAL to outline the process with the Subscriber, with both parties agreeing timelines and delivery dates.
- b. IBAL to specify the training to be provided to Meeting Organiser(s) and Delegates, together with branding options, paper upload support, 1<sup>st</sup> meeting support and general system requirements.
- c. IBAL to forward all associated training and system set-up documentation to the Subscriber.

##### **2. Basic Training & Site Set-Up**

###### *a. Meeting Organiser(s) Training:*

- i. Training to be provided by one or more of the following means: (i) at the Subscriber's offices (ii) at IBAL's London training centre or (iii) by web-ex.
- ii. Software training: hands-on training with example information and documents. Training includes meeting organiser functions, setting up of users/individuals, a review of how the meeting agenda and supporting papers are compiled, where documents originate, formats of documents, average size of main meeting documents and populating the reading room.
- iii. Post meeting review – this is available following the completion of the first meeting, where required.

###### *b. Delegate Training:*

- iv. Provided by IBAL or the Subscriber: IBAL would usually recommend it provides all training services, depending on timescales.
- v. One-to-one or group: 30-minute to one-hour slots over two days. (Training can also be provided by telephone or web-ex.)
- vi. An additional fee will apply for any training requested by the Subscriber that falls outside of the initial basic training set out in this schedule.

#### **PHASE 2(A) FIRST MEETING: PRE-MEETING SUPPORT**

3. Provided on the day meeting papers are compiled and circulated: on-site support provided by IBAL's implementation team who will oversee the meeting pack compilation & circulation process.

#### **PHASE 2(B) FIRST MEETING: IN-MEETING SUPPORT**

4. Provided on the day of the meeting: an IBAL consultant will be available before, during and after the meeting to assist with Tablet queries; this service will be provided on site or by telephone, as reasonably determined by IBAL.

#### **PHASE 2(C) FIRST MEETING: POST MEETING SUPPORT**

5. Where appropriate, IBAL will complete a "feedback and lessons learned/meeting debrief session" and review Delegate feedback questionnaires if available.

#### **PHASE 3 - FURTHER MEETINGS (IF REQUIRED)**

6. IBAL can provide pre and post-meeting support for meetings held on an *ad-hoc* or on-going basis. An additional fee is charged for this service.