



GENERAL TERMS AND CONDITIONS

Please read these terms and conditions carefully. The following terms and conditions apply to contracts that the Supplier may enter into from time to time for the supply by the Supplier to the Customer of Services provided or to be provided, Equipment sold or to be sold and/or Software licensed or to be licensed. The definitions and the rules of interpretation set out in clause 19 shall apply to these Terms and Conditions.

1. **Formation of Contract**

- 1.1 These Terms and Conditions shall apply to and be incorporated into the Contract. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a director of the Supplier. The parties agree that these Terms and Conditions will prevail over any inconsistent terms and conditions contained in, or referred to in, the Contract or in any confirmation of order or specification or as implied by law, trade, custom practice or a course of dealing.
- 1.2 The Customer's acceptance of the terms of the Proposal constitutes an offer by the Customer to purchase the Equipment, Software or Services (as applicable) specified in it on the basis of these Terms and Conditions; accordingly, the earlier of the execution of the Contract by the parties, or the Supplier's commencement or execution of work pursuant to the Proposal, shall constitute a Contract for the supply and purchase of that Equipment, Software or Services (as applicable) on these Terms and Conditions.
- 1.3 For the avoidance of doubt, where the relevant Contract has not been signed by either (or both) of the Customer or the Supplier, these Terms and Conditions will nevertheless apply to the Contract provided that the Customer has had prior notice of them (regardless of whether the Customer has indicated its acceptance in writing). By instructing the Supplier to supply any Equipment, Software or Services (as applicable) and/or by paying any charge(s) or invoice(s) of the Supplier, whether set out in the Contract or otherwise, the Customer indicates its acceptance of these Terms and Conditions.
- 1.4 Certain Services supplied by the Supplier are subject to Supplemental Terms which will (where applicable) form part of the Contract and will supplement and (unless expressly stated otherwise in the relevant Supplemental Terms) incorporate these Terms and Conditions.

2. **Specification and Change Control**

- 2.1 Any Equipment, Software or Services (as applicable) to be supplied by the Supplier shall be supplied by the means and in accordance with the timetable set out in the Contract. Where no means are specified, the relevant Equipment, Software or Services shall be supplied by such means as the Supplier determines appropriate and where no timetable is specified, the relevant Equipment, Software or Services shall be supplied within a reasonable time. Whilst the Supplier will use its reasonable endeavours to deliver the relevant Equipment, Software or Services by any date or within any period agreed upon, such dates and periods are estimates only, given in good faith, and the Supplier will not be liable for any failure to deliver by or within such a period nor shall delays in the delivery of a Contract entitle the Customer to refuse to take delivery of the relevant Equipment, Software or Services. Time for delivery shall not be of the essence of the Contract.
- 2.2 The description of any Equipment, Software or Services (as applicable) contained in a Proposal or other order form, invoice, descriptive matter, specification, catalogue or advertising material published or issued by the Supplier is for identification only and the use of such description will not constitute a sale by description. Any typographical or other error or omission in any such literature or any other document issued or provided by the Supplier may be corrected by the Supplier without any liability on the part of the Supplier.
- 2.3 If at any time after the acceptance of a Proposal pursuant to clause 1.2, the scope of the Equipment, Software or Services (as applicable) changes or if either party wishes to change the scope of the same, it shall submit details of the change or the requested change to the other in writing. If either party identifies or requests a change to the scope or execution of the Equipment, Software or Services (as applicable), the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
 - 2.3.1 the likely time required to implement the change;
 - 2.3.2 any variations to the Supplier's charges arising from the change;
 - 2.3.3 the likely effect of the change on the Project Plan; and
 - 2.3.4 any other impact of the change on the terms of the Contract.
- 2.4 If the Supplier identifies or requests a change to the scope of the Equipment, Software or Services (as applicable), the Customer shall not unreasonably withhold or delay consent to it. Any request by the Customer for the cancellation or reduction of the scope of the Equipment, Software or Services (as applicable) to be supplied by the Supplier to the Customer will only be accepted at the discretion of the Supplier and the Customer agrees to indemnify the Supplier against all costs or expenses incurred by the Supplier up to the date of such cancellation or variation (and all loss or damage resulting to the Supplier by reason of such cancellation or variation and including, for the avoidance of doubt the payment identified in clause 14.6). Acceptance of such cancellation or variation will only be binding on the Supplier if in writing and signed by a director of the Supplier.



- 2.5 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.
3. **Support Services**
- 3.1 This clause 3 applies if and to the extent that the Support Services are expressly identified in the Contract or otherwise agreed between the parties in writing.
- 3.2 The Supplier shall provide the Support Services:
- 3.2.1 either remotely or (at the Supplier's discretion) at the Place of Use in which case mileage, subsistence, travelling and accommodation expenses incurred by the Supplier may be invoiced by the Supplier and shall be payable by the Customer pursuant to clause 4.1.2 in addition to the Charges; and
- 3.2.2 during the Normal Working Hours. If requested by the Customer, the Supplier may (at its discretion) supply the Support Services to the Customer outside the Normal Working Hours subject to additional Charges.
- 3.3 The Customer shall:
- 3.3.1 nominate at least two individuals to act as Client Contacts, and promptly notify the Supplier in writing of any changes to the identities and/or contact details of the Client Contacts;
- 3.3.2 inform the Supplier by the means specified in the Contract (or otherwise notified by the Supplier to the Customer from time to time) through a Client Contact of any Issues, and provide complete and accurate description of the Issue including screenshots (where appropriate); and
- 3.3.3 provide any other information or documentation which the Supplier may need to diagnose any fault that has given rise to the Issue.
- 3.4 Subject to clause 2.1 and save for Issues which require the attention of a third party or a visit of the Supplier to the Place of Use, the Supplier shall use reasonable endeavours to remedy the Issues within the timescales specified (if any) in the Proposal. Satisfactory resolution of an Issue will not necessarily be a desirable long term fix for the Issue in question, and the Supplier may make recommendations as to how a recurring Issue should be resolved in the long term.
- 3.5 Unless otherwise agreed in writing from time to time and subject to the Daily Rate and / additional Charges and/or disbursements at its standard time-based rates (where applicable), the Support Services do not extend to, and the Supplier shall have no obligation to provide:
- 3.5.1 training in relation to the Maintained Equipment;
- 3.5.2 resolutions to any Excepted Issue;
- 3.5.3 resolutions to any Issue which requires the purchase of new hardware or software; or
- 3.5.4 repairs to any Maintained Equipment which is within its warranty period, save that the Supplier may use its reasonable endeavours to assist the Customer in contacting the warrantor and securing repairs within the terms of the applicable warranty.
- 3.6 If the total hours spent by the personnel of the Supplier performing the Support Services during any calendar month exceed the hours stated in the proposal or is not commercially reasonable for the Supplier, then:
- 3.6.1 the Supplier will cease to have an obligation to provide Support Services to the Customer during the remainder of that period; and
- 3.6.2 the Supplier may agree to provide Support Services to the Customer during the remainder of that period, but the provision of those Support Services will be subject to additional Charges.
- 3.7 The Supplier and the Customer will endeavour to meet at least once in each calendar year of the Term to discuss the Customer's then current IT infrastructure and review the Customer's needs (such as changes to the scope of the Maintained Equipment, and/or any necessary upgrades or improvements). Such meetings will not form part of the Support Services but will not be subject to additional Charges.
4. **Prices**
- 4.1 Unless otherwise stated in writing, quotations are valid for 14 days from the date of the Proposal and are exclusive of:
- 4.1.1 VAT and any other relevant taxes which the Supplier shall add to its invoices at the appropriate rate; and
- 4.1.2 any chargeable expenses and disbursements which are incurred by the Supplier's Personnel on behalf of the Customer including but not limited to hotels, subsistence, travelling, mileage at 45p per mile, supplies and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of services, and
- where applicable, such additional amounts shall be invoiced by the Supplier and be payable by the Customer in addition to the Charges.
- 4.2 Subject to 14.2.2, the Supplier may:



- 4.2.1 at any time by giving the Customer twenty (20) Business Days' written notice, increase its prices to take account of any increase in the direct cost to the Supplier of supplying the Equipment, Software or Services (as applicable) (including, but not limited to, any change in telecommunication provider rates or Third Party Software Vendor licence fees or other third party costs) and such increased prices applying at the date of supply of Equipment, Software or Services (as applicable) by the Supplier shall be substituted for the previous contract price;
- 4.2.2 where the Proposal relates to the Support Services, at any time by giving the Customer twenty (20) Business Days' written notice, increase its prices to take account of any matter or matters that the Supplier consider to be a significant change in the scope, complexity or scale of the Support Services such increased prices applying at the date the Supplier notifies the Customer of the change in the scope of the Support Services shall be substituted for the previous contract price; and
- 4.2.3 where the Proposal relates to Support Services and includes an Initial Term, at any time after the first anniversary of the Commencement Date by giving to the Customer not less than twenty (20) Business Days' written notice, increase the Charges provided that the increases shall be no more frequent than once in any 12-month period.

5. **Payment**

5.1 The Customer shall pay the Charges to the Supplier in accordance with these Terms and Conditions:

5.1.1 clause 5.2 shall apply if the Services are to be provided on a time-and-materials basis; and

5.1.2 clause 5.3 shall apply if Equipment, Software or Services (as applicable) are to be provided for a fixed price.

The remainder of this clause 5 shall apply in either case.

5.2 Where the Services are provided on a time-and-materials basis:

5.2.1 the Charges payable for the Services shall be calculated at the Daily Rate;

5.2.2 the Supplier's agreed daily fee rates are calculated on the basis of Normal Working Hours;

5.2.3 the Supplier shall be entitled to charge at an overtime rate for part days and for time worked by members of the project team outside the Normal Working Hours on a pro-rata basis. Overtime will be calculated by multiplying the Supplier's agreed time-based overtime charging rates (as may be set out in the Contract and/or notified by the Supplier to the Customer from time to time) by the time spent by the Supplier's personnel performing the Services; and

5.2.4 the Supplier shall invoice the Customer monthly in arrears for its charges for time and materials, subject to any cap where the services are provided on a capped time-and-materials basis (together with expenses and VAT where appropriate) for the month concerned.

5.3 Where Equipment, Software or Services (as applicable) are provided for a fixed price, the price for the Equipment, Software or Services (as applicable) shall be the amount set out in the Proposal. Where the price envisages payment in instalments and/or Project Milestones, the Supplier shall be entitled to ask the Customer for a payment in advance of the commencement of the Contract and at each Project Milestone of up to 100% of the capital costs incurred by the Supplier in respect of such Equipment, Software or Services, in which case such advance payment will be set out in the Proposal. On achieving a Project Milestone, the Supplier shall invoice the Customer for the Charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate).

5.4 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within ten (10) Business Days of receipt (or in accordance with such other payment terms as may be specified in the Proposal). Time for payment shall be of the essence of the Contract.

5.5 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank Plc (or at a rate of 4% in the event that the base rate of the bank is less than zero), accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.

5.6 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.

5.7 All amounts due under the Contract shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer, whether such liability is present or future, liquidated or unliquidated, and whether or not either such arises under the Contract, another agreement or otherwise.

6. **Third Party Contracts**

6.1 If any payments due to the Supplier in respect of Equipment, Software or Services (as applicable) are to be paid by a third party then the Customer agrees that immediately on delivery of the Equipment, Software or Services in question the Customer will sign the acceptance note for the leasing company or other third party and will generally take all steps as



may be necessary to ensure that payment is made to the Supplier for the Equipment, Software or Services in accordance with these Terms and Conditions.

- 6.2 It is agreed and acknowledged between the Supplier and the Customer that:
- 6.2.1 in providing the Services to the Customer, the Supplier may enter into binding contractual commitments ("Third Party Contracts") on the Customer's behalf with telecommunication providers and other third parties ("Third Party Providers");
 - 6.2.2 the Customer acknowledges that the Third Party Contracts create rights and obligations between the Supplier and the Third Party Providers; and
 - 6.2.3 notwithstanding that the Customer is not a party to the Third Party Contract, the Customer is and shall be at all times responsible and held liable for any and all call and data charges, termination fees and any other charges and fees that may be charged by the Third Party Providers to the Supplier in respect of the Services provided to the Customer and the Customer undertakes to pay such sums on an indemnity basis and defend, indemnify, keep indemnified and hold the Supplier harmless against any and all third party claims, actions, and proceedings, and all losses, damages, expenses and costs (including without limitation legal costs) associated therewith.

7. **Delivery, transfer of risk and title to the Equipment**

- 7.1 Risk of damage to or loss of the Equipment passes to the Customer on completion of delivery. Unless otherwise specified in the Contract, delivery of the Equipment shall be completed when the Supplier notifies the Customer that the Equipment is ready for collection from the Supplier's premises and the Customer (or a carrier on behalf of the Customer) takes delivery.
- 7.2 If the Customer fails to take delivery within ten (10) days after the day on which the Supplier notified the Customer that the Equipment was ready for delivery, the Supplier may resell part of, or all of the Equipment and, after deducting any reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.
- 7.3 If the Supplier fails to deliver the Equipment, the Supplier's liability is limited to the cost of obtaining replacement goods of a similar description and quality in the cheapest market available, less the price of the Equipment. However, the Supplier will not be liable to the extent that any failure to deliver was caused by the Customer's failure to provide adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 7.4 Where the Contract specifies that the Equipment is to be delivered by the Supplier to a location other than the Supplier's premises, the Supplier may (at its discretion) invoice to the Customer additional Charges in respect of transportation, insurance and packaging of the Equipment.
- 7.5 The following provisions shall apply to all Contracts and to all Equipment which under the Contract the Supplier agrees to supply to the Customer. No failure by the Supplier to enforce strict compliances by the Customer with such provisions shall constitute a waiver thereof and no termination of the Contract shall prejudice, limit or extinguish the Supplier's rights under this clause 7.5:
 - 7.5.1 upon delivery of the Equipment the Customer shall hold the Equipment solely as bailee for the Supplier and the Equipment shall remain the property of the Supplier until such time as the Customer shall have paid to the Supplier and the Supplier has cleared funds for the full purchase price of all Equipment, whether under the Contract or otherwise. The Customer shall maintain the Equipment in a satisfactory condition and separated from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property. Until this time the Supplier shall be entitled to recover the Equipment or any part thereof and, for the purpose of exercising such rights, the Customer hereby grants a licence to the Supplier, its employees and agents (together with appropriate transport) to enter upon the Customer's premises and any other location where the Equipment is situated and remove the Equipment;
 - 7.5.2 the Customer is hereby licensed to agree to sell on the Equipment on condition that the Customer shall inform its customer of the provisions of clause 7.5.1. The Customer acts as the Supplier's bailee in respect of any such sale and shall immediately upon receipt of the proceeds of sale, and whether or not payment has become due under clause 5 remit to the Supplier the full purchase price of the Equipment sold on less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Supplier;
 - 7.5.3 the Customer shall maintain an appropriate insurance in respect of the Equipment from the date or dates on which the risk therein passes to the Customer. In the event of any loss or damage occurring while the Equipment remain the property of the Supplier, the Customer shall immediately on receipt of the insurance monies, remit to the Supplier the full purchase price of the Equipment lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Supplier; and
 - 7.5.4 the licences granted under this clause 7.5 shall be terminable forthwith at any time upon notice by the Supplier to the Customer.

8. **Software supply**

- 8.1 Where Software supplied is Third Party Software, the Supplier shall supply or otherwise make available to the Customer a copy of the Third Party Software Licence on request from the Customer, whether by means of the Third Party Software



Vendor's website or otherwise. In supplying any such Third Party Software License the Supplier shall be permitted to redact such information contained in the Third Party Software Licence as it deems reasonably necessary to protect its Confidential Information. The Customer shall be responsible for ensuring that the Customer's use of the Third Party Software is properly licensed.

- 8.2 The parties acknowledge that the Customer's rights to use the Third Party Software, and the restrictions on the Customer's use of the Third Party Software, shall be as set out in the Third Party Software Licence.
- 8.3 The Customer must abide by the terms of the Third Party Software Licence and ensure that all persons using the Third Party Software supplied (or otherwise made available) by the Supplier to the Customer abide by the terms of the Third Party Software Licence.
- 8.4 The parties acknowledge that the Third Party Software Licence creates rights and obligations between the Customer and the Third Party Software Vendor, and that the Supplier is not a party to the Third Party Software Licence.
- 8.5 The Supplier shall as far as it is able pass on to the Customer the benefits of any Vendor's Warranties in relation to any Third Party Software. Save as provided in clause 8.6, the Supplier gives no warranties or guarantees and makes no representations concerning the Software, and all such warranties, guarantees, representations, and all conditions and any other terms whatsoever implied by statute or otherwise, are hereby excluded from the Contract between the Supplier and the Customer to the fullest extent permitted by applicable law.
- 8.6 Where the Software is created by the employees of the Supplier as part of Software Development Services and where this clause 8.6 is expressly identified as being applicable in the Contract (but not otherwise), then the Supplier warrants that the Project Deliverables in that Software will, at the date of Customer's acceptance of the Software (in accordance with clause 9.2 below), and for twenty (20) Business Days after that date, perform in accordance with the technical specification contained in the Proposal. The Supplier shall not be in breach of the warranty at this clause 8.6 to the extent the breach of any such warranty arises from (i) compliance by the Supplier (or any third party acting on behalf of the Supplier) with the Customer's written instructions (ii) any modification of the Project Deliverables after delivery by the Supplier to the Customer if such modification was not made by and/or on behalf of the Supplier or with the written approval of the Supplier or (iii) operation or use by the Customer or any third party of some or all of the Project Deliverables in combination with products, information, specification, instructions, data, materials not provided or approved by the Supplier.

9. **Acceptance Testing**

- 9.1 Where acceptance testing is expressly envisaged as being applicable in the Proposal (but not otherwise) then, prior to launch of the Equipment, Software or Services (as applicable), the Supplier shall undertake such acceptance tests in relation to the relevant Equipment, Software or Services as it deems fit, and as may be reasonably required by the Customer. The acceptance criteria for such tests shall be objective. The Customer shall promptly provide such assistance as the Supplier may reasonably require in order to complete such acceptance tests. In the event that any acceptance tests are not successfully completed, the Supplier shall be given the opportunity to retest such elements which were not successfully completed and/or (with the consent of the Customer, not to be unreasonably withheld or delayed) to modify the acceptance tests or acceptance criteria. The Supplier shall notify the Customer once all acceptance tests have been successfully completed ("a Notification") and shall provide reasonable evidence of such completion on request. If, within 10 Business Days of receipt of a Notification the Customer has not provided the Supplier with a confirmation as to whether or not the tests have been successfully completed, then a confirmation of the successful completion of the relevant acceptance tests shall be deemed to have been served on the Supplier by the Customer.
- 9.2 Acceptance of the Equipment, Software or Services (as applicable) shall be deemed to have occurred on whichever is the earliest of; (i) the date that the Customer notifies (or pursuant to clause 9.1 is deemed to have notified) the Supplier that the relevant acceptance tests have been successfully completed or (ii) the date that the relevant Equipment, Software or Services (as applicable) are put into commercial or operational use.

10. **Customer's Obligations**

- 10.1 The Customer shall:
 - 10.1.1 co-operate with the Supplier in all matters relating to the Contract and appoint an authorised representative of the Customer who has the authority to contractually bind the Customer on matters relating to the Contract;
 - 10.1.2 provide in a timely manner such access to the Customer's premises, systems and data (including, where agreed in the Contract, providing the Supplier with access to the Customer's systems by use of remote desktop support software) and such office accommodation and other facilities, as is requested by the Supplier;
 - 10.1.3 provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects;
 - 10.1.4 comply with any Mandatory Policies that are notified to it from time to time;
 - 10.1.5 take all steps to ensure the welfare and safety of any the Supplier's Personnel at any premises of the Customer and ensure that its premises and all plant and equipment which is used by the Supplier's Personnel or with which they may come into contact or to which they may be exposed complies with the Health and Safety at Work Act 1974, all relevant statutory provisions (as defined in that Act) and all other obligations imposed by statute and common law relating to health and safety; and
 - 10.1.6 be responsible (at its own cost) for the performing or procuring the performance of the Customer Responsibilities including preparing the relevant premises for the supply of the Equipment, Software or Services (as applicable).



- 10.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's Personnel (including any failure to perform or procure the performance of the Customer Responsibilities or any delays or postponements by the Customer of any installation dates specified by the Supplier, of dates for scheduled service visits or otherwise) then:
- 10.2.1 the Supplier shall be granted relief from any failure of it to carry out the Services, deliver the Equipment/Software or otherwise comply with its obligations under the Contract; and
- 10.2.2 the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 11. Limitation of Liability**
- 11.1 The Customer agrees and acknowledges that the level of the Charges takes fully into account the limits of the Supplier's entire financial liability (set out below) for the applicable Equipment, Software or Services (as applicable) supplied or to be supplied to the Customer, the Customer's use of them, and for anything else in connection with any Contract between the Supplier and the Customer for Equipment, Software or Services (as applicable).
- 11.2 Nothing in these Terms and Conditions shall limit or exclude the liability of the Supplier in respect of (i) death or personal injury caused by negligence or (ii) fraud or (iii) any other liability which cannot by law be limited or excluded.
- 11.3 Subject to clause 11.2, the Supplier shall not be liable to the Customer whether in contract, tort (including for negligence or breach of statutory duty), or for negligent or innocent misrepresentation, or otherwise, for any of the following types of loss or damage, even if the Customer has been advised of the possibility of such loss or damage (i) loss or depletion of goodwill or reputation or (ii) loss of profits, revenue, contracts or anticipated savings; or (iii) loss or damage arising from loss, damage or corruption of data or information; or (iv) loss of use; or (v) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- 11.4 The Supplier shall not be liable if any loss arises directly as a result of the failure of any supplier of the Supplier failing to carry out its obligations and/or the inability of the Supplier to provide the Equipment, Software or Services due to any other third party.
- 11.5 Subject to clause 11.2, if the Customer incurs any loss, in connection with or arising (i) from the performance or non-performance of the obligations of the Supplier under a Contract for Equipment, Software or Services (as applicable) or (ii) as a result of any advice given or failed to be given to the Customer by the Supplier and the Supplier's liability (whether for a breach of contract or tort (including negligence or breach of statutory duty), or for negligent or innocent misrepresentation or otherwise) as a result thereof is established (a "Supplier Default"), then the total aggregate liability of the Supplier to the Customer under the Contract or otherwise for that Supplier Default and any previous Supplier Defaults shall in no circumstances exceed:
- 11.5.1 where the Supplier Default relates to Equipment or Software supplied by the Supplier, the sum of the amount paid by the Customer to the Supplier for the Equipment or Software that are directly affected by the Supplier Default; and
- 11.5.2 where the Supplier Default relates to a Service supplied by the Supplier, the sum of the amount paid by the Customer to the Supplier for the service element(s) of the Service(s) that are directly affected by Supplier Default (the "Affected Services") during the preceding twelve months immediately prior to the act or omission giving rise to the loss (or if the event giving rise to the loss occurs during the first twelve (12) months of the Contract, the amount paid by the Customer for the Affected Services during that period).
- 12. Warranties**
- 12.1 The Supplier warrants to the Customer that:
- 12.1.1 it has the legal right and authority to enter into the Contract and perform its obligations under these Terms and Conditions;
- 12.1.2 it shall provide the Services with reasonable skill and care; and
- 12.1.3 it shall comply with all applicable laws in relation to its performance of the Contract.
- 12.2 The Customer warrants to the Supplier that:
- 12.2.1 the Customer has the legal right and authority to enter into the Contract and perform its obligations under these Terms and Conditions;
- 12.2.2 none of the information, documents, drawings, software, images, content or sounds (together with any database made up of any of these) and other materials owned or controlled by the Customer, embodied in any medium, which are supplied or made available by or on behalf of the Customer to the Supplier in connection with a Contract infringe any Intellectual Property Right or any right of confidence, right of privacy or right under data protection legislation of any third party;
- 12.2.3 in relation to its use of the Software neither it nor any of its employees or associated parties will attempt to or permit any third party to reverse engineer, decompile, monitor or in any way replicate the coding, software or functionality of any Software;
- 12.2.4 it has, and shall maintain throughout the term, the full capacity, authority and any necessary licences and approvals under applicable laws to enter into and perform its obligations contained in the Contract; and



12.2.5 it shall comply with all applicable laws in relation to its performance of the Contract.

12.3 It is acknowledged and agreed by the Customer that:

12.3.1 in respect of the Equipment, Software or Services (as applicable) supplied by the Supplier, whilst the Supplier will endeavour to use its experience and expertise to advise the Customer, the Supplier acts as a supplier to the Customer only. The Customer assumes sole responsibility ensuring that the Equipment, Software or Services (as applicable) supplied by the Supplier meet its requirements and for results obtained from the use of the same by the Customer and for conclusions drawn from such use;

12.3.2 in respect of the Equipment, the Supplier shall as far as it is able pass on to the Customer the benefits of any Vendor's Warranties in relation to that Equipment;

12.3.3 the Supplier shall not have any obligation or duty, and shall not bear any liability or responsibility, in relation to any of those matters which the Customer expressly undertakes, warrants, or bears responsibility for in the Contract; and

12.3.4 except as expressly set out in these Terms and Conditions, the Supplier gives no warranties or guarantees and makes no representations concerning the supply of the Equipment, Software or Services (as applicable), and all such warranties, guarantees, representations, and all conditions and any other terms whatsoever implied by statute or otherwise, are hereby excluded from the Contract between the Supplier and the Customer to the fullest extent permitted by applicable law.

12.4 The Customer undertakes to defend, indemnify, keep indemnified and hold the Supplier harmless against any and all third party claims, actions, and proceedings, and all losses, damages, expenses and costs (including without limitation legal costs) associated therewith, where any of the same arise out of or in connection with either the Customer's use of or access to any of the Equipment, Software or Services (as applicable) including those arising out of (i) the failure of the Customer to fully observe or perform any of its obligations contained in the Contract; or (ii) any loss, damage or injury to property or person caused or contributed to by the conduct or negligent act, error or omission of the Customer or its agents, employees, contractors or directors; or (iii) any breach by the Customer of any warranty, undertaking or other terms or conditions of the Contract between the Supplier and the Customer.

13. **Confidentiality**

13.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. Confidential Information shall not include information that:

13.1.1 is or becomes publicly known other than through any act or omission of the receiving party;

13.1.2 was in the other party's lawful possession before the disclosure;

13.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

13.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or

13.1.5 is required to be disclosed by law, for the purpose of legal or regulatory proceedings, by any court of competent jurisdiction or by any regulatory or administrative body or the disclosing Party's insurers (provided that before any such disclosure, the disclosing Party shall, to the extent legally permissible, shall give the other party reasonable notice of the proposed disclosure).

13.2 Each party shall hold the other's Confidential Information in confidence for the Term and for a period of five (5) years thereafter.

13.3 The Supplier shall be entitled to disclose any Confidential Information to its employees, agents and advisors who need to know such information for the purposes of carrying out its obligations or duties in providing the Services in accordance with this Contract.

13.4 Each party shall take all reasonable steps to ensure that anyone to whom it provides (or makes available) the Confidential Information of the other party as permitted by the Contract complies with the confidentiality provisions of the Contract as if they were directly obliged to do so.

13.5 The Supplier shall be entitled to make a public announcement concerning the existence, subject matter or terms of the Contract, the wider transactions contemplated by it, or the relationship between the parties, provided that the Supplier shall make reasonable attempts to agree the contents of the announcement before making it. Nothing in this clause 13.5 shall be construed as limiting either party's obligations under this clause 13.

14. **Duration and Termination**

14.1 The Contract shall commence on the Commencement Date. Where:

14.1.1 either the Proposal includes an Initial Term or the Services are or include the Support Services, then unless terminated earlier in accordance with this clause 14, the Contract shall continue for the Initial Term and shall automatically extend for 12 months ("Renewal Term") at the end of the Initial Term and at the end of each Renewal Term thereafter. Either party may give written notice to the other party, not later than sixty (60) Business Days before the end of the Initial Term or the relevant Renewal Term, to terminate this Contract at the end of the Initial Term or the relevant Renewal Term, as the case may be; or

14.1.2 clause 14.1.1 does not apply, the Contract shall continue until the Supplier completes the relevant supply of the Services or the delivery of the Equipment or Software (as the case may be) upon which the Contract shall terminate automatically, subject to earlier termination in accordance with this clause 14.



- 14.2 Without affecting any other right or remedy available to it, either party may give notice in writing to the other terminating the Contract:
- 14.2.1 immediately, if the defaulting party suffers an Insolvency Event; or
 - 14.2.2 on 20 Business Days' written notice, if the Customer does not accept any or all amendments to the Contract pursuant to clause 4.2 or 18.10; or
 - 14.2.3 on ten (10) Business Days' notice, if the party has not for a continuous period of one (1) month been able to perform its obligations as a result of a Force Majeure Event; or
 - 14.2.4 immediately, if the defaulting party commits a breach of any material term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) Business Days of being notified in writing to do so.
- 14.3 Without affecting any other right or remedy available to it, the Supplier may give notice in writing to the Customer terminating the whole (or part) of the Contract immediately, if:
- 14.3.1 the Customer fails to pay any amount due under the Contract or any other contract between the Supplier and the Customer on the due date for payment and remains in default not less than five (5) Business Days after being notified in writing to make such payment;
 - 14.3.2 the Customer commits a repeated breach of the Customer's obligations under the Contract. A repeated breach shall be defined as two or more breaches of the same, or any three breaches of different obligations of the Customer under this Contract within a twelve (12) months' period where each of those breaches have been notified in writing by the Supplier to the Customer;
 - 14.3.3 the Customer commits any act or omission which could or might in the sole opinion of the Supplier bring the Supplier into disrepute or damage the reputation of the Supplier;
 - 14.3.4 the Customer breaches clauses 10, 12.2, 13, or 15 or otherwise challenges the Intellectual Property Rights of the Supplier;
 - 14.3.5 the technology of any nature relied upon by the Supplier becomes unavailable for use by it for any reason whatsoever; or
 - 14.3.6 the Supplier becomes unable through no fault of its own and having made all reasonable endeavours to provide the Equipment, Software or Services due to the actions or omissions of a third party supplier on which it relies in order to provide such Equipment, Software or Services.
- 14.4 Without limiting its other rights or remedies, the Supplier may suspend performance of all or any part of its obligations under the Contract or any other contract between the Customer and the Supplier, if the Customer becomes subject to any of the events listed in clauses 14.2 or 14.3 or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under the Contract or any other contract between the Supplier and the Customer on the due date for payment. The Supplier shall have no liability to the Customer for any losses, damages, expenses or costs that the Customer may incur by reason of such suspension.
- 14.5 On termination of the Contract for any reason:
- 14.5.1 save for the licence granted at clause 16.3, all other rights and licences of the Customer under the Contract shall terminate on the date of termination of the Contract;
 - 14.5.2 the Customer shall, as soon as reasonably practicable, return or destroy (as directed in writing by the Supplier) any documents, handbooks or other information provided to it by the Supplier or data for the purposes of this Contract, including all documents and materials (and any copies) containing, reflecting, incorporating or based on the Supplier's Confidential Information;
 - 14.5.3 the Customer shall, as soon as reasonably practicable, return all of the equipment and materials owned by the Supplier or any third party, failing which, the Supplier may enter the relevant premises and take possession of them. Until these are returned or repossessed, the Customer shall be solely responsible for their safe-keeping;
 - 14.5.4 the Supplier may destroy or otherwise dispose of any of the Customer's, storage media, software, equipment or other items in its possession unless the Supplier receives, no later than ten (10) Business Days after the effective date of the termination of this Contract, a written request for their delivery to the Customer. The Supplier will use reasonable commercial efforts to deliver the same to the Customer within twenty (20) Business Days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) and provided that Customer meets any charges that the Supplier may charge for providing such assistance. The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of them; and
 - 14.5.5 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices (together with any accrued interest if such invoices are outside their payment terms) and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt.
- 14.6 If prior to the expiry of the Initial Term or any Renewal Term set out in clause 14.1, the Customer terminates the Contract for any reason other than as set out in clause 14.2, then in addition to any outstanding amounts payable in respect of clause 14.5.5, the Customer shall be obliged to pay to the Supplier by way of compensation, the balance of the Charges the Customer would have paid over a period equal to the unexpired residue of the Initial Term or the Renewal Term immediately prior to the date of termination of the Contract less such discount as the Supplier shall reasonably apply to



such balance in its discretion to reflect any savings in overheads. Any such payment shall become due within three (3) Business Days of receipt of invoice.

- 14.7 The Supplier and the Customer confirm that any sums calculable and payable pursuant to clause 14.6 represent a genuine pre-estimate of the Supplier's loss.
- 14.8 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry and shall not affect the continuation after termination or expiry of any provision expressly stated to survive or implicitly surviving termination (including for the avoidance of doubt, clauses 11, 13, 15, 17, 18.16, 18.17, 18.18 and 19).
- 15. Data Protection**
- 15.1 For the purposes of this clause 15:
- 15.1.1 "data controller", "data processor", "data subject", "personal data", "personal data breach" and "processing" shall have the meanings ascribed to them in the Data Protection Legislation;
- 15.1.2 "Applicable Laws" means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and
- 15.1.3 Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 15.2 Each party warrants to the other that it will process Personal Data in compliance with the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 15.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer shall be the data controller and the Supplier shall be a data processor in respect of personal data transferred to (or otherwise shared) by the Customer with the Supplier from the point when such data is transferred by the Customer to the Supplier ("Customer Data"). Schedule 1 ("Data protection particulars") sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subjects.
- 15.4 Without prejudice to the generality of clause 15.2, the Customer warrants to the Supplier that it has the legal right to disclose all personal data that it does in fact disclose to the Supplier under or in connection with the Contract, and that the processing of that personal data by the Supplier for the purpose of providing all Equipment, Software and Services (as applicable) contemplated by the Contract, fulfilling all of its obligations under the Contract, and complying with all of its legal and regulatory obligations ("Permitted Purpose") in accordance with these Terms and Conditions will not breach any Data Protection Legislation.
- 15.5 If, notwithstanding the intentions of the parties set out at clause 15.4, the Supplier processes personal data as a data controller, it shall comply with the provisions of the Data Protection Legislation imposed on a data controller.
- 15.6 The Customer shall ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Customer Data to the Supplier for the duration and purposes of the Contract.
- 15.7 The Supplier shall, in relation to any Customer Data processed in connection with the Contract:
- 15.7.1 process that personal data only for the Permitted Purpose and otherwise in accordance with the lawful, reasonable and documented instructions of the Customer, including with regard to transfers of personal data outside the EEA, unless the Supplier is required by Applicable Laws to otherwise process Customer Data in which case the Supplier shall, to the extent permitted by such law, inform the Customer of that legal requirement before processing that personal data;
- 15.7.2 having regard to the state of technological development and the cost of implementing any measures, ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of such personal data, and against accidental loss or destruction of, or damage to such 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;
- 15.7.3 ensure that all the Supplier's Personnel who have access to and/or process personal data are obliged to keep the personal data confidential;
- 15.7.4 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 15.7.5 notify the Customer without undue delay on becoming aware of a personal data breach;
- 15.7.6 on termination of the Contract, at the Customer's costs and at the Customer's option, either delete or return all of the Customer Data to the Customer (including deleting existing copies) except to the extent that any Applicable Law requires the Supplier to store such Customer Data; and
- 15.7.7 maintain complete and accurate records and information to demonstrate its compliance with clause 15.7, and allow for audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose, subject to the Customer:



- (a) giving the Supplier reasonable prior notice of such information request, audit and/or inspection being required by the Customer;
 - (b) ensuring that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to the Relevant Authority or as otherwise required by the Data Protection Legislation or other applicable law);
 - (c) ensuring that such audit or inspection is undertaken during Normal Working Hours, with minimal disruption to the Supplier's business, the Sub-processors' business and the business of other customers of the Supplier; and
 - (d) paying the Supplier's reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits.
- 15.8 In relation to Sub-processors:
- 15.8.1 the Customer acknowledges and hereby authorises the Supplier to engage in connection with the performance of the Contract those Sub-processors set out in Schedule 2 ("Approved Sub-processors") to this Contract, which includes the identities of those Sub-processors and their country of location;
 - 15.8.2 the Supplier may amend and update the Approved Sub-processors list by providing written notice to the Customer of any proposed new Sub-processor. Customer may notify the Supplier promptly in writing within ten (10) Business Days after receipt of the Supplier's notice, if the Customer has a reasonable basis for objecting to a new Sub-processor. The Supplier shall not appoint (or disclose any Customer Data to) that proposed Sub-processor until reasonable steps have been taken to address the objections raised by the Customer and the Customer has been provided with a reasonable written explanation of the steps taken;
 - 15.8.3 prior to giving any Sub-processor access to Customer Data, the Supplier shall ensure that such Sub-processor has entered into a written agreement with the Supplier including terms in the contract between the Supplier and the Sub-processor which are substantially the same as those set out in this clause 15 and the requirements of article 28(3) of the GDPR;
 - 15.8.4 as between the Customer and the Supplier, the Supplier shall remain fully liable to the Customer for any failure by a Sub-processor to fulfil its obligations in relation to the processing of any Customer Data under the Contract; and
 - 15.8.5 to the extent that such sub-processing does not occur in the EEA, or a country that is the subject of a valid adequacy decision by the European Commission ("Restricted Country"), the Supplier may only authorise a Sub-processor to process the Customer Data in a Restricted Country if, the Standard Contractual Clauses are at all relevant times incorporated into the agreement between the Supplier on the one hand and on the other hand the Sub-processor, or if requested by the Customer and required by Data Protection Legislation, procure that the Customer shall enter into (or procure that any relevant third party enters into) a data controller to data processor data transfer agreement, incorporating Standard Contractual Clauses.
- 15.9 Insofar as the Supplier processes the Customer Data on behalf of the Customer, the Supplier shall promptly inform the Customer if the Supplier becomes aware that the Customer's instruction in respect of the processing of the Customer Data infringes the Data Protection Legislation, provided that:
- 15.9.1 this shall be without prejudice to clauses 15.2, 15.4, 15.6, and 15.10; and
 - 15.9.2 to the maximum extent permitted by mandatory law, the Supplier shall have no liability howsoever arising (whether in contract, tort (including negligence) or otherwise) for any Losses arising from and in connection with any processing in accordance with the Customer's instructions following receipt by the Customer of that information.
- 15.10 Subject to clause 15.9, the Customer acknowledges that the Supplier is reliant on the Customer as data controller for direction as to the extent to which the Supplier is entitled to use and process the Customer Data. Consequently, to the maximum extent permitted by the Data Protection Legislation, the Supplier will not be liable for any unauthorised or non-compliant loss, access or other processing of personal Customer Data or any claim brought by a data subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Customer's instructions or the Customer's failure to provide instructions. The Customer shall indemnify and hold the Supplier harmless against all Losses that the Supplier suffers of incurs as a result of the Customer's instructions or the Customer's failure to provide instructions (whether as a result of a claim by a data subject or otherwise).
- 15.11 Subject to clause 18.11, either party may, at any time on not less than twenty (20) Business Days' written notice, revise this clause 15 by replacing clauses 15.7 and 15.8 with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).
16. **Intellectual Property Rights**
- 16.1 Subject to clauses 16.2 and 16.3, nothing in these Terms and Conditions shall operate to assign or transfer any Intellectual Property Rights from the Supplier to the Customer, or from the Customer to the Supplier. Notwithstanding the foregoing,



the Supplier shall be entitled to use, develop and share knowledge, experience and skills of general application gained through performing the Services.

- 16.2 Where this clause 16.2 is expressly identified as being applicable in the Contract (but not otherwise), the Customer shall acquire ownership of the Project Deliverables and all Intellectual Property Rights subsisting in the same on payment in cleared funds of every part of the Charges relating to the Services.
- 16.3 Where clause 16.2 is not identified as being applicable in the Contract, then the Supplier shall, on payment in cleared funds of every part of the Charges relating to the Services, grant to the Customer a non-exclusive, non-assignable, non-sub-licensable, perpetual, royalty free licence to use the Intellectual Property Rights in any product of the Services ("the Licensed Rights") for the commercial business purposes identified in the Contract. The Licensed Rights shall not be used for any other purpose without prior written consent of the Supplier and the grant of the licence shall not restrict or prevent the Supplier from using or licensing any of the Licensed Rights (or any other Intellectual Property Rights of the Supplier) for any purpose whatsoever at any time.
- 17. Non-Solicitation of personnel and Employment Liabilities**
- 17.1 The Customer must not, without the prior written consent of the Supplier, either during the Term or within the period of twelve (12) months following the end of the Term, engage, employ or solicit for engagement or employment any Personnel of the Supplier who has been involved in any way in the negotiation or performance of the Contract.
- 17.2 The Customer agrees that if they breach the provisions of clause 17.1 by successfully soliciting, interfering with, procuring or enticing away any employee or contractor of the Supplier, they shall pay the Supplier promptly upon the written demand of the Supplier a sum reflecting the Supplier's genuine estimate of its loss as a result of such solicitation or equivalent to half the annual salary or fees paid by the Supplier to the person so solicited immediately before that person leaves the Supplier employment or ceases to be engaged by the Supplier, whichever is the higher.
- 17.3 The Customer agrees that the amount referred to in clause 17.2 represents a reasonable pre-estimate of the loss and damage which the Supplier would suffer in the event described in clause 17.2.
- 17.4 The provisions of this clause 17 are without prejudice to the right of the Supplier to seek interim remedies through the court or otherwise in respect of the non-solicitation.
- 17.5 The parties agree that on the expiry or termination of the Contract, there will be no relevant transfer as defined in the Regulations and as a result neither the Supplier's Personnel nor any other individual shall transfer their employment to the Customer or any future supplier of the Customer.
- 18. General**
- 18.1 Subject to the following sentence, the Contract may not be transferred, assigned, subcontracted, licensed, charged or otherwise dealt with or disposed of (whether in whole or in part) by either party without the prior written consent of the other party (such consent not to be unreasonably withheld, conditioned or delayed). The Supplier may, after having given prior written notice to the Customer assign and transfer all of its rights and obligations under the Contract (i) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier (ii) to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the Customer to be bound by the obligations of the Supplier under the Contract.
- 18.2 Any notice given under the Contract must be in writing and must be delivered personally or sent by recorded delivery or by email to the party to whom it is being given at the address, and marked for the attention of the person, specified in the Proposal or to such other address, or marked for the attention of such other person, as the applicable party may from time to time notify to the other party.
- 18.3 A notice delivered or sent in accordance with clause 18.2 will be deemed to have been given if delivered personally or by recorded delivery, at the time of delivery or, if sent by email, at the time of transmission and in proving the giving of a notice, it shall be sufficient to show that delivery was made or that the email was properly addressed and transmitted, as the case may be. Email notices do 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.
- 18.4 The Supplier will not be liable to the Customer for any failure to perform or for any delay in performance under this Contract to the extent such non-performance or delay is caused by a Force Majeure Event. If the Contract is terminated in accordance with clause 14.2.3, neither party shall have any liability to the other except that rights and liabilities accrued prior to such termination shall continue to subsist.
- 18.5 No delay in exercising, or failure to exercise, any right, power or remedy provided by law or under the Contract shall be construed as such right, power or remedy.
- 18.6 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 18.7 The Contract represents the whole agreement and understanding between the parties relating to the Equipment, Software or Services (as applicable) and replaces all other arrangements, agreements, understandings, statements, representations, warranties, undertakings or promises (whether in writing or not) made between the parties on the subject ("pre-contractual statements") including any heads of agreement related to the subject matter hereof.



- 18.8 Without prejudice to clause 18.7, each party warrants to the other that, in entering into the Contract, it has not relied on and shall have no remedy in respect of any pre-contractual statement. Nothing in clauses 18.7 or 18.8, or otherwise in the Contract, is intended to limit either party's liability for fraud or fraudulent misrepresentation.
- 18.9 The Customer acknowledges and confirms it has had an opportunity to carry out a thorough due diligence exercise in relation to the supply of (as applicable) the Services, the Equipment and/or the Software including asking questions they consider are relevant and making their own respective enquiries to satisfy themselves as to the accuracy and completeness of any information received including the completeness and accuracy of the Proposal, and has raised all relevant due diligence questions with the Supplier before the Commencement Date and has entered into the Contract in reliance on its own due diligence.
- 18.10 The Supplier shall be permitted to, and the Customer acknowledges that the Supplier may, amend these Terms and Conditions or Supplemental Terms forming part of the Contract. The Supplier shall give the Customer at least twenty (20) Business Days' notice in writing of any change to the same. Any such revised Terms and Conditions and/or Supplemental Terms shall be effective as the Terms and Conditions from the date of expiry of such notice. The Customer shall provide written notice to the Supplier during this twenty (20) Business Days' period, informing the Supplier that the Customer does not accept the amendments.
- 18.11 Subject to clause 18.10, no variation of the Contract shall be effective unless it is in writing and signed by or on behalf of each of the parties.
- 18.12 If at any time any provision of this Contract is or becomes illegal, invalid or unenforceable, that shall not affect or impair the legality, validity or enforceability of any other provision of the Contract. The parties shall use all reasonable endeavours to replace any illegal, invalid or unenforceable provision by a valid provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.
- 18.13 The Customer shall from time to time at its own cost do or procure the doing of all such acts and things, and execute or procure the execution of all such documents in a form reasonably satisfactory to the Supplier, which the Supplier may reasonably require for the purpose of giving full effect to the Contract.
- 18.14 No person who is not a party to the Contract, shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of, or enjoy any benefit under, the Contract.
- 18.15 The Contract may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of the Contract, but all the counterparts shall together constitute one and the same agreement. Transmission of an executed counterpart of the Contract by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of the Contract.
- 18.16 These Terms and Conditions and the Contract and any disputes or claims arising out of their subject matter or formation (including any non-contractual dispute or claim) shall be governed by and construed in accordance with English law.
- 18.17 Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales in respect of all legal proceedings and waives any objection which it may have now or in the future to the courts of England and Wales being nominated for the purpose of this clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.

19. Definitions and interpretation

19.1 In these Terms and Conditions, the following definitions apply:

Business Day	means any day other than a Saturday or Sunday or a public or bank holiday in England;
Charges	means the following amounts (as applicable): (a) the Daily Rate; and/or (b) any other amount specified in the Proposal; and/or (c) such amounts as may be agreed in writing by the parties from time to time; and/or (d) amounts calculated by multiplying the Daily Rate by the time spent by the Provider's Personnel performing the Services;
Client Contact	a member of the Customer's Personnel who has the authority to instruct the Supplier in respect of Issues;
Commencement Date	means the date set out in the Contract or, where no date is stated there, the earlier of the date that the Supplier executes the acknowledgement copy of the purchase order form or begins supplying the relevant Equipment, Software or Services (as applicable) to the Customer;



Confidential Information	means any technical or commercial know-how, specifications, inventions, processes or initiatives, trade secrets other information which are of a confidential nature and have been disclosed by one party to the other (including the details of any Contract or Proposal and/or these Terms and Conditions) received or obtained by a party that is proprietary or confidential of the other party and (i) is clearly labelled as such; (ii) is otherwise clearly identified as such; or (iii) from its nature and/or the circumstances of its disclosure it is reasonable to infer that it is such;
Contract	means the contract entered into by the parties on the basis of the terms of the Proposal for Equipment, Software or Services (as applicable) which is subject to these Terms and Conditions and (if applicable) any Supplemental Terms and which incorporates the terms of the Proposal;
Control	means the legal power to control (directly or indirectly) the management of an entity (and " Controlled " should be construed accordingly);
Customer	means the person who purchases Equipment, Software or Services (as applicable) from the Supplier;
Customer Responsibilities	any acts or activities identified in the Contract as being responsibilities of the Customer together with such other acts which need to be performed by the Customer or other third parties engaged or directed by the Customer under the Contract in order for the Supplier to be able to provide the Services, Equipment or Software (as applicable);
Daily Rate	the Supplier's daily charging rate, as set out in the Contract or as subsequently agreed in writing between the Supplier and the Customer;
Data Protection Legislation	(d) all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; any other directly applicable European Union regulation relating to privacy and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data and the privacy of electronic communications.;
EEA	means the European Economic Area;
Equipment	means the equipment agreed in the Contract to be purchased by the Customer from the Supplier (including without limitation any part or parts of it) as may be set out in the Proposal;
Excepted Issues	means errors, faults, malfunctioning or otherwise failure of the Maintained Equipment due to: (a) any factor outside the scope of the Support Services; (b) a defect in the manufacturer's design of the Maintained Equipment; (c) faulty materials or workmanship in the manufacture of the Maintained Equipment; (d) the alteration, modification, additions to, or maintenance of the Maintained Equipment by the Customer or any other party aside from the Supplier, save with the Supplier's prior written consent; (e) the Customer's failure to maintain suitable environment for the Maintained Equipment in accordance with the Supplier's written specifications including, without limitations, failure to maintain a constant power supply, air conditioning and/or humidity control; (f) neglect, misuse or improper maintenance of the Maintained Equipment or failure to operate the Equipment in accordance with any applicable instruction manuals or for the purposes for which it was designed by the Customer or any third party; (g) the transportation or relocation of the Equipment save where the same has been performed by the Supplier or under the Supplier's direction and/or with the Supplier's prior written permission; (h) use of the Maintained Equipment with computer equipment hardware or materials not supplied or approved in writing by the Supplier; (i) any defect or error in any software (other than software being Maintained Equipment) used upon or in association with the Equipment;



	<p>(j) any accident or disaster affecting the Maintained Equipment including Force Majeure Event, vandalism and/or burglary, spillage or leakage of chemicals or other harmful substances onto the Maintained Equipment;</p> <p>(k) a failure, interruption, disruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment;</p> <p>(l) accumulation of dirt or ingress of foreign substances within the Maintained Equipment or corrosion of component parts;</p> <p>(m) a defect or damage to the Maintained Equipment caused by a computer virus, denial of service attack or similar malicious cyberattack;</p> <p>(n) defects or damage which relate to a source external to the Maintained Equipment;</p> <p>(o) any failure by the Customer to perform or procure the performance of the Customer Responsibilities;</p> <p>(p) the use of the Equipment and/or Software being Maintained Equipment in breach of any of the provisions of the Contract under which such Maintained Equipment was supplied;</p> <p>(q) any failure by the Customer to implement the Supplier's recommendations or to take appropriate action on any advice the Supplier may provide to the Customer;</p> <p>(r) any failure by the Customer to follow the Supplier's oral or written instructions as to use or maintenance of the Maintained Equipment or (if there are none) good trade practice;</p> <p>(s) the Supplier following any Third Party Specification; and/or</p> <p>(t) the Supplier being prevented by the Customer or any third party acting on behalf of the Customer to remedy an Issue.</p>
<p>Force Majeure Event</p>	<p>means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, third party malicious actions including but not limited to cyber attacks and insider threats, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);</p>
<p>Initial Term</p>	<p>means either:</p> <p>(a) the initial term of the Contract as expressly set out in the Contract; or</p> <p>(b) if the Services to be provided under the Contract are or include the Support Services and no initial terms is expressly set out in the Contract, twelve (12) months from the Commencement Date;</p>
<p>Intellectual Property Rights</p>	<p>means patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;</p>
<p>Insolvency Event</p>	<p>means that a person:</p> <p>(a) is unable to pay its debts or becomes insolvent or bankrupt or ceases to trade;</p> <p>(b) is the subject of an order made or a resolution passed for the administration, winding-up or dissolution (otherwise than for the purpose of a solvent amalgamation or reconstruction, which does not materially reduce that entity's assets);</p> <p>(c) has an administrative or other receiver, manager, trustee, liquidator, administrator, or similar officer appointed over all or any substantial part of its assets;</p> <p>(d) enters into or proposes any composition or arrangement with its creditors generally (otherwise than for the purpose of a financing or solvent amalgamation or reconstruction, which does not materially reduce the entities' assets); or</p> <p>(e) is the subject of any events or circumstances analogous to any of the foregoing in any applicable jurisdiction;</p>



Issue	means, in relation to the Maintained Equipment: (a) errors in software that cause it to fail to operate substantially in accordance with the relevant operating manuals, technical literature and other related materials provided by the supplier of that software; and/or (b) malfunctioning or otherwise failure of equipment to operate in accordance with specifications and other manufacturer documentation relating to that equipment, but excludes the Excluded Issues;
Losses	means all losses, liabilities, costs (including reasonable legal costs), fees, expenses, actions, procedures, claims, demands and damages (including the amount of damages awarded by a court of competent jurisdiction or any penalties and fines levied by it;
Mandatory Policies	means the Supplier's mandatory policies and procedures as shall be notified by the Supplier to the Customer in writing from time to time;
Maintained Equipment	means the equipment and software (including any Equipment and Software) as specified in the Proposal or as may be agreed by the parties in writing from time to time;
Normal Working Hours	means 09:00 to 17:00 GMT/BST Monday to Friday but excluding bank or statutory holidays;
Permitted Purpose	has the meaning given in clause 15.4;
Personnel	means any employee, agent, consultant and/or sub-contractor of the party concerned;
Place of Use	means that part of the site or location specified in the Contract (or agreed otherwise) where the equipment and/or software which is subject of the Support Services is housed and operated;
Project Deliverables	means any product developed by the Supplier in relation to the Software Development Services in a tangible form, including computer software and any other documents or materials but excluding any rights in any Third-Party Software and excluding any Intellectual Property Rights created by the Supplier before (or independently of) the Contract;
Project Milestone	means the date by which a part of the Equipment, Software or Services (as applicable) are estimated to be completed, as set out in the Project Plan;
Project Plan	means a plan that may form part of the Proposal, describing the Equipment, Software or Services (as applicable) and setting out the estimated timetable, responsibilities and any applicable Project Milestones for the provision of the same by the Supplier;
Proposal	means the non-binding document(s) provided in writing by the Supplier to the Customer which sets out the description or specification of the applicable Equipment, Software or Services (as applicable) that will be provided by the Supplier to the Customer and may include a Project Plan;
Relevant Authority	means any governmental, regulatory or other competent authority that regulates and/or supervises any of the Supplier, the Customer and/or either of their activities (including activities of Customer using the Services);
Renewal Term	has the meaning given in clause 14.1;
Services	means the services that the Supplier agrees to supply to the Customer under a Contract (which may include Software Development Services) as may be set out in the Proposal;
Software	means software that the Supplier agrees to supply to the Customer under a Contract (which may comprise Third-Party Software) as may be set out in the Proposal;
Software Development Services	means any services the Supplier agrees to supply to the Customer in a Contract in connection with the development and/or configuration of any Software as may be set out in the Proposal;



Support Services	means any services the Supplier agrees to supply to the Customer in a Contract in connection with the support of the Maintained Equipment subject to clause 3.5 as may be set out in the Proposal;
Standard Contractual Clauses	the standard contractual clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of protection as set out in Commission Decision C(2010) 593, as updated and amended;
Sub-processor	means any person (including any third party but excluding an employee of the Supplier or any of its sub-contractors) appointed by or on behalf of the Supplier to process personal data on behalf of the Customer in connection with this Contract;
Supplemental Terms	means any supplemental terms supplied to the Customer by the Supplier in respect of certain Services which supplement and (unless expressly stated otherwise) incorporate these Terms and Conditions;
Supplier	means RMT Technology Limited, a company registered in England and Wales (registration number 06036364) having its registered office at Gosforth Park Avenue, Newcastle Upon Tyne, NE12 8EG;
Supplier Default	has the meaning given in clause 11.4;
Term	means the term of the Contract as set out in clause 14.1;
Terms and Conditions	means this document, including the Schedules;
Third Party Software	means that software the rights in which are owned by one or more third parties that the Supplier agrees to supply to the Customer under a Contract as may be set out in the Proposal;
Third Party Software Licence	means the Third Party Software Vendor's standard licensing terms for the Third Party Software from time to time; and
Third Party Software Vendor	means a third party that has granted to the Supplier the right to distribute the Third Party Software and resell licences for the Third Party Software.
Third Party Specification	means a specification, instruction or design supplied by any third party on behalf of the Customer;
Vendor's Warranties	mean the warranties given by any: (a) third party manufacturer in relation to the Equipment or Maintained Equipment; or (b) Third Party Software Vendor in relation to Third Party Software or Maintained Equipment.

19.2 In the Terms and Conditions, unless the context otherwise requires:

- 19.2.1 terms defined in any Proposal or Supplemental Terms unless stated otherwise shall have the same meanings ascribed to them in these Terms and Conditions;
- 19.2.2 references to clauses and Schedules are to clauses of, and schedules to, these Terms and Conditions;
- 19.2.3 references to the singular include the plural and vice versa and references to one gender include all genders;
- 19.2.4 references to a "person" include any company, partnership or unincorporated association (whether or not having separate legal personality) and references to a "company" include any company, corporation or other body corporate (wherever and however incorporated or established);
- 19.2.5 references to a statute or statutory provision include (i) that statute or statutory provision as modified, re-enacted or consolidated from time to time (whether before or after the date of this Contract) and (ii) any subordinate legislation made from time to time under that statute or statutory provision;
- 19.2.6 subject to clause 18.3, which specifies that service of any proceedings or other documents in any legal action may not be served by email, a reference to "writing" or written includes emails (but not faxes) and each party warrants that it has the ability to open Adobe PDF files;
- 19.2.7 the words "include(s)" and "including" are to be construed as if followed by the words "without limitation"; and
- 19.2.8 references to a "month" are to a calendar month.

19.3 The Schedules form part of the Terms and Conditions and shall have the same force and effect as if set out in the body of these Terms and Conditions and any reference to these Terms and Conditions shall include the Schedules.

19.4 The headings in Terms and Conditions are included for convenience only and shall be ignored in interpreting the Contract.