

## Service Terms and Conditions

### 1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.8.

**Contract:** the contract between the Supplier and the Client for the supply of Equipment and/or Services in accordance with the following:

- (a) the Conditions; and
- (b) any Services Agreement; and
- (c) any Order; and
- (d) any applicable Specific Terms and Conditions.

**Control:** shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

**Client:** the person or firm who purchases the Equipment and/or Services from the Supplier, as named or represented in the order documentation. Also referred to as the Company.

**DPA:** means the Data Protection Act 2018 (2018 c.12).

**Controller, Processor, Data Subject and Personal Data, Sensitive Data, processing and appropriate technical and organisational measures** shall have the meanings given to them in the DPA.

**Data Protection Laws:** means: (a) the GDPR; (b) the DPA; and (c) any laws that implement, replace, extend, re-enact, consolidate or amend the GDPR or DPA.

**Data Security Breach:** a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Protected Data.

**Deliverables:** the deliverables set out in the Order produced by the Supplier for the Client.

**Delivery Location:** has the meaning given in clause 4.1.

**EEA:** the European Economic Area.

**Equipment:** the Equipment (or any part of it) set out in the Order.

**Equipment Specification:** any specification for the Equipment, including any relevant plans or drawings, that is agreed in writing by the Client and the Supplier.

**Fair Use:** An upper limit of consumption of Services, as defined in these Terms.

**Force Majeure Event:** has the meaning given to it in clause 16.

**GDPR:** means the General Data Protection Regulation (EU) 2016/679.

**Inclusion List:** A specified list of services that defines what is included within the Managed Service Product. Forms part of the order, when processed as a Managed Service Agreement.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Managed Service Agreement:** an agreement for the provision of services provided in writing by the Supplier to the Client. Also known as a Recurring Time Service Agreement.

**Minimum Cancellation Notice Period:** the minimum period of notice that the Client must give to the Supplier to terminate the Services or any part of them or this Contract.

**Minimum Term:** The minimum term of the related product as specified in the order.

**Order:** a signed proposal, service agreement, quote or written instruction for the supply of Equipment and/or Service.

**Out of scope:** activities, time or equipment that is not planned for within the Contract or Fee.

**Protected Data:** means Personal Data received from or on behalf of the Client in connection with the performance of the Supplier's obligations under the Contract.

**Representatives:** means in relation to the Supplier its officers, employees, professional advisers, consultants and contractors that need to know the Confidential Information to enable the Supplier to comply with the terms of the Contract.

**Restricted Person:** means any person employed or engaged by the Supplier during the term of the Contract who has been engaged in the provision of the Services or the management of the Contract either as principal, agent, employee, independent contractor or in any other form of employment or Contract.

**Service Fee:** the fee payable by the Client to the Supplier for the Services, which is made up of the Subscription Fee and any applicable Usage Fee.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Client as set out in the Service Specification.

**Specific Terms and Conditions:** the Supplier's specific terms and conditions (if any) applicable to the Services (or any part of them) referred to in the Order.

**Subscription Fee:** that regular part of the Service Fee.

**Supervisory Authority:** means any regulator, authority, or body responsible for administering Data Protection Laws.

**Supplier:** Ashgates IT Ltd, registered in England and Wales (no: 10647697)  
5 Prospect Place, Millennium Way, Pride Park, Derby, DE24 8HG

**Usage Fee:** that variable part of the Service Fee based on actual Usage for a period.

## 1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) A reference to a party includes its personal representatives, successors and permitted assigns;
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision;
- (d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
- (e) A reference to writing or written form shall include any legible format capable of being reproduced on paper, irrespective of the medium used;
- (f) words in the singular include the plural and vice versa;
- (g) a reference to a Clause is a reference to a Clause of this Agreement; and
  
- (h) the headings are inserted for convenience only and do not affect the interpretation of any Clause;

## 2. Basis of contract

- 2.1 The Order constitutes an offer by the Client to purchase Equipment and/or Services in accordance with the Contract.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point, and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force unless stated otherwise in the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.
- 2.6 The invalidity or non-enforceability of any provision or Clause of this Agreement shall not affect the validity or enforceability of the remaining provisions and Clauses of this Agreement which shall continue in full force and effect.

### **3. Equipment**

- 3.1 The Equipment is described in the Equipment Specification.
- 3.2 To the extent that the Equipment (or part of it) is to be manufactured in accordance with an Equipment Specification supplied by the Client, the Client shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Equipment Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Equipment Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Client in any such event.

### **4. Delivery of Equipment**

- 4.1 The parties may agree either that:
- (a) the Supplier shall deliver the Equipment to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Client that the Equipment are ready; or
  - (b) the Client shall collect the Equipment from the Delivery Location within 5 (five) Business Days of the Supplier notifying the Client that the Equipment are ready.
- 4.2 Delivery of the Equipment shall be completed on the completion of unloading or loading (as may be appropriate) of the Equipment at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.
- 4.4 If the Supplier fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement Equipment of similar description and quality in the cheapest market available, less the price of the Equipment. The Supplier shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event or the Client's failure to provide the Supplier with adequate delivery instructions for the Equipment or any relevant instruction related to the supply of the Equipment.
- 4.5 If the Client fails to take or accept delivery of the Equipment within 5 (five) Business Days of the Supplier notifying the Client that the Equipment is ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Equipment:

- (a) delivery of the Equipment shall be deemed to have been completed at 9.00 am on the fifth Business Day following the day on which the Supplier notified the Client that the Equipment was ready; and
  - (b) the Supplier shall store the Equipment until delivery takes place and charge the Client for all related costs and expenses (including insurance).
- 4.6 If 10 (ten) Business Days after the Supplier notified the Client that the Equipment was ready for delivery the Client has not taken or accepted delivery of it, the Supplier may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Client for any excess over the price of the Equipment or charge the Client for any shortfall below the price of the Equipment.
- 4.7 The Supplier may deliver the Equipment by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment.
- 4.8 The Supplier may specify an Expected Time of Arrival (ETA), for the Equipment to be delivered to the Location. In the event that the Supplier has provided an ETA, the Client must inform the Supplier, by email if the Equipment fails to arrive before 23:59 on the date of the ETA. The Client must notify the Supplier of the failure to deliver the Equipment within 5 (five) working days of the date of the ETA. If the Supplier does not receive formal notification of the failed delivery from the Client within the 5 working day notice period, the Supplier shall charge the Client for all related costs and expenses (including insurance).

## 5. Quality of Equipment

- 5.1 The Supplier warrants that on delivery, and for a period of 30 days from the date of delivery (**warranty period**), the Equipment shall:
- (a) conform in all material respects with the Equipment Specification; and
  - (b) be free from material defects in design, material, and workmanship.
- 5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full if:
- (a) the Client gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Equipment do not comply with the warranty set out in clause 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Equipment; and
  - (c) the Client (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Client's cost.
- 5.3 The Supplier shall not be liable for the Equipment's failure to comply with the warranty in clause 5.1 if:
- (a) the Client makes any further use of such Equipment after giving a notice in accordance with clause 5.2;

- (b) the defect arises because the Client failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) best practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Equipment Specification supplied by the Client;
- (d) the Client alters or repairs such Equipment without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Equipment differs from the Equipment Specification as a result of changes made to ensure that it complies with applicable statutory or regulatory standards.

5.4 Except as provided in this clause, the Supplier shall have no liability to the Client in respect of the Equipment's failure to comply with the warranty set out in clause 5.1.

5.5 Any equipment defects outside of the Suppliers Warranty period, will fall back on the responsibility of the Manufacturer to resolve under their own Warranty terms and conditions. The Client acknowledges, it is their sole responsibility to resolve Manufacturer Warranty claims, directly with the Manufacturer at their own cost, whether time or materials.

5.6 The Client may request assistance from the Supplier in dealing with Manufacturer Warranty claims but the Supplier reserves the right to charge on a Time and Materials basis for such assistance.

5.7 The terms of these Conditions shall apply to any repaired or replacement Equipment supplied by the Supplier.

## **6. Title and risk**

6.1 The risk in the Equipment shall pass to the Client on completion of delivery.

6.2 Title to the Equipment shall not pass to the Client until the Supplier receives payment in full (in cash or cleared funds) for the Equipment.

6.3 Until title to the Equipment has passed to the Client, the Client shall:

- (a) store the Equipment separately from all other equipment held by the Client so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
- (c) maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause (b); and
- (e) give the Supplier such information relating to the Equipment as the Supplier may require from time to time.

6.4 If before title to the Equipment passes to the Client the Client becomes subject to any of the events listed in clause (b) to clause 14.2(d) then, without limiting any other right or remedy the Supplier may have:

- (a) the Client's right to use the Equipment in the ordinary course of its business shall cease immediately; and
- (b) the Supplier may at any time:
  - (i) require the Client to deliver up the Equipment; and
  - (ii) if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Equipment is stored in order to recover it.

## **7. Supply of Services**

7.1 Service Availability – Services are available Monday – Friday 08:00 - 17:30 (excludes public and / or bank holidays)

7.2 Emergency cover is available Monday – Friday 17:30 – 21:00 & Saturday – Sunday 09:00 – 17:00 (excluding public and / or bank holidays)

7.3 Any work completed outside the Service Availability times and/or during the emergency cover periods will be chargeable at the Supplier's current out of hours hourly rates.

7.4 Emergency support cannot be guaranteed.

7.5 Service outside of the Availability hours may be provided with prior agreement but cannot be guaranteed.

7.6 The Supplier shall supply the Services to the Client in accordance with the relevant Services Agreement, and/or Specific Terms and Conditions as applicable. The Services may include applications or other services provided by third parties.

7.7 The Supplier shall assist the Client in the set-up of the Services.

7.8 The Supplier shall provide technical assistance and training (which may incur a reasonable additional charge depending on requirements unless set out in any Services Agreement, Order or Specific Terms and Conditions) for the set-up and provision of the Services when reasonably requested to do so. The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified (including any project work that is time and materials charged) but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.9 The Supplier reserves the right to amend the Service Specification if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

7.10 The Supplier may, on prior notice to the Client, make changes to the Services, provided such changes do not have a material adverse effect on the Client's business operations.

7.11 The Suppliers Services are responsive in nature, responding to issues and/or requests as the Supplier is alerted to by the Client.

7.12 The Supplier shall have no obligation to provide the Services where faults arise from:

- 7.13 misuse, incorrect use of or damage to the Hardware and/or Software from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power;
- 7.14 failure to maintain the necessary environmental conditions for use of the Hardware and/or Software;
- 7.15 use of the Hardware and/or Software in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with any Modification forming part of the Software, or any fault in any such equipment or software;
- 7.16 relocation, installation or modification of the Hardware and/or Software by any person other than the Supplier or Support Staff;
- 7.17 any breach of the Client's obligations under the Contract or having the Hardware and/or Software maintained or supported by a third party;
- 7.18 any Modification not authorised by the Supplier resulting in a departure from the Specification;
- 7.19 or operator error.
- 7.20 The Supplier warrants to the Client that the Services will be provided using reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks that are allocated to them.
- 7.21 Unless stated in any Services Agreement or Specific Terms and Conditions the Supplier does not warrant that the Services will be error-free or uninterrupted.
- 7.22 The Supplier shall co-operate with the Client in all matters relating to the supply of services subject to the order it relates to.
- 7.23 The Supplier will obtain all necessary statutory and regulatory licences and permits to provide the services purchased within the Contract.
- 7.24 Maintain necessary insurance in respect of any breach of its obligations under the Order.
- 7.25 Supply of additional Services - the Client may from time to time request The Supplier to supply Additional Services. The Supplier shall use its reasonable endeavours to comply with the Client's request but acknowledges that The Supplier's ability to supply the Additional Services shall depend on the availability of appropriate resources at the time in question.
- 7.26 Where the Supplier agrees to provide Additional Services, such agreement shall be embodied in a Quote for Additional Services.
- 7.27 Each accepted Quote for Additional Services shall be made under, and shall incorporate, these Terms.
- 7.28 Limitation of Service**
- 7.29 The Supplier will its best endeavours to resolve request, problems or issues with third party equipment but where the requests, problems or issues cannot be resolve by the Supplier, they may need to rely on the support of the third-party provider.



7.30 The Supplier does not collect, recycle or sell any unwanted equipment on behalf of the Client. The Supplier, can, when requested securely destroy some forms of data storage media, as and when requested by the Client.

### **7.31 Quality of Service**

7.32 The Supplier always aims to provide a high quality of service. The Supplier warrants (within other provisions within the Contract) to the Client that the Services will be provided using reasonable care and skill.

7.33 The Supplier will not be liable for a breach of warranty unless the Client notifies The Supplier in writing of such a failure within 30 days of the performance of relevant services.

7.34 If the Client would like to discuss with the Supplier how the service could be improved or if the Client is dissatisfied with the service, the Client is receiving please let the Supplier know by contacting the Director dealing with the Client's affairs.

7.35 The Supplier provides no warranty on any equipment supplied, only the standard manufacturer's warranty will be applicable in accordance with the Manufacturer's terms and conditions.

7.36 The Client will be responsible for exercising any claim against the manufacturer's warranty.

7.37 The Supplier can assist with such a claim, but this will be charged at the Supplier's normal hourly rates.

7.38 The Supplier undertakes to look into any complaint carefully and promptly and to do all they can to explain the position to the Client. If the Supplier does not answer the Client's complaint to the Client's satisfaction, they may take up the matter with alternate director, Tony Lymn.

## **8. Client's obligations**

8.1 The Client shall:

- (a) ensure that the terms of the Order and any information it provides in the Service Specification and the Equipment Specification are complete and accurate;
- (b) co-operate with the Supplier as far as reasonable in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (e) prepare the Client's premises for the supply of the Services;
- (f) comply with all applicable laws, including health and safety laws;
- (g) comply with any policies, best practice documents and or configuration documentation issued by the Supplier including (but not limited to) acceptable use, security and disaster recovery;

- (h) respond to Supplier enquiries in a professional and timely manner; allowing reasonable notice to complete such requests.
- (i) report faults promptly to the Supplier;
- (j) promptly report any actual or suspected security breaches to [support@ashgatesit.co.uk](mailto:support@ashgatesit.co.uk) or 01332 380691.
- (k) provide the Supplier with remote and (if requested) physical access to any systems that the Supplier supports;
- (l) keep full backup copies of all of its data prior to the commencement of the Services and for the duration of the Services;
- (m) Test its data and data backups prior to the commencement of the Services and for the duration of the Services;
- (n) Safely store and maintain a list of all hardware and/or software purchased outside of the contract.
- (o) Obtain all necessary Third-Party Licences purchased outside of the contract, which may be required before the date on which the Services are to start and maintain all necessary Third-Party Licences which may be required for the duration of the Contract;
- (p) Obtain all necessary Third-Party Licences purchased outside of the contract, which may be required and provide full License details to the Supplier in a timely manner before the Licenses are used in the environment and maintain all necessary Third-Party Licences purchased outside of the contract which may be required for the duration of the Contract;
- (q) Safely store and maintain license information passed to it by the Supplier in relation to the Contract.
- (r) Ensure compliance with the terms of any licence(s) applicable to the Services or Third-Party licenses within its environment;
- (s) Accept that the Supplier can provide an ongoing snapshot of the Clients Software license position, if requested to do so by the Client but that will be subject to the Supplier's hourly rates as well as an ongoing subscription charge for the Software Asset management Agent service. The Software Asset Management Agent can only provide a snapshot of the Client's licensing position at the given time.
- (t) Accept it is the Client's responsibility for ensuring they are compliant in their use of Software License terms and conditions at the time of reporting and in the time between reports, if they choose to subscribe to the service.
- (u) ensure compliant installation and/or use of its hardware, software and services, within the terms of common law and manufacturer or developer license agreements.
- (v) ensure ongoing compliance with standards of which the Client have requested the Supplier to assist in helping the Client work towards and/or achieve, within the agreement(s) and/or terms set out by the standards regulator and/or service provider.
- (w) Ensure only lawful and non-malicious use of its IT System.

- (x) Indemnify the Supplier against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Supplier as a result of the Client's breach of the Contract or any negligent or wrongful act of the Client, its officers, employees, Contractors or agents;
- (y) keep all contact information provided to the Supplier up to date and correct in order to enable account management and technical notifications about the Services;
- (z) Keep and maintain all Supplier Materials at the Client's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to The Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- (aa) if the Services include VoIP services, to keep the Supplier aware of any phone location changes in order to ensure details are correct for the use of 999 emergency services;
- (bb) Ensure that the necessary environmental conditions are maintained for the use of the Hardware and/or Software and shall take all reasonable steps to ensure that the Hardware and/or Software is operated in a proper manner by the Client's employees;
- (cc) keep the Supplier up to date with any changes to the infrastructure or environment relating to the Services that might impact on the performance of the Services;
- (dd) Ensure that any Hardware and/or Software that has not been maintained or supported by the Supplier prior to the Commencement Date is in a condition acceptable to the Supplier prior to the start of the Supply of the Services;
  - a. The Client agrees any work required by the Supplier in order to ensure any Hardware and/or Software is in an acceptable condition to the Supplier will be chargeable on a time and materials basis.
- (ee) maintain any Equipment and insure any rented or loaned Equipment against all risks for its full value on the Client's behalf from the date of delivery;
- (ff) notify the Supplier as soon as reasonably practicable of any loss of or damage to rented or loaned Hardware (fair wear and tear excepted) and, on request, reimburse the Supplier for the price for any loss or damage to it;
- (gg) establish, maintain and monitor adequate internal security measures for the Client's access and use of the Services including the confidentiality and safe storage of all login details, usernames and passwords and updating them regularly; and will not knowingly allow its service and access details, specifically any security codes or passwords, to be viewed or retrieved by any third parties.
- (hh) use the Services for the Client's business purposes only; and
- (ii) comply with any additional obligations as set out in the Service Specification and the Equipment Specification;
- (jj) return any loaned or rented Equipment to the Supplier well-packaged and in good condition (fair wear and tear excepted) within 7 (seven) days of termination of Contract; and

- (kk) where the Services include applications or other services provided by third parties, to comply with any terms, conditions and instructions issued by those third parties.

8.2 The Client shall not access or use the Services for any unlawful purpose including:

- (a) in any way which is likely to infringe the Intellectual Property Rights of a third party;
- (b) for the transmission, display, downloading or uploading of any material which is or is likely to be construed as defamatory, threatening, offensive, abusive, obscene or which will or is likely to cause unnecessary anxiety or inconvenience to a third party or which is otherwise unlawful;
- (c) attempting to gain unauthorised access to the Services;
- (d) attempting to modify, distribute, reverse engineer or otherwise attempting to decipher any code in connection with the Services and/or any other aspect of the Supplier's or the Supplier's licensor's technology;
- (e) in any way that is likely to cause damage or adversely affect the operation of the Services or interfere with or disrupt the Client's website, other websites, servers or networks; and
- (f) in any way that will or is likely to interfere with the use and enjoyment of the Services for other users.

8.3 Unless the Supplier has appointed the Client as a partner or reseller the Client agrees that it will not market, offer to sell or resell the Services to any third party.

8.4 If the Services include any third-party services, the Client agrees to be bound by the third-party terms and conditions applicable to such services.

8.5 If the Services include any project work that is time and material charged the Client accepts that:

- (a) any failure by the Client to adhere to the terms of this Contract that leads to delays will result in target dates being extended so as to accommodate fully the effects of such delay; and
- (b) any delay that is directly or indirectly caused by any act or omission by the Client may result in the Supplier charging the Client for the effects of such a delay on a time and materials basis at its standard published hourly billing rates.

8.6 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.6; and

- (c) the Client shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Client Default.

8.7 In order to protect the legitimate business interests of the Supplier, the Client covenants with the Supplier that it shall not (except with the prior written consent of the Supplier):

- (a) attempt to solicit or entice away; or
- (b) solicit or entice away

from the employment or service of the Supplier the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the Supplier.

8.8 The Client further covenants with the Supplier that it shall not (except with the prior written consent of the Supplier) employ or engage or otherwise facilitate the employment or Contract of any Restricted Person.

8.9 The Client shall be bound by the covenants set out in clauses 8.7 and 8.8 during the term of the Contract, and for a period of 12 months after its termination or expiry.

8.10 If the Client commits any breach of clause 8.7 or clause 8.8 the Client shall, on demand, pay to the Supplier a sum equal to one year's basic salary or the annual fee that was payable by the Supplier to the Restricted Person plus the recruitment costs incurred by the Supplier or relevant in replacing such person. The Client acknowledges that it has had the opportunity to obtain independent legal advice on the implications of this clause and agrees to be bound by it.

## **9. Charges, payment and Fee Limitations**

### **9.1 Equipment**

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the order; and
- (b) unless otherwise stated, shall be exclusive of all costs and charges of packaging, insurance, transport of the Equipment.

### **9.2 The Supplier reserves the right to:**

- (a) increase the charges for the Services.
  - (i) From time to time as determined by the Supplier.
  - (ii) in line with any price increase levied upon the Supplier by a third-party supplier.
- (b) increase the price of the Equipment, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Equipment to the Supplier that is due to:
  - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Client to change the delivery date(s), quantities or types of Equipment ordered, or the Equipment Specification;

- (iii) any delay caused by any instructions of the Client in respect of the Equipment or failure of the Client to give the Supplier adequate or accurate information or instructions in respect of the Equipment; or
- (iv) any price increase levied upon the Supplier by a third-party supplier.

### **9.3 Hourly Rate Professional Time Charges and Out of Scope Time charges**

- a) For those engaged with us on an hourly rate basis, and for those time charges deemed to be out of scope of a Managed Service Agreement, the following terms apply:
- b) The Supplier's Time charges are applied in accordance with the Supplier's Hourly Rate Schedule. The Client may request a current Hourly Rate Schedule at any time by requesting it in writing from the Supplier.
- c) Hourly charge rates are likely to vary for different members of the Suppliers staff, dependent upon their seniority and/or level of experience.
- d) Hourly charge rates for time outside of the Service Availability hours, will be higher than those rates offered during the service availability times.
- e) Hourly charge rates for Emergency and/or Disaster Recovery work, will be higher than hour standard Hourly rates.
- f) Time Recording – In order for the Supplier to accurately track Client time and therefore time charges, the Supplier records their time in 15 minute blocks.
- g) The Client acknowledges that the Supplier will record all time taken in relation to the Contract and therefore all time may be chargeable to the Client, in accordance with the Order. Time may still be charged by the Supplier when a resolution is not agreed, for example but not limited to, troubleshooting, investigation, and diagnosis.
- h) The Client acknowledges that the categorisation of time is determined by the Supplier.

### **9.4 Managed Service Agreements, associated fees and limitations**

- a) If the Client is engaged with us on the basis of a Managed Service Agreement, the following terms and conditions will also apply;
- b) Where the order states a minimum term, the number of users, devices and/or items subscribed to will remain at the minimum contracted quantity as specified in the order unless there is an increase in the quantity consumed, at which point the quantity invoiced will be revised up, according to the actual subscribed numbers. Any changes up will be reflected immediately from the month the commenced.
- c) Where the minimum term of the order has expired, and the product or service has become a rolling agreement, as specified in section 14.4, the number of users, devices and/or items subscribed to will be reviewed monthly and any changes up will be reflected immediately, and be displayed on the next invoice. Any changes down will be reflected at the end of the current billing period and shown on the first invoice in the next complete billing period for the service or product.

- d) Where the number of consumed product subscriptions is higher than the number of users in the Managed Service subscription, the Supplier will levy an additional charge for the overage, over and above the agreed fee.
- e) Fair Usage – Managed Service Agreements are subject to the Supplier's Fair Usage terms;
  - 9.4.e.1 Managed Service Agreements are open to unfairly high use and the Supplier must protect themselves commercially from any such losses, whereby the high usage and therefore its commercial value far out ways the agreed fee.
  - 9.4.e.2 On any occasion whereby the usage of a Managed Service Agreement exceeds the commercial value, in a given billing period, the Supplier reserves the right to levy a fair usage fee, against the 'overuse' of the Supplier's time.
  - 9.4.e.3 Where the total use of the Supplier's time consumed under the contract, in any given billing period, exceeds 1 (one) hour per user, the Supplier shall be entitled to levy a fair usage overage charge in addition to the agreed fee. This will be calculated in-line with the Suppliers current Hourly Rates.
  - 9.4.e.4 The Supplier, may at its discretion apply a discount on the Fair usage fee.
  - 9.4.e.5 The Supplier may reasonably determine whether the time consumed is billable or non-billable. Only billable time will be included in the fair usage calculation.
- 9.5 The Client acknowledges that by omitting to select any of the services offered by the Supplier, the Client is responsible for the consequences of omitting said services.
- 9.6 The Managed Services are as described in the Order, by agreeing the Order, the Client acknowledges they are accurately described.
- 9.7 If there are no pre-arranged scheduled tasks agreed in writing, the Client acknowledges, none will take place.
- 9.8 Managed Service fees will be reviewed annually, in-line (but not necessarily limited to) with the latest published rate of CPI (Consumer Price Index) inflation, whereby there is no material change in the contract.
- 9.9 Where there is a material change in the contract mid-term, the Supplier reserves the right to review and increase the fee, the Supplier will provide at least 14 days written notice to the Client, in this regard.
- 9.10 Where the contract is revised with a new order mid-term, the Order will form part of the contract and will be automatically reflected in the new fee.
- 9.11 If the agreed fee becomes commercially unsuitable for the Contract, the Supplier reserves the right to review the fee for the Contract at any time during the Contract, providing 14 days written notice. If the Client disagrees with the reviewed fee, they have the right invoke the cancellation notice period as set out in these terms.
- 9.12 The Supplier shall be entitled to charge (above the Managed Service Fee(s) on a time and materials basis) where:
  - a) no fault is found;
  - b) The work is required out of the Service Availability hours as stated in the Contract.

- c) Out-of-scope Services are required; or
  - d) the cause of the incident that gave rise to the Support Request is one or more of the following:
    - 9.12.d.1 that power has been switched off or disconnected from a socket, device or external power supply unit.
    - 9.12.d.2 that a network cable is disconnected at device, data point, switch or hub including at the communications cabinet.
    - 9.12.d.3 that the fault relates to a telephone line and/or broadband circuit unless the telephone line and/or broadband service has been supplied and is currently supported by the Supplier under this Contract
    - 9.12.d.4 that the fault relates to any device that has not been supplied by the Supplier unless it is currently supported by the Supplier under this Contract; or
    - 9.12.d.5 the Supplier reasonably believes that the fault has been caused (wholly or in part) by damage or interference with equipment or software by the Client.
  - e) Where the work required arises from the supply by the Client or any third-party, of inaccurate or incomplete information, or from the failure by the Client or any third-party to supply any appropriate information or the Client's failure to act on advice and/or recommendations from the Supplier or respond promptly to communications from the Supplier.
  - f) The Supplier will only provide Services to the configuration items, devices, services, software, users or infrastructure that is agreed in the order. The Client acknowledges any additions, moves, changes or work requested that the Supplier determines to be outside the scope of agreed fees, will be chargeable on a time and materials basis.
- 9.13 The Supplier may reasonably determine that any services are Out-of-scope Services. If the Supplier makes any such determination, it shall with best endeavours, notify the Client of that determination.
- 9.14 The Client acknowledges that emergency and/or Disaster Recovery work will be deemed out of scope and subject to charges on a time and materials basis.
- 9.15 The Client acknowledges that any material or significant change to their IT environment will be deemed out of scope and subject to charges on a time and materials basis.
- 9.16 The Client acknowledges that the set up of new users and new equipment will be deemed out of scope and subject to charges on a time and materials basis.
- 9.17 The Client acknowledges, due to the nature of the Services, it may not always be possible or practical to inform the Client of out of scope charges in advance of the work being completed. The Client acknowledges, the time completed by the Supplier in such a scenario is billable to the Client.
- 9.18 The Client acknowledges that the Supplier is not required to provide out of scope Services.
- 9.19 The Client acknowledges that the Supplier is entitled to charge on a time and materials basis when the Service is deemed out of scope by the Supplier.



9.20 The Supplier will only provide Services to the configuration items, devices, services, software, users or infrastructure that is agreed through the applicable order(s).

### **9.21 Other charges**

9.22 Travel mileage costs are charge at £0.40 per mile.

9.23 Travel times costs are charged at 50% of the Supplier's standard hourly rates.

9.24 Any expenses or equipment over £50 will be authorised by the Client prior to purchase. Any expenses or equipment under this value may be incurred by the Supplier and recharged to the Client without notice, in the interests of efficiency.

### **9.25 General (Charges and Payment)**

9.26 Any expenses or equipment may be invoiced in advance, as determined by the Supplier.

9.27 Any new subscriptions will be charged from the first day of the month in which the order was signed or that the subscription commenced, whichever is later.

9.28 Any additions to existing subscriptions will be charged from the first day of the month in which the addition was applied.

9.29 Where applicable, any reduction in subscription numbers will be made from the first day of the next billing period, that commences after the current billing period.

9.30 Any discounts applied may be withdrawn at any time without notice.

9.31 Unless the parties otherwise agree, the following shall apply:

- (a) the Supplier shall invoice the Client on or at any time after completion services, with the exception of any expenses or equipment that the Supplier has elected to invoice in advance; and
- (b) where the Services include an agreed minimum term, the Client shall be liable for full payment in respect the entire term of each service even where the term of that service exceeds the term of the Contract;
- (c) for the avoidance of doubt, the Client acknowledges that termination of the Contract for any reason will not avoid its liability under the clause above.

9.32 The Client shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Client; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

9.33 The Client acknowledges that the Supplier shall charge any incurred time and/or equipment costs following any instruction given to it by the Client, which the Client then decides to terminate or pause prior to its completion.

9.34 The billing period will be determined by the Supplier and the Supplier reserves the right to adjust the period from time to time.

- 9.35 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Equipment at the same time as payment is due for the supply of the Services or Equipment.
- 9.36 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 9.37 The Supplier will provide a minimum of 14 days written notice to the Client, of any change to fees in relation for the Managed Service and/or products.

## 10. Intellectual property rights

- 10.1 Unless stated otherwise, all Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Client) shall be owned by the Supplier or a third-party licensor.
- 10.2 The Client acknowledges that it has no right, title or interest in or to such Intellectual Property Rights other than as expressly set out in the Contract or as permitted by law.
- 10.3 The Client shall indemnify and hold the Supplier harmless against any costs, liabilities, losses, and expenses including reasonable legal costs arising from any claim relating to the infringement of any third-party Intellectual Property Rights provided that:
- (a) the Supplier gives notice of the claim;
  - (b) the Client has sole control and defence of the claim; and
  - (c) the Supplier provides reasonable cooperation in the defence and settlement of the claim.

## 11. Data protection

- 11.1 The Client and the Supplier acknowledge that the Client is the Controller and the Supplier is a Processor for the purposes of processing Protected Data pursuant to these Conditions. The Client shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Client shall ensure that all instructions that it gives to the Supplier in respect of Protected Data are in accordance with Data Protection Laws.
- 11.2 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and these Conditions.
- 11.3 The Supplier confirms that it has a valid registration with the Supervisory Authority. A copy of the Supplier's registration certificate is available for inspection on request.
- 11.4 The Supplier shall process Protected Data fairly and lawfully in accordance with clauses 11.5 and 11.6.
- 11.5 The Supplier shall ensure that it processes Protected Data on the basis of one or more of the following legal grounds:

- (a) the Data Subject has unambiguously given his or her consent;
- (b) processing is necessary for the performance of a contract to which the Data Subject is a party or in order to take steps at the request of the Data Subject prior to entering into a contract;
- (c) processing is necessary for compliance with a legal obligation to which the parties are subject, other than an obligation imposed by contract;
- (d) processing is necessary in order to protect the vital interests of the Data Subject;
- (e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the parties; and / or
- (f) processing is necessary for the purposes of the legitimate interests pursued by the parties except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the Data Subject.

11.6 In addition to its obligations under clause 11.5 the Supplier shall ensure that it processes Sensitive Data on the basis of one or more of the following legal grounds:

- (a) the Data Subject has given his or her explicit consent to the processing of the Sensitive Data;
- (b) processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the Controller in connection with employment;
- (c) processing is necessary to protect the vital interest of the Data Subject or of another person where the Data Subject is physically or legally incapable of giving his or her consent or the Controller cannot reasonably be expected to obtain the data subject's consent;
- (d) processing relates to data which has been made public as a result of steps taken by the Data Subject;
- (e) processing is for the purpose of or in connection with legal proceedings (including prospective legal proceedings), for the obtaining legal advice or is otherwise necessary for the purpose of establishing, exercising or defending legal rights;
- (f) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the parties;
- (g) processing is necessary for the purposes of preventing fraud; and / or
- (h) processing relates to racial or ethnic origin and is necessary to review the existence or absence of equality of opportunity or treatment with a view to enabling such equality to be promoted or maintained.

11.7 The Client shall, in respect of Protected Data, ensure that their privacy notices are clear and provide sufficient information to the Data Subjects for them to understand what of their Protected Data the Client is sharing with the Supplier, the circumstances in which it will be shared, how such data will be processed and either the identity of the Supplier or a description of the type of organisation that will receive the Protected Data.

- 11.8 The Client and the Supplier both acknowledge that Data Subjects have the right to obtain certain information about the processing of their Personal Data through a Subject Access Request. In circumstances where the processing of a Data Subject's Personal Data is not in compliance with Data Protection Laws, Data Subjects may also request rectification, erasure or blocking of their Personal Data. Where the Supplier receives a Subject Access Request as a result of its processing Protected Data, the Client shall provide all reasonable assistance at its own cost to enable the Supplier to respond to the Subject Access Request.
- 11.9 The Supplier shall not retain or process Protected Data for longer than is necessary. Any Protected Data in the Supplier's possession on the termination or expiry of the Contract will be returned to the Client unless the Supplier is required by law to retain such Protected Data for a specified period.
- 11.10 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Protected Data.
- 11.11 Each party warrants to the other that it will process the Protected Data in compliance with the Data Protection Laws and all codes, recommendations and advice issued by the Supervisory Authority.
- 11.12 The Supplier warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
- (a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Protected Data and against the accidental loss or destruction of, or damage to, Protected Data to ensure a level of security appropriate to:
    - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
    - (ii) the nature of the data to be protected; and
  - (b) take reasonable steps to ensure compliance with those measures.
- 11.13 Subject to clause 13 below, The Client agrees to indemnify and keep indemnified and defend at its own expense the Supplier against all costs, claims, damages or expenses incurred by the Supplier for which the other party may become liable due to any failure by the Client or its employees or agents to comply with any of its obligations under this clause 11.
- 11.14 The Client acknowledges that, subject to clauses 11.5 and 11.6 above, the Supplier is reliant on the Client for direction as to the extent to which the Supplier is entitled to use and process the Protected Data. Consequently, the Supplier will not be liable for 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 or indirectly from the Client's instructions.
- 11.15 The Supplier may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:
- (a) is on terms which are substantially the same as those set out in these Conditions; and

(b) terminates automatically on termination of the Contract for any reason.

11.16 The Supplier will notify the Client promptly of any Data Security Breach and use all reasonable endeavours to rectify it or mitigate against its effects. The Supplier will also report such Data Security Breach to the Supervisory Authority where required by Data Protection Laws. The Client agrees to provide all necessary assistance at its own expense to the Supplier to facilitate the handling and resolution of the Data Security Breach in an expeditious and compliant manner.

11.17 In the event of a dispute or claim brought by a Data Subject or the Supervisory Authority concerning the processing of Protected Data against either or both parties, the parties will inform each other about any such disputes or claims and will cooperate with a view to settling them amicably in a timely fashion.

11.18 The parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Supervisory Authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

11.19 The Supplier may without the consent of but by written notice to the Client unilaterally amend this clause 11 to comply with changes in Data Protection Laws.

11.20 The Client agrees that the Supplier may provide the Client's contact details to any company that it uses to provide the Services solely for the purpose of delivering the Services.

11.21 Retention of Records

11.22 During the course of the Supplier's work, the Supplier will collect information from the Client for example passwords, encryption keys that will be kept in a secure encrypted state and will only be accessible by authorised employees.

## 12. Confidentiality

12.1 Confidential Information means all confidential information that the Client discloses or makes available to the Supplier before, on or after the date of this agreement. This includes:

- (a) the fact that discussions and negotiations are taking place and the status of those discussions and negotiations;
- (b) the existence and terms of this agreement;
- (c) all confidential or proprietary information relating to:
  - (i) the business, affairs, Clients, Client, suppliers, plans, intentions, or market opportunities of the Client; and
  - (ii) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Client;
- (d) any information, findings, data or analysis derived from Confidential Information; and

- (e) any other information that is identified as being of a confidential nature; but excludes any information referred to in clause 12.2.

12.2 Information is not Confidential Information if:

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Supplier in breach of this agreement;
- (b) it was available to the Supplier on a non-confidential basis prior to disclosure by the Client;
- (c) it was, is, or becomes available to the Supplier on a non-confidential basis from a person who, to the Supplier's knowledge, is not under any confidentiality obligation in respect of that information;
- (d) it was lawfully in the possession of the Supplier before the information was disclosed by the Client;
- (e) it is developed by or for the Supplier independently of the information disclosed by the Client; or
- (f) the parties agree in writing that the information is not confidential.

12.3 In return for the Client making Confidential Information available to the Supplier, the Supplier undertakes to the Client that it shall:

- (a) keep the Confidential Information secret and confidential;
- (b) not use or exploit the Confidential Information in any way except for complying with its obligations under the Contract;
- (c) not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with this agreement;
- (d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for complying with its obligations under the Contract; and
- (e) apply the same security measures and degree of care to the Confidential Information as the Supplier applies to its own confidential information, which the Supplier warrants as providing adequate protection from unauthorised disclosure, copying or use.

12.4 The Supplier shall establish and maintain adequate security measures to safeguard the Confidential Information from unauthorised access or use.

12.5 The Supplier may disclose the Confidential Information to its Representatives on the basis that it:

- (a) informs those Representatives of the confidential nature of the Confidential Information before it is disclosed; and
- (b) procures that those Representatives comply with the confidentiality obligations in clause 12.3 as if they were the Supplier.

- 12.6 If so, requested by the Client at any time by notice in writing to the Supplier, the Supplier shall promptly:
- (a) destroy or return to the Client all documents and materials (and any copies) containing, reflecting, incorporating or based on the Client's Confidential Information;
  - (b) erase all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form;
  - (c) to the extent technically and legally practicable, erase all the Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
  - (d) certify in writing to the Client that it has complied with the requirements of this clause 12.7.
- 12.7 Nothing in clause 12.7 shall require the Supplier to return or destroy any documents and materials containing or based on the Confidential Information that the Supplier is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of this agreement shall continue to apply to any documents and materials retained by the Supplier pursuant to this clause 12.8.
- 12.8 The Client reserves all rights in its Confidential Information. The disclosure of Confidential Information by the Client to the Supplier does not give the Supplier or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this agreement.
- 12.9 Except as expressly stated in this agreement, the Client makes no express or implied warranty or representation concerning its Confidential Information including, but not limited to, the accuracy or completeness of the Confidential Information.
- 12.10 The Client shall, for the duration of the Contract and thereafter, restrict disclosure of Confidential Information to such of its employees, agents or Subcontractors as need to know it for the purpose of discharging its obligations under the Contract, and shall not use for its own purposes (other than implementation of the Contract) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any Confidential Information, unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of the Contract, or subsequently comes lawfully into the possession of such party from a third party.
- 12.11 The Client shall use its reasonable endeavours to prevent the unauthorised disclosure of any Confidential Information and shall ensure that its employees, agents or Subcontractors are subject to obligations of confidentiality corresponding to those which bind the Client under the Contract.
- 12.12 The Client shall notify The Supplier if any of its employees, agents or Subcontractors connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall

afford reasonable assistance to The Supplier, at the Client's reasonable cost, in connection with any enforcement proceedings which the Supplier may elect to bring against any person.

- 12.13 The terms of the Contract may not be disclosed by the Client to a third party (other than to its legal advisors) without the prior written agreement of The Supplier.
- 12.14 The Supplier in the context of diagnosing and resolving IT issues for The Client may access Client, staff or commercial confidential and/or sensitive information. Under what is known as the common law duty of confidentiality, confidential information (information that individuals disclose in confidence) should not be used or shared further without the consent of the individual and The Supplier is bound by this duty in relation to any information it accesses in the course of providing IT support to The Client. Exceptions to the requirement for consent are limited to:
- 12.15 A legal reason to disclose information, e.g., by Acts of Parliament or court orders;
- 12.16 A public interest justification for breaching confidentiality such as a serious crime.
- 12.17 Any breach or potential breach of this duty by The Supplier should be reported to The Client in accordance with the Supplier's Data Breach Policy.
- 12.18 The confidentiality clause shall survive termination of the Contract.

### **13. Limitation of liability**

- 13.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
  - (e) defective products under the Consumer Protection Act 1987.
- 13.2 Subject to clause 13.1, the Supplier shall not be liable to the Client, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- (a) pure economic loss;
  - (b) loss of profits;
  - (c) loss of sales or business;
  - (d) loss of agreements or contracts;
  - (e) loss of anticipated savings;



- (f) loss of use or corruption of data;
- (g) loss of or damage to goodwill;
- (h) any indirect loss; or
- (i) any consequential loss.

13.3 The Client acknowledges that the Supplier shall not be liable to the Client for:

- a) any accidental or malicious damage caused to the IT Systems by the Client or any third party.
- b) The Client not ensuring they have relevant accessible and working data and/or system backups.
- c) any unlawful and or non-compliant installation or use of any equipment, hardware, software, licences or services within or outside of the Client's IT system.
- d) any issues relating to or the disruption of, or loss of availability of any equipment, software, services.
- e) any failure by the Client to implement recommendations made by the Supplier.
- f) any unauthorised or improper use, operation or neglect of the Client's Operating Environment, any Client side equipment, software or equipment via which the Services or any third-party Services are accessed or used in relation to the Contract.
- g) any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow The Supplier's instructions (whether given verbally or in writing), misuse or alteration of the Equipment, or any other act or omission on the part of the Client or any third party.
- h) any repair, adjustment, alteration or modification of the Services provided the Supplier in relation to the Contract, by any person that is not a representative of the Supplier.
- i) any acts or omissions by Third Party Providers, or any unauthorised use of Services, equipment or software.
- j) Any non-compliance with the Client's obligations under this agreement.
- k) Any causes beyond the control of the Supplier.

13.4 The Client acknowledges that its use of the internet to access the Services (or part of the Services) is at its own risk and that the Supplier shall not be liable in respect of any goods, services, information, software or other material that the Client may obtain from a third party when using the internet.

13.5 The advice which the Supplier gives to the Client is for the Client's sole use and does not constitute advice to any third party to whom the Client may communicate it.

13.6 In the event that the Supplier finds themselves subject to a claim from another party arising out of the Contract (other than as a result of own negligence or wilful default) any claim established against the Supplier and the costs the Supplier necessarily incur in defending it would form part of the expenses, the Supplier would look to recover from the Client.

- 13.7 The Supplier will provide the Services outlined in the Contract with reasonable care and skill. However, the Supplier will not be responsible for any losses, penalties, surcharges, arising from the supply by the Client or any third-party, of inaccurate or incomplete information, or from the failure by the Client or any third-party to supply any appropriate information or the Client's failure to act on advice and/or recommendations from the Supplier or respond promptly to communications from the Supplier.
- 13.8 Reliance on advice - The Supplier will endeavour to record all advice on important matters in writing. Advice given orally is not intended to be relied upon unless confirmed in writing. Therefore, if the Supplier provides oral advice (for example during the course of a meeting or a telephone conversation) and the Client wishes to be able to rely on that advice, the Client must ask for the advice to be confirmed by the Supplier in writing.
- 13.9 Please note that the Supplier does not offer legal advice and therefore any matters of law should be discussed with a qualified solicitor or lawyer.
- 13.10 Electronic Communication - as internet communications are capable of data corruption, the Supplier does not accept any responsibility for changes made to such communications after their despatch. For this reason, it may be inappropriate to rely on advice contained in an e-mail without obtaining written confirmation of it. All risks connected with sending commercially sensitive information relating to the Client's business are borne by the Client and are not the responsibility of the Supplier. If the Client does not accept this risk, the Client should notify the Supplier in writing that e-mail is not an acceptable means of communication.
- 13.11 E-mail may be used to enable the Supplier to communicate with the Client. As with any other means of delivery this carries with it the risk of inadvertent misdirection or non-delivery. It is the responsibility of the recipient to carry out a virus check on any attachments received.
- 13.12 Subject to clause 13.1, the Supplier's total liability to the Client, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract (including any indemnity under it), shall be limited to:
- (a) in any Minimum Cancellation Notice Period 100% of the time charges paid in respect of the previous 12 month period, this excludes any equipment costs during the period.
- 13.13 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 13.14 The Client acknowledges that it has read and understood this clause 13 and that it has adequate insurance or other financial means to cover for any losses beyond those set out in this clause.
- 13.15 This clause shall survive termination of the Contract.

## **14. Termination**

- 14.1 Where the Client wishes to terminate this contract, the Client shall give no less than 180 days' notice to terminate the Contract or any Service(s) supplied pursuant to it, in writing to the Supplier. The termination of the Contract will take place at the end of the calendar month 180 days after the date that the notice to terminate has been received by the Supplier. If no notice or less than 180 days' notice is received by the Supplier, the

Contract and any Service(s) supplied pursuant to it shall continue for the stated minimum term of the Contract or any Service(s) minimum term as stated in the order.

- 14.2 Where the Services include those with a minimum term agreement, provided by the Supplier or any third party, the Client shall be liable for full payment in respect the entire term of each service even where the minimum term of the service exceeds the term of the Contract;
- 14.3 For the avoidance of doubt, the Client acknowledges that termination of the Contract for any reason will not avoid its liability under the clause above.
- 14.4 At the end of the minimum term, the contract will revert to a rolling agreement, subject to the notice period(s) specified in 14.1 and 14.5, unless the order has been superseded with a new order or agreement, at which point the new order or agreement will supersede the existing order or agreement and the new minimum term(s) will apply as specified in the order.
- 14.5 Where the Supplier wishes to terminate the contract, the Supplier shall give no less than 30 days' notice to terminate the Contract or any Service(s) supplied pursuant to it in writing to the Client. The termination of the Contract will take place at the end of the calendar month 30 days after the date that the notice to terminate has been sent by the Supplier.
- 14.6 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 5 (five) days after receipt of notice in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.7 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Client if:
- (a) the Client fails to pay any amount due under the Contract on the due date for payment; or
  - (b) there is a change of control of the Client.
- 14.8 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Equipment under the Contract or any other contract between the Client and the Supplier if the Client fails to pay any amount

due under the Contract on the due date for payment, the Client becomes subject to any of the events listed in clause (b) to clause 14.2(d), or the Supplier reasonably believes that the Client is about to become subject to any of them.

## **15. Consequences of termination**

### **15.1 On termination of the Contract:**

- (a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Equipment supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return any Deliverables or Equipment which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

15.2 Termination of the Contract shall not affect any rights, remedies, obligations and 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.

15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## **16. Force majeure**

16.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its or, in the case of the Supplier, its own suppliers' reasonable control. These include: (a) natural disasters or "acts of God," such as lightning, tornadoes, hurricanes, tsunamis, floods and earthquakes; (b) manmade disasters, such as plant fires or floods; (c) war and civil issues, such as riots, civil unrest, acts of terrorism; (d) labour disputes or strikes; (e) government embargoes or other government actions affecting the supply chain; and (f) power outages or transportation issues.

16.2 Clause 16.1 above shall not apply in respect of any failure or delay by the Client to make any payment to the Supplier that falls due under the Contract.

## **17. General**

### **17.1 Assignment and other dealings**

- (a) The Supplier may at any time assign, transfer, charge, Subcontract or deal in any other manner with all or any of its rights under the Contract and may Subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Client shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier which shall not be unreasonably withheld, conditioned or delayed.

## 17.2 Notices

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Order.
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

**17.3 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

**17.4 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

**17.5 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

## 17.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

- 17.7 **Third parties' rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 17.8 **Variation.** The Supplier may, from time to time amend the Contract by giving 14 days' written notice to the Client. If the Client does not accept the amended Contract, either party may exercise termination, providing the required written notice as required by the terms of the Contract.
- 17.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 17.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.
- 17.11 **Execution.** Both parties agree that the signing of the Order and the Conditions electronically shall be as valid as if signed in manuscript.