



General Terms and Conditions

1. DEFINITIONS

- 1.1 'Additional Term' means any term of this Agreement which is subsequent to the expiry of the Minimum Term, which shall have the duration set out on the Order.
- 1.2 'Agreement' means these General Terms and Conditions, any engrossed Order, and a single instance of Supplementary Terms with its attached Service Schedule, all of which, together constitute the agreement between the parties for the supply of Goods and Services.
- 1.3 'Applicable Law' means:
 - 1.3.1 The laws of the jurisdiction set out in clause 17 hereof, any re-enactments thereof and regulations imposed by regulatory bodies that apply to the provision and receipt of the Services; and
 - 1.3.2 The laws of the jurisdictions under which the Company's suppliers operate and any re-enactments thereof, that apply to the provision and receipt of the Services.
- 1.4 'Applicable Service' means a Service or part thereof for which the Company makes an express commitment in relation to performance and sets out remedies in the event of failure to meet such commitment.
- 1.5 'Commencement Date' means the date of commencement of this Agreement, as set out on the Order, which is the date of the Company's acceptance of the Order.
- 1.6 'Confidential Information' means information, documentation, know-how, data, diagrams, specifications or other materials (digital, written or oral), belonging to the other and concerning the business and affairs of the other, including Customer Data and Customer Information.
- 1.7 'Customer Data' means data that is the property of the Customer (including any information or data derived there from), which may contain Personal Data and which is:
 - 1.7.1 Transmitted via Nexus Point's Infrastructure; and / or
 - 1.7.2 Remotely stored within Nexus Point's Infrastructure or otherwise stored on Nexus Point's premises; and / or
 - 1.7.3 Data (for example names, user-names and email addresses), used by Nexus Point for the purposes of configuration of the Services, or the configuration Customer's Equipment or Software
- 1.8 'Customer Information' means information supplied by the Client which includes Personal Data (including names, email addresses, company address, telephone numbers, usernames and passwords) which is required by the Company to enable it to deliver the Services under the terms of this Agreement.
- 1.9 'Direct Client' means a Client who has directly placed an order for Goods and or Services with the Company.
- 1.10 'Equipment' means telephony and IT hardware, including telephone handsets, workstations, servers, routers and switches.
- 1.11 'Force Majeure' means an event affecting the performance by a party of its obligations under this Agreement, arising from circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action (except any industrial action relating to the Company, its subcontractors or suppliers or any other failure in the Company's supply chain), government restrictions, legislation, act of God or any other occurrence of a like nature.
- 1.12 'General Terms and Conditions' means these General Terms and Conditions
- 1.13 'Goods' means any goods that are supplied to the Client by the Company, including Equipment and Software.

- 1.14 'Good Industry Practice' means in relation to any undertaking and any circumstances, the exercise of the degree of skill, care, prudence and foresight which would be expected from a provider of business-critical services having regard to factors such as the nature and size of the parties, the term of the Agreement, the pricing structure and any other relevant factors.
- 1.15 'Hour' means clock hour, which may fall outside of the Working Day.
- 1.16 'Infrastructure' means the Company's network infrastructure, servers and storage.
- 1.17 'Intellectual Property' means all intellectual property, including patents, utility models, trade and service marks, trade names, domain names, rights in designs, copyrights, moral rights, rights in databases, software, trade secrets and know-how, in all cases whether or not registered or able to be registered and including registrations and applications for registration of any of these and rights to apply for the same, rights to receive equitable remuneration in respect of any of these and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world.
- 1.18 'Intellectual Property Rights' ('IPR') means the right to title to any Intellectual Property.
- 1.19 'Issue' means any non-conformity, defect or failure in the Services.
- 1.20 'Loaned Equipment' means Equipment that is loaned to the Client by the Company under the terms of this Agreement, to which the Company shall retain title.
- 1.21 'Minimum Notice Period' means the minimum notice period that is set out on the Order.
- 1.22 'Minimum Term' means the initial term of this Agreement, set out in the Order.
- 1.23 'Order' means the hard copy or online order form (which may be attached to these terms, completed online by the Client or supplied by the Company to the Client) or written otherwise instruction which sets out the Goods to be supplied and summary of Services to be delivered.
- 1.24 'Rented Equipment' means Goods that shall be rented to the Client and to which the Company shall retain title.
- 1.25 'Reseller' means an organisation which is authorised by the Company to either re-sell the Company's Services or sell such Services on the Company's behalf.
- 1.26 'RFS Date' (Ready For Service Date) means the date from which the Services are available for use (at all sites) by the Client, as notified by the Company.
- 1.27 'Services' means services provided to the Client by the Company under the terms of this Agreement.
- 1.28 'Service Component' means an individual component of the Services which is separately itemised on the Order and described in the Schedules.
- 1.29 'Service Credit' means credit applied to the Client's account to be used as credit against future invoices.
- 1.30 'Service Schedule' means the schedule which forms part of the service-specific Supplementary Terms which sets out the detailed services to be provided and any applicable service levels.
- 1.31 'Software' means any software and associated documentation provided by the Company to the Client or its end users pursuant to this Agreement or used by the Company to provide the Services, including any software which is embedded in the Equipment.
- 1.32 'Supplementary Terms' means the service-specific supplementary terms and conditions and its associated Service Schedule, which form part of this Agreement.
- 1.33 'Working Day' means 9am to 5.30pm (UK Time Zone) Monday to Friday, excluding Bank and Public Holidays.
- 1.34 'Working Hour' means any hour within the Working Day.

2. THE PARTIES

The parties to this Agreement are (i) the Nexus Point Limited, company number 07566006 ('The Company'), whose registered office is at Norfolk House, Bostock Road, Winsford, Cheshire CW7 3BD and (ii) the Client, whose name and place of business are set out on the Order.

3. GENERAL

- 3.1 These General Terms govern the overall relationship of the parties to this Agreement in relation to the Services provided by the Company to the Client.

- 3.2 The Company shall provide the Services to the Client in the manner and on the terms of these General Terms and Conditions and in the Supplementary Terms.
- 3.3 From time to time, the Client may engage the Company to provide additional Services under the terms of an additional Order and the terms of this Agreement, which at its Commencement Date shall be incorporated into this Agreement; and
 - 3.3.1 In the event that any Services or Goods are supplied by the Company which are not subject to an Order, these terms and conditions and any applicable Supplementary Terms shall apply to the provision of such Goods and Services;
 - 3.3.2 For the avoidance of doubt, Orders for services that are not covered by this Agreement shall be subject to the terms of an additional agreement.
- 3.4 In the event of a conflict between the terms set out in an Order, these General Terms and Conditions and the Supplementary Terms, the following order of precedence shall apply:
 - 3.4.1 The terms of the Order;
 - 3.4.2 The terms of the Supplementary Terms and its attached Service Schedule;
 - 3.4.3 The terms of these General Terms and Conditions.
- 3.5 In this Agreement:
 - 3.5.1 The words 'including' and 'includes' when followed by particular examples shall be construed as illustrative and not exhaustive;
 - 3.5.2 Words of a technical nature shall be construed in accordance with the relevant common usage in the information technology industry in the United Kingdom;
 - 3.5.3 References to a 'person' include a natural person, body corporate, unincorporated body of persons, individual, company, firm, government, state or agency of the state;
 - 3.5.4 References to the singular includes the plural and vice versa;
 - 3.5.5 Headings to clauses have been inserted for convenience of reference only and should not be construed as forming part of this Agreement;
 - 3.5.6 References to clauses and sub-clauses are references to clauses and sub-clauses in these General Terms and Conditions and the Supplementary Terms; and references to paragraphs are references to paragraphs within the Service Schedules attached to the Supplementary Terms;
 - 3.5.7 A reference to a statute, statutory provision, order, regulation instrument or other subordinate legislation is a reference to that statute, statutory provision, order, regulation, instrument or other subordinate legislation and amendments and re-enactments made to such from time to time;
 - 3.5.8 A reference to a regulatory authority or other competent body shall be deemed to include any successor authority or body;
 - 3.5.9 A reference to the parties is a reference to the Company and the Client and a reference to a party is a reference to one of them;
 - 3.5.10 All periods expressed in days shall mean calendar days unless expressly stated otherwise;
 - 3.5.11 Copyright in supplier and other third party product and service names is hereby acknowledged.
- 3.6 Payment of the Company's invoice for the Services or the use of the Services and associated Equipment by the Client constitutes acceptance of the terms and conditions of this Agreement.

4. COMMENCEMENT AND TERM

- 4.1 This Agreement shall be deemed to come into effect on the Commencement Date set out on the Order and shall run until the termination of the Services in accordance with the terms of the Supplementary Terms or the terms hereof.
- 4.2 From time to time, the Client may engage the Company to provide other services under the terms of other Orders and Supplementary Terms. Each such Order and Supplementary Terms, with these General Terms and Conditions shall form a separate agreement for the supply of the services described in the other Supplementary Terms.

- 4.3 The termination of this Agreement to provide the Services will not affect any other agreement between the parties that may be in place for the supply of other services.

5. THE COMPANY'S OBLIGATIONS

During the term of this Agreement, and subject to the performance by the Client of its obligations hereunder, the Company shall:

- 5.1 As soon as reasonably possible following the Commencement Date of this Agreement, provide a target for the RFS Date and make reasonable endeavours to provide Services by such date; and
- 5.1.1 As soon as reasonably possible, notify the Client if it becomes aware of any subsequent change thereto;
- 5.1.2 On the RFS Date, notify the Client that the Services are available for use;
- 5.1.3 Promptly respond to any and rectify any non-conformances in the Services that are raised by the Client.
- 5.2 Provide the Services in accordance with the Supplementary Terms and its Service Schedule.
- 5.3 Warrant that it and its suppliers hold and shall continue to maintain all licences, authorisations, approvals and consents necessary to allow the Company, its suppliers and subcontractors to provide the Services in accordance with all Applicable Laws; and
- 5.3.1 Subject to the provisions of sub-clause 10.13, the Company shall indemnify the Client against any third party claims arising from the Company's breach of the warranty given in this sub-clause 5.3.
- 5.4 Being engaged by the Client for its professional expertise, warrant that the Services shall be performed by sufficient competent staff, with reasonable skill and care and in accordance with Good Industry Practice.
- 5.5 Without prejudice to its other obligations or responsibilities, when any of the Company's obligations are performed on the Client's premises it shall:
- 5.5.1 Ensure that whenever reasonably possible it will not hinder the Client's employees from performing their duties and;
- 5.5.2 Ensure that all rules and instructions in force and published thereat are complied with, provided always that the Company has been made aware of such rules and instructions.
- 5.6 Ensure that it and if appropriate, use reasonable endeavours to ensure that its suppliers provide sufficient resources to perform its obligations under the terms of this Agreement.
- 5.7 The Company shall ensure that appropriate safety, backup and security systems and procedures are in place and maintained to maintain continuity of and prevent unauthorised access or damage to the Services, its own systems and Customer Data, in accordance with Good Industry Practice.
- 5.8 Make reasonable endeavours to provide reasonable notice of any bona fide restriction which, for operational reasons the Company may place on the Services.
- 5.9 Take full ownership of any Issues in the Services as properly reported to the Company or of which it ought to be aware and maintain ownership until such Issue is resolved; however the Company does no guarantee that it will fix all Issues.
- 5.10 Work directly with its suppliers if such suppliers are involved in the resolution of particular Issues.
- 5.11 Recognising that the Services may be used in conjunction with services, software and equipment that may be provided and maintained by third parties who have directly contracted with the Client in respect of same (i.e. suppliers other than the Company and its suppliers):
- 5.11.1 Whilst the Company cannot guarantee the successful resolution of any problem with or failure of a product or service provided by such a third party, it will however assist the Client in the tracing and identification of problems incurred by the Client which prove not directly attributable to the Services;
- 5.11.2 Where it is appropriate, the Company will also take reasonable steps to demonstrate to a third party supplier where the Issue lies; and
- 5.11.3 If such Issue(s) are shown not to result from the Services, the Company shall be entitled to charge the Client for work carried out, at its prevailing rates.

6. THE CLIENT'S OBLIGATIONS

During the term of this Agreement and subject to the performance by the Company of its obligations hereunder, the Client shall:

- 6.1 If installation or implementation charges are indicated on the Order to be estimates, undertake to pay the actual charge incurred for the installation / implementation of the Equipment or Services.
- 6.2 Promptly report Issues and / or place calls for support services using the designated telephone number, email-address or web portal as set out in the Supplementary Terms or as notified to the Client from time to time.
- 6.3 Provide suitably qualified personnel for such times as may be reasonably required by the Company:
 - 6.3.1 To promptly provide any information within the Client's possession or control which the Company may reasonably require in order to perform its obligations;
 - 6.3.2 To give the Company information and assistance in identifying and correcting any malfunctions;
 - 6.3.3 To receive and execute the appropriate corrective measures (or other instructions in relation to this Agreement) given by the Company; and / or
 - 6.3.4 To carry out diagnostic tests on the Equipment as requested by the Company.
- 6.4 Allow the Company, its subcontractors or agents proper access to the Client's premises on reasonable notice and a suitable, safe working environment during the Working Day and at other times as may be reasonably requested.
- 6.5 Provide and prepare a suitable place for the installation of Equipment necessary for the delivery of the Services (including availability of electrical supply and connection points) in accordance with the Company's reasonable instructions.
- 6.6 Ensure that the use of the Services complies with the acceptable use clauses set out in this Agreement and not cause the Company or its suppliers to contravene any legislation, regulation or authorisation.
- 6.7 Ensure that the existence of this Agreement does not breach the terms of any agreement made between the Client and any other party for the supply of similar services; and
 - 6.7.1 If the Client requests assistance from the Company following a breach or suspected breach of Personal Data by the Client; prior to requesting the Company's assistance, ensure that such request does not breach the terms of any insurance policy held by the Client in relation thereto.
- 6.8 Disclose to the Company any facts that are known or potential issues that are suspected which might have a material impact on the implementation of the Services, including breach or potential breach of this Agreement and breach or suspected breach of its security.
- 6.9 In the event of a failure or interruption to the Services which has been investigated and or repaired by the Company and found to be caused by the Client or a third party (not connected with or under the control of the Company), pay any reasonable charges levied by the Company in respect of the work carried out and wherever possible the Company shall seek to agree such charges in advance with the Client.
- 6.10 Warrant that it holds and shall continue to maintain all licences, authorisations, approvals and consents:
 - 6.10.1 Necessary to allow it to use the Services;
 - 6.10.2 Necessary for any data, including documentation, software or data which may be supplied to the Company for the purpose of assisting with the provision of the Services; and
 - 6.10.3 Subject to the provisions of sub-clause 10.13, the Client shall indemnify the Company against any third party claims arising from the Client's breach of the warranty given in this sub-clause 6.10.
- 6.11 Not, unless deemed by the Company to be a Reseller, supply, sell, sub-license, transfer or otherwise make available the Services to any third party.
- 6.12 Save as provided by the Company under the terms of this or another Agreement, provide all equipment necessary to enable access to the Services; and
 - 6.12.1 Make all reasonable measures to ensure that such equipment used in conjunction with the Services is free from viruses, worms, Trojan horses or any other malware.

- 6.13 Ensure that its use of the Goods or Services supplied under the terms of this Agreement is in compliance with Applicable Law and undertakes not to cause, approve or otherwise facilitate third parties to breach such compliance.
- 6.14 Be solely responsible for the use of the Services under its control, including that by third parties whether fraudulent or invited by the Client.
- 6.15 Not alter, deface, delete or otherwise change any text which relates to copyright, ownership or underlying services that is referenced on any materials, including web page templates that are provided by the Company.

7. CONFIDENTIALITY

- 7.1 Each of the parties to this Agreement agrees to use Confidential Information solely for the purposes of executing this Agreement and for the evaluation of future products and services. Neither party shall disclose Confidential Information to any other person without the owner's written consent except when it is deemed that such disclosure is required to execute this Agreement, in which case the disclosing party will obtain binding commitment from the receiving party to keep such information confidential.
- 7.2 Each of the parties to this Agreement shall, and procure that its staff, agents, regulators and subcontractors shall, keep confidential all Confidential Information that it shall have obtained as a result of the discussions leading up to or entering into or performance of this Agreement except:
 - 7.2.1 To the extent that it can be shown that the information is publicly available other than through a breach of this Agreement;
 - 7.2.2 To the extent that it can be shown that the information was lawfully in its possession prior to the date of its disclosure by any other party;
 - 7.2.3 To the extent that the receiving party may have received the information from a third party without (bona fide) restriction as to disclosure;
 - 7.2.4 Where the receiving party receives or has received written consent to such disclosure from the party entitled to such information;
 - 7.2.5 To the extent that the receiving party may be required by law to make such disclosure, whereupon the receiving party shall forthwith notify the disclosing party of such requirement and shall limit disclosure to the portion of the Confidential Information which is legally required;
 - 7.2.6 To the extent that it can be shown that such has been independently developed by the receiving party;
 - 7.2.7 The parties agree in writing that such need not be kept confidential.
- 7.3 Upon written request from the other party, either party will return to the other all copies of the Confidential Information obtained during the performance of the Agreement within thirty days of such request.
- 7.4 Within thirty days of the date of termination of this Agreement, all Confidential Information and copies thereof shall be returned to the disclosing party, or at the disclosing party's request, destroyed by the receiving party.
- 7.5 Neither party shall provide Confidential Information which has been received from the other in response to a request made under the Freedom of Information Act 2000 prior to giving the other party no less than ten Working Days to make its representations.
- 7.6 Without prejudice to any other rights or remedies that the disclosing party may have, the receiving party agrees that if Confidential Information is used, disclosed or threatened to be used or disclosed in breach of this clause 7, the disclosing party shall be entitled, without proof of special damage, seek injunctive relief or other equitable relief for any actual or threatened breach of this clause 7.
- 7.7 The provisions of this clause 7 shall survive in perpetuity the termination of this Agreement, howsoever occasioned.

8. DATA PROTECTION

- 8.1 In this Agreement the terms:

- 8.1.1 'Data Protection Legislation' means the Data Protection Act 2018, UK GDPR, any amendments and re-enactments made thereto from time to time and any other data protection regulations currently in force;
 - 8.1.2 'Personal Data', 'Data Subject', 'Data Controller', 'Data Processor', 'Subject Access Request', 'Supervisory Authority', 'Process' and 'Processing' shall have the meanings defined in the Data Protection Legislation;
 - 8.1.3 'Sub-Processor' means a subcontractor or supplier to the Company who Processes Customer Data on the Company's behalf.
- 8.2 The Company and the Client each agree to comply with their respective obligations under the Data Protection Legislation and to maintain all necessary consents, registrations and notifications.
- 8.3 The parties to this Agreement agree that in relation to Customer Information that the Company Processes in order to provide the Services, the Company shall be a Data Processor and, acting in the capacity of a Data Processor shall:
 - 8.3.1 only Process, use or share with its suppliers or subcontractors such Customer Information that the Company needs to use or share enable it to provide the Services, including:
 - a) Administration, tracking and fulfilment of Client orders;
 - b) Management of Issue reports;
 - c) Administration of access to the Company's support portal;
 - d) Administration of access to the Services;
 - e) Raising and issuing invoices;
 - f) Management of this Agreement, including issuing notices and providing management reporting.
 - 8.3.2 Process the Customer Information only in accordance with the applicable Data Protection Legislation and where applicable, the Company's Privacy Policy;
 - 8.3.3 Not disclose to any person Customer Information other than to its suppliers, subcontractors or employees who shall be placed under the same binding obligation of confidence and who need access to such Customer Information to facilitate proper performance of their contractual obligations (in relation to this Agreement), to the Company;
 - 8.3.4 The Company shall be entitled to use selected Customer Information and data pertaining to the Client's use of the Services to advise appropriate members of the Client's staff about additional products, services and offers;
 - 8.3.5 If the Client does not consent to the provisions of sub-clause 8.3.4, it shall be entitled to notify the Company and forthwith upon receipt of such notice the Company shall cease to advise the Client about additional products, services and offers.
- 8.4 The parties agree that in relation to Personal Data contained within Customer Data that the Company Processes on behalf of the Client, the Client shall be the Data Controller and the Company shall be the Data Processor and that under the terms of this Agreement:
 - 8.4.1 The duration of Processing shall be limited to the duration of this Agreement and thereafter for as long as is required by Applicable Law following the termination thereof;
 - 8.4.2 The nature of Processing is (a) the transmission; (b) the storage; and (c) the use for the purpose of configuration of the Client's Equipment and Software, (collectively, the 'Permitted Uses') of Customer Data as required to deliver the Services and the purpose of the Processing is the delivery of the Services ordered by the Client under the terms of this Agreement;
 - 8.4.3 The parties acknowledge that save for email and internet protocol addresses, which may be transmitted via the Services, types of Personal Data and categories of Data Subjects that may be included within the Customer Data shall be determined exclusively by the Client and the Company shall not be privy to such information;
 - 8.4.4 To the extent necessary to enable it to provide the Services, the Company shall be entitled to and may transfer Customer Data outside of the European Economic Area or to an international organisation, subject to its compliance with the terms of sub-clause 8.7.5;

- 8.4.5 This Agreement forms inter alia the Client's complete written instruction to Process Customer Data.
- 8.5 The Company agrees that it shall be solely responsible for its compliance with its obligations under the Data Protection Legislation to take the necessary technical and organisational measures to ensure that Customer Data is protected (to a level that is appropriate to the risks associated with Processing) against accidental destruction, damage, loss or disclosure where such Customer Data is:
- 8.5.1 created and / or stored within the Company's Infrastructure by the Client using applications including email, desk-top applications, third party software and software developed by or for the Client, including such being executed in managed desktop and infrastructure as a service environments;
 - 8.5.2 created and / or stored within the Company's Infrastructure either automatically or in response to third party user input using third party software or software developed by or for the Client, including web-sites and web-services;
 - 8.5.3 created and / or stored within the Company's Infrastructure by any other means, including telephone voice recording.
- 8.6 The Client hereby agrees that certain Services the Company provides under the terms of this Agreement may or will be provided to the Company by one or more suppliers or subcontractors; and
- 8.6.1 In respect of Personal Data, the Company's suppliers or subcontractors may act in the capacity of Sub-Processor; and
 - 8.6.2 For the avoidance of doubt, if the Company appoints a Sub-Processor to Process Customer Data on its behalf, the Company shall remain fully liable to the Client for the performance of that Sub-Processor's data protection obligations; and
 - 8.6.3 The Company shall be entitled to change its suppliers or subcontractors at its sole discretion; and
 - 8.6.4 If the Company elects to change a supplier or subcontractor who is acting in the capacity of Sub-Processor, it shall notify the Client without undue delay and:
 - a) If the Client objects to the appointment of a Sub-Processor, the Client shall notify the Company within thirty days of the change and the Company will address the objection in accordance with the process set out in clause 18 hereof; and
 - b) If the Client does not object within thirty days of notification of the changed Sub-Processor, such change will be deemed acceptable to the Client.
- 8.7 The Client, in its capacity of Data Controller hereby authorises the Company, in its capacity of Data Processor to Process Customer Data and to permit its suppliers and subcontractors, whether direct or indirect, who may be acting in the capacity of Sub-Processor to Process Customer Data for the purposes of performing its obligations under this agreement, subject to the Company's, its suppliers' and subcontractor's compliance with the following conditions:
- 8.7.1 To restrict Processing of Customer Data to the Permitted Uses thereof;
 - 8.7.2 Notwithstanding the provisions of sub-clause 8.7.1, the Company and / or its supplier(s) shall be entitled use and store information including origin, destination, duration, route and time of data transmitted over its network services, exclusively for the purposes of:
 - a) Collating statistics for network planning purposes; and
 - b) Providing such information to government security agencies in response to specific requests.
 - 8.7.3 Not to retain any copy (save as required for the provision of specific services under the terms of this Agreement, including backup and disaster recovery services), abstract, summary or précis of the whole or any part of the Customer Data (save as set out in sub-clause 8.7.2); permit its employees to do the same and shall procure similar written, binding undertakings from its subcontractors and suppliers, who may be acting in the capacity of Sub-Processor;
 - 8.7.4 Not to modify any part of Customer Data or permit its employees to do the same and shall procure similar written, binding undertakings from its subcontractors and suppliers, who may be acting in the capacity of Sub-Processor;

- 8.7.5 Not to transfer Customer Data outside of United Kingdom or the European Economic Area or to an international organisation without complying with the provisions of the Data Protection Legislation regarding inter alia the adequate level of protection of any Personal Data that may be contained therein, unless such transfer is required under Applicable Law in which case the Company shall, provided that it is not prevented from so doing under the Applicable Law, promptly notify the Client of such transfer.
- 8.7.6 To promptly notify the Client if it becomes aware of any accidental destruction, disclosure or illegal Processing of Customer Data;
- 8.7.7 To undertake to implement appropriate processes and technology to ensure that:
- a) The Processing of Customer Data meets the requirements of the Data Protection Legislation;
 - b) Customer Data is protected (to a level that is appropriate to the risks associated with Processing) against accidental destruction, damage, loss or disclosure;
 - c) The Company's employees as fully as it is reasonable to expect, understand their obligations under the Data Protection Legislation.
- 8.7.8 To undertake to assist the Client with the Client's own obligations under the Data Protection Legislation, taking into account the nature of the Processing and the information available to the Company by:
- a) Communicating to the Client within five Working Days of receipt, any Subject Access Requests that relate to the Customer Data;
 - b) In response to written instructions, assisting the Client in providing Subject Access to the extent practicable;
 - c) In the event of a security breach which involves Customer Data, providing to the Client details of the Customer Data that is involved in the breach;
 - d) Providing responses to reasonable requests for technical and organisational information in relation to the Processing of Customer Data;
 - e) On request making available to the Client any of the Company's relevant documentation that demonstrates its compliance with its obligations under the Data Protection Legislation;
 - f) Allow the Client or an authorised representative of the Client to audit the Company's compliance with the Data Protection Legislation, provided that unless such an audit is required by a regulatory body or where the Client has reasonable grounds for believing that the Company has not complied with its obligations under this Agreement, the frequency of such audits shall not be greater than once every twelve months,
- and save to the extent that the Company is determined to be in breach of its obligations under this agreement, the Client agrees to reimburse the Company for its reasonable expenses incurred for any assistance provided under this sub-clause 8.7.8, save sub-clause 8.7.8(c).
- 8.7.9 To undertake to on termination of this Agreement:
- a) On request, return to the Client copies of all Customer Data;
 - b) Delete all Customer Data that is held within the Company's (or its supplier's) Infrastructure (unless such is prohibited by Applicable Law).
- 8.8 The Company undertakes that it shall:
- 8.8.1 Not disclose to any person Customer Data other than to its suppliers, subcontractors or employees who shall be placed under the same written, binding obligation of confidence and who need access to such Customer Data to facilitate proper performance of their contractual obligations (in relation to this Agreement), to the Company;
- 8.8.2 If required to disclose Customer Data, including communications content, to an appropriate judicial, law enforcement or government agency under Applicable Law, the Company shall prior to disclosure use reasonable endeavours to promptly notify the Client of the disclosure, PROVIDED THAT it is not prohibited from doing so by the requesting agency.

- 8.9 The Client agrees that in the event of the Company ceasing to trade and if subsequent to such cessation the Client consents to any novation of this Agreement or part thereof by the Company, Customer Data and Customer Information, may be transferred to such new supplier or its assignee.
- 8.10 The Company will on demand, deliver to the Client all documents that may be in its possession or in the possession of its agents, subcontractors, suppliers or employees (including documents prepared by the Client) which may include Personal Data.
- 8.11 The provisions of this clause 8 shall survive in the termination of this Agreement, howsoever occasioned, until such time as the Company no longer retains any Customer Data or Customer Information.

9. CHARGES AND PAYMENT

- 9.1 In consideration of the provision of the Services, the Client shall pay the charges in accordance with this Clause 9 (the 'Charges').
- 9.2 The Company shall invoice the Client according to the billing period set out in the Order and the Charges will be calculated using the details recorded by the Company.
- 9.3 The Client agrees to pay the whole amount of the Charges (without any withholding, deduction, set off or counter-claim), within thirty days of receipt of the Company's invoice unless otherwise agreed in writing.
- 9.4 The Company shall be entitled to offset any monies owed to the Client against any monies owed to the Company.
- 9.5 Invoices shall be deemed accepted by the Client unless a written objection, which clearly identifies the reason for the dispute is received by the Company within ten Working Days of the date of the invoice. If the Client disputes the invoice, the parties shall make all reasonable endeavours to resolve the dispute promptly. In the event that the dispute has not been resolved within fifteen Working Days of the receipt by the Company of the Client's letter, the dispute shall be escalated in accordance with the provisions of Clause 18 of this Agreement.
- 9.6 If the Client fails to make any payment in respect of undisputed invoices for Goods or Services within thirty (30) days of the Company's written request to do so, the Company shall be entitled to take one or more actions:
- 9.6.1 Suspend the provision of Services to the Client for such time as the outstanding invoice(s) remain unpaid;
 - 9.6.2 Terminate this Agreement;
 - 9.6.3 Recover from the Client damages for any costs or losses suffered by the Company as a result of the Client's failure to make payment.
- 9.7 The Company shall be entitled to charge the Client at cost for any additional expenses incurred by it in the provision of the Services which are not set out in the Order provided such expenses have been communicated to and agreed by the Client before being incurred by the Company.
- 9.8 If the Company is requested to provide Goods or Services in addition to those set out in the Order, the Company shall charge the Client for the provision of such Goods or Services at its prevailing rates.
- 9.9 All prices or Charges stated or referred to in this Agreement are exclusive of packing, packaging, shipping, carriage and insurance charge, if applicable.
- 9.10 All prices or Charges stated or referred to in this Agreement are exclusive of Value Added Tax which shall be charged in addition at the rate ruling at the tax point.
- 9.11 All elements of the Charges for Services shall be reviewed by the Company to be effective at the end of the Minimum Term and each subsequent anniversary thereof; and subject to clause 11.1.12:
- 9.11.1 Provided that no material changes occur in suppliers' charges to the Company, the maximum annual increase in the annual charge will not exceed the retail prices index valid at the time of notification of the annual increase;
 - 9.11.2 If there is material change to the charges made by the Company's supplier, the Company shall be entitled to pass such costs on to the Client;
 - 9.11.3 Any proposed changes in charges will be notified to the Client in writing not less than ninety days prior to any anniversary.

- 9.12 Notwithstanding the provisions of clause 9.11, the Company shall be entitled to increase its charges for any part of the Services if its suppliers increase their charges at any time by providing the Client not less than twenty eight day's notice.
- 9.13 The Client hereby consents to and procures that its directors, owners and officers consent to the Company carrying out such credit reference checks as reasonably required in respect of the Client from time to time. The Client also agrees to provide all information requested by the Company that is necessary to carry out such credit reference checks.
- 9.14 The Company shall be entitled to require that the Client pays a deposit before the commencement of Services or during the term of this Agreement if the Company becomes aware of an adverse change to the Client's financial standing:
- 9.14.1 The Company shall be entitled to apply all or any of the deposit against any unpaid charges at its sole discretion;
- 9.14.2 Deposits shall not attract interest.
- 9.15 The Company shall be entitled to:
- 9.15.1 Correct a previously raised but incorrect invoice for a period of twelve months following the date of the invoice; and
- 9.15.2 Raise an invoice for supply of the Services for a period of twelve months following the Client's incurring the Charges; and
- 9.15.3 The provisions of this sub-clause 9.15 shall continue in force for a period of twelve months following termination of this Agreement, howsoever occasioned.
- 9.16 If the Client modifies the Order after the Order has been accepted by the Company, the Company shall be entitled to charge the Client for all reasonable expenses incurred up to the date of the modification.

10. LIMITATION OF LIABILITY

- 10.1 This clause 10 sets out the parties' entire financial liability (including any liability for the acts or omissions of its employees, subcontractors, agents and suppliers) to the other in respect of:
- 10.1.1 Any breach of the express or implied terms of this Agreement by either party, its employees, subcontractors agents and suppliers;
- 10.1.2 Any use made by the Client of the Services;
- 10.1.3 Any of the Services, their supply or failure or delay in the supply thereof by the Company;
- 10.1.4 Any fraudulent misrepresentation, tortious act or omission (including negligence) arising under or in connection with this Agreement.

Whether arising in contract (including under any indemnity), tort (including negligence), under common law or statutory duty.

- 10.2 Nothing in this Agreement shall limit:
- 10.2.1 Either party's liability to the other for:
- a) Death or personal injury caused by or arising from the negligence of the other, its employees, subcontractors agents or suppliers;
- b) Any damage resulting from fraud or fraudulent misrepresentation by the other, its employees, subcontractors, agents or suppliers;
- c) Any damage resulting from breach of confidentiality by the other, its employees, subcontractors, agents or suppliers;
- d) Any damage resulting from breach of Intellectual Property Rights by the other, its employees, subcontractors, agents or suppliers;
- e) Any damage resulting from failure by the other to comply with Applicable Law.
- 10.2.2 The Company's liability for any breach by the Company, its employees, subcontractors agents or suppliers of warranties as to title, quiet possession and freedom from encumbrance which may be implied by Section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979; or
- 10.3 In the event of damage to or loss, illegal Processing or disclosure of Personal Data:
- 10.3.1 The Company shall accept liability for direct losses, costs and damages which arise in respect of:

- a) Regulatory inspection;
- b) Notification of Data Subjects;
- c) Remediation efforts with Data Subjects;
- d) Data Subject claims;
- e) Restoration of Personal Data;

To the extent that such losses, costs or damages arise from the Company's negligence or breach of its obligations under clause 8 hereof, up to a maximum liability of one hundred thousand pounds (£100,000) per event or series of connected events.

10.3.2 The Company shall not accept liability for:

- a) Any indirect losses, costs or damages;
- b) Losses, costs or damages to the extent that such arise from the Client's breach of its obligations under clause 8 and / or the Data Protection Legislation;
- c) Losses, costs or damages that result directly from the interception by a third party of Personal Data whilst such Personal Data is being transmitted via the Public Internet or telephony network, unless the possibility of such interception arises directly from the Company's negligence.

- 10.4 Notwithstanding any other provision of this Agreement each party's maximum aggregate liability in one calendar year whether in contract, tort (including negligence and breach of statutory duty), misrepresentation, restitution or otherwise for any loss or damage howsoever caused and not falling under the provisions of sub-clauses 10.2, 10.3, 10.7 and 10.13 hereof shall be limited to the total amount of the charges (including VAT) collected by the Company under the terms of this Agreement in the twelve (12) month period prior to the date of the event which gave cause to the claim, PROVIDED THAT before any such claim is made the breaching party is given reasonable opportunity to make good the breach giving rise to such claim.
- 10.5 In relation to direct loss of or physical damage to the Client's tangible property, the Company's maximum liability is one million pounds (£1,000,000).
- 10.6 Except as expressly set out in this Agreement, all conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise are hereby wholly excluded to the maximum extent permitted by law.
- 10.7 Subject to any express terms and conditions of this Agreement to the contrary, neither party shall be liable in respect of any matter arising out of or in connection with this Agreement in contract, tort (including negligence and breach of a statutory duty), misrepresentation, restitution or otherwise for any indirect, special loss or damage or any other loss or damage that could not be reasonably foreseen and the parties hereby waive and release any claims they might otherwise have to be compensated in respect of such losses (without limitation), even if a party has been advised of the possibility of such loss or damages.
- 10.8 If any exclusion in clause 10.7 is held to be invalid or any reason the Company's liability for loss or damage that may be lawfully limited shall be limited to the aggregate liability set out in sub-clause 10.4.
- 10.9 The Company shall not in any event have any liability for non-provision in the provision of Services which:
- 10.9.1 Can be reasonably attributed principally to the acts or omissions of the Client (including fraud), its employees, agents or subcontractors including provision of complete, accurate information in a timely fashion to the Company;
 - 10.9.2 Can be reasonably attributed to the un-serviceability, un-suitability, mis-configuration or misuse of the Client's equipment which is attached to the Services and is under the control of the Client;
 - 10.9.3 Arises from or is a consequence of use of the Company's Services other than in accordance with the express terms of this Agreement or the express directions of the Company;
 - 10.9.4 Occurs during any period during which the Services have been suspended by the Company in accordance with clause 12.
- 10.10 The Company shall not in any event have any liability for non-provision of services arising from a delay to the RFS Date, howsoever caused.

- 10.11 The Client acknowledges and agrees that data transmitted over technology including the public internet, telephony network or any other electronic means cannot be guaranteed to be free from the risk of interception, corruption or loss even if transmitted in an encrypted form, and that save where the Company has failed to provide the Services in accordance with these terms and conditions, the Company shall not be liable for any losses the Client may incur resulting from the interception, corruption or loss of such data, and:
- 10.11.1 The Client shall be responsible for insuring against loss of or damage to data stored or transmitted via the Services; and
 - 10.11.2 The Client shall be responsible for adopting such security measures as are appropriate to protect the Client's systems and data (including backups).
- 10.12 The parties acknowledge and agree that:
- 10.12.1 The allocation of risk contained in this clause 10 is reflected in the price charged for the Goods and Services;
 - 10.12.2 The Company shall not be liable for any losses, costs or damages incurred by third parties resulting from such third party's use of or reliance upon the Services, whether with or without the permission of the Client;
 - 10.12.3 Nothing in this clause 10 excludes or limits the Client's liability to pay the charges due under the terms of this Agreement;
 - 10.12.4 The Company shall not be liable for any damages, costs, fines or other claims that arise from errors or omissions in information provided to the Company by the Client;
 - 10.12.5 The Company shall not be liable for any losses, costs or damages whatsoever under the terms of this Agreement, where proceedings for such losses, costs or damages are begun one year or more after the Client becomes aware of the occurrence of the breach giving rise to the claim.
- 10.13 The parties acknowledge and agree that in respect of all indemnities given in this Agreement:
- 10.13.1 The indemnifying party agrees to indemnify the indemnified party from and against any liabilities, actions, losses damages, judgements, costs, fines, claims or expenses incurred by the indemnified party or legal proceedings which are brought or threatened against the indemnified party by a third party (the 'Claim');
 - 10.13.2 If either party becomes aware of any claim contemplated by any indemnity given in this Agreement it shall as soon as reasonably practical, notify the other party of such claim.
 - 10.13.3 The indemnified party shall:
 - a) Consult with the indemnifying party regarding the conduct of any action and have due regard for the indemnifying party's representations and not agree any settlement, legal proceedings or make any payment by way of liquidated damages without the prior written agreement of the indemnifying party, such agreement not to be unreasonably delayed or withheld;
 - b) Make no admission relating to such claim or legal proceedings without agreement of the indemnifying party, such agreement not to be unreasonably delayed or withheld;
 - c) Not agree any settlement of the Claim or make any payment without the consent of the indemnifying party;
 - d) Allow the indemnifying party (at its request) to use its chosen advisers and to have the exclusive conduct of all negotiations and proceedings and provide the indemnifying party with such reasonable assistance required by the indemnifying party regarding the claim;
 - e) Promptly provide the indemnifying party and its advisers with all information and assistance that they may reasonably require;
 - f) Promptly take any action and give any information and assistance as the indemnifying party may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party's rights in relation to the matter.
 - 10.13.4 Both parties to this Agreement shall have a duty to mitigate any loss which it may incur as a result of a matter giving rise to a right of indemnification under this clause.

- 10.13.5 The indemnities given in this Agreement shall not apply to the extent that such a Claim results directly or indirectly from the negligence of the party, its employees, subcontractors or agents, against whom the Claim has been made.
- 10.14 The Client agrees and accepts that the express obligations and warranties made by the Company in this Agreement are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, (excluding fraudulent misrepresentations) express or implied, statutory or otherwise relating to the Services provided under or in connection with this Agreement, including (though not limited to) those as to the quality, performance and care and skill used in its provision.
- 10.15 The Client acknowledges that the Company's obligations and liabilities are exhaustively defined in this Agreement.
- 10.16 The provisions of this clause 10 shall survive the termination of this Agreement, howsoever occasioned.

11. TERMINATION

- 11.1 This Agreement may be terminated (without prejudice to the terminating party's other rights and remedies) by written notice to the other party:
- 11.1.1 Forthwith by the Company if the Company's invoice remains unpaid thirty days after receipt of written notice from the Company to do so;
 - 11.1.2 Forthwith by the Company if that two consecutive direct debit requests are rejected;
 - 11.1.3 Forthwith by either party if the other commits any material breach of any terms of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty days of a written request to remedy the same; or
 - 11.1.4 Forthwith by either party if the other convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act of 1986 or a proposal for any other composition, scheme of arrangement with (or assignment for the benefit of) its creditors or if the other is unable to pay its debts within the meaning of the Section 123 of the Insolvency Act 1986, or if a trustee receiver, administrator or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction); or
 - 11.1.5 Forthwith by the Company in advance of the supply of Services under the terms of this Agreement if the Company's supplier declines to accept the Company's order for the supply of Services;
 - 11.1.6 Forthwith by either party if the Company ceases to be authorised by a competent authority to provide the Services;
 - 11.1.7 Forthwith by either party if the other party ceases to trade;
 - 11.1.8 Forthwith by either party if the other party commits a breach which cannot be remedied;
 - 11.1.9 Forthwith by either party if the other party is repeatedly in material breach of this Agreement;
 - 11.1.10 Forthwith if a right of termination arises in the event of Force Majeure;
 - 11.1.11 In accordance with any additional terms of the Supplementary Terms;
 - 11.1.12 on ninety days' notice by the Client following any notice being served of increase in charges which are made by the Company pursuant to clause 9.11.2 and/or clause 9.12.
- 11.2 On termination of this Agreement, the Client shall forthwith return all Rented Equipment and Loaned Equipment to the Company and shall pay all Charges and any applicable cancellation Charges to the Company.
- 11.3 If any Equipment that is the Company's property is not returned to the Company within fourteen days of the date of termination, the Company shall be entitled to:
- 11.3.1 Enter into the Client's premises to recover the property and charge the Client any costs reasonably incurred; or
 - 11.3.2 Charge the Client for the full retail price of the property as at the Commencement Date.

- 11.4 Any termination of the Agreement (however occasioned) shall not affect any accrued rights, remedies or liabilities of either party. Nor shall it affect the continuance in force of any provision of this Agreement that is expressly or by implication intended to continue in force after such termination.

12. SUSPENSION OF SERVICES

- 12.1 The Company shall be entitled to suspend the provision of the Services in whole or part, without notice (save as where it is reasonably possible to provide prior written notice) or liability to the Client if:
- 12.1.1 the Services are being used for activities that are in breach of any acceptable use clause contained in the Supplementary Terms or any other fraudulent, illegal or wrongful activity, knowingly or otherwise, by the Client;
 - 12.1.2 the Client is in material breach of any other provision of this Agreement;
 - 12.1.3 due and undisputed invoices remain unpaid within thirty days of the Company's written request to do so;
 - 12.1.4 The Company is instructed to do so by Government or any other competent authority;
 - 12.1.5 Planned or emergency work is required to systems that underpin the delivery of the Services and such work is carried out between 2300 and 0700;
 - 12.1.6 Any consent, wayleave or authority required by the Company or its supplier is withdrawn, revoked or otherwise ceases to have effect.
- 12.2 In the event of suspension of Services under the terms of sub-clause 12.1:
- 12.2.1 Services shall be restored by the Company during Working Hours when the situation which has given cause to the suspension is resolved by the Client and:
 - 12.2.1.1 in relation to any suspension pursuant to clauses 12.1.1 to 12.1.3 (inclusive) the Company shall be entitled to charge a reinstatement fee equal to any additional costs it reasonably incurs in connection with such restoration; and
 - 12.2.1.2 in relation to any suspension pursuant to clauses 12.1.4 and 12.1.6 the parties shall agree, acting reasonably and in good faith, the apportionment of any additional costs reasonably incurred by the Company in connection with such restoration.
 - 12.2.2 Suspension of any part of the Services under the terms of this Agreement shall not constitute a termination and the Client shall continue to pay all of the Company's charges in relation to this Agreement during the period of suspension of Services;
 - 12.2.3 If the Client fails to rectify the situation which has given cause to the suspension within thirty days of the commencement of the suspension, the Company shall be entitled to terminate the Agreement under the terms of clause 11;
 - 12.2.4 The Company shall not be liable for any costs, expenses or losses or other liabilities incurred by the Client as a result of suspension of the Services.

13. PERFORMANCE AND SERVICE CREDITS

- 13.1 Service performance targets that are deemed to be Applicable Services are clearly indicated as such in the service level agreement set out in the Supplementary Terms ('**Service Level Agreement**').
- 13.2 The Company commits to ensure that the Applicable Services meet the performance targets set out in the Service Level Agreement.
- 13.3 If the Company does not meet the performance criteria set out in the Service Level Agreement, the Client shall be entitled to claim a Service Credit as set out in the Supplementary Terms.
- 13.4 To make a claim for Service Credit, the Client must notify the Company within 14 days of the beginning of the incident that gives rise to the claim.
- 13.5 The notification of the claim must include:
- 13.5.1 Client name and contact;
 - 13.5.2 The start and end time for each incident for which a claim is being made;
 - 13.5.3 Clear and accurate evidence to enable the Company to confirm the claim for Service Credit.

- 13.6 The Client acknowledges and accepts that:
- 13.6.1 The Service Level Agreement is conditional upon, where and to the extent required, the Client allowing the Company unrestricted access to its Site during Working Hours and any extended cover period set out in the Service Schedule without prior notice in the event of a malfunction or other failure of the Services;
 - 13.6.2 Eligibility for payment of Service Credits shall be restricted to the Service Component whose performance fails to meet its target.
- 13.7 The Parties acknowledge and agree that:
- 13.7.1 Service Credits represent a genuine pre-estimate of a failure to provide that part of the Applicable Service which are fair and reasonable in all the circumstances;
 - 13.7.2 the Parties' intention is that Service Credits will ensure that the Client does not pay for Services that it has not received in accordance with any agreed service levels;
 - 13.7.3 accordingly, Service Credits will be the Client's sole and exclusive remedy in respect of any loss it would otherwise incur by paying Charges in respect of Services that are subject to a service level failure; and
 - 13.7.4 Service Credits are not exclusive of any rights or remedies the Client may have in respect of any loss or liability other than as described in clause 13.7.3 suffered or incurred by the Client arising out of or in connection with any service level failure, whether expressly stated in or arising under this Agreement or as otherwise provided by law.
- 13.8 When a Service Credit is deemed due, such Service Credit shall be applied to the Client's account within thirty days of such date or, where such period runs beyond termination or expiry of this agreement, the Company shall pay the amount of such Service Credit(s) on the date of termination or expiry.
- 13.9 Service Credits shall not apply following any failure of the Company to provide the Applicable Services due to:
- 13.9.1 Incidents outside of the Company's reasonable control including force majeure events; or
 - 13.9.2 Law enforcement activity; or
 - 13.9.3 Suspension or termination of Services by the Company under the Terms of this Agreement; or
 - 13.9.4 Any incident, action or event that occurs before the RFS Date.
- 13.10 The Client shall be ineligible to claim for Service Credits under the terms of this Agreement if:
- 13.10.1 The Client is in breach of any part of the Agreement; or
 - 13.10.2 The Services have been suspended by the Company under clauses 12.1.1 to 12.1.3 (inclusive); or
 - 13.10.3 Invoices issued by the Company are due to be paid and are undisputed but remain outstanding.
 - 13.10.4 If the Client is in breach of these terms and conditions and has been served notice to remedy such breach and such remedy remains un-discharged provided that on discharge, Service Credits will be reinstated.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 All Intellectual Property Rights in the Goods and Services provided by the Company in the performance of this Agreement which are owned or used by the Company, its subcontractors, agents or suppliers ('Owners') shall be and will remain vested in the Owners except as expressly provided in this Agreement. The Client shall not acquire any rights, title or interest in or to any Intellectual Property owned by the Owners. To the extent to which it is entitled, the Company grants or shall procure that the grant of to the Client a royalty-free, non-exclusive, revocable, non-transferable licence to use all such Intellectual Property as is required to use the Services in accordance with the terms of this Agreement, until this Agreement is terminated or expires.
- 14.2 Without prejudice to sub-clause 14.1, the Company shall if applicable acquire for the Client (a) non-exclusive, non-transferable, royalty-free licence(s) to use the Software and associated

documentation set out on the Order or Supplementary Terms for the purposes of using the Services.

- 14.3 The Client hereby undertakes to protect and keep confidential all Software and associated documentation and, except to the extent and in the circumstances expressly permitted by the Company in accordance with Section 50B of the Copyright Designs and Patents Act 1988, the Client hereby undertakes that it shall make no attempt to examine, copy, alter, reverse engineer, disassemble or tamper with such Software.
- 14.4 In the event of the Client's breach of sub-clause 14.3, the Client undertakes to:
 - 14.4.1 Immediately notify the Company of the breach;
 - 14.4.2 Take reasonable steps to remedy the breach within forty eight hours of having become aware of the breach.
- 14.5 All Intellectual Property owned or used by the Client and / or its subcontractors, agents and suppliers ('**Client Owners**') pursuant to this Agreement shall be and will remain vested in Client Owners and except as expressly provided in this Agreement, the Company shall not acquire any rights, title or interest in or to any Intellectual Property owned by Client Owners.
- 14.6 Subject to the provisions of sub-clause 10.13, the Client shall indemnify the Company against any third party claims arising from the Client's infringement of or non-compliance with any third party licences or other end user terms applicable to the use of any Software, images Customer Data or other data, either by the Client and / or its employees, subcontractors, agents or customers.
- 14.7 Subject to the provisions of sub-clause 10.13, the Company shall indemnify the Client against any third party claims arising from any IPR Claim relating to the use of by the Client of any Goods or Services provided under this Agreement infringes the Intellectual Property rights of any third party ('**IPR Claim**') by the Owner of Equipment or Software supplied by the Company under the terms of this Agreement.
- 14.8 In the event of an IPR Claim arising from Equipment or Software provided by the Company to facilitate the use of the Services, the Client acknowledges that the Company may, at its discretion and cost, licence to the Client or procure a licence to the Client of an alternative item and / or modify or procure the modification of the infringing item in each case provided that (i) this resolves the original IPR Claim, (ii) it does not give rise to another IPR Claim; (iii) is of no extra cost to the Client and (iv) it does not materially affect the performance of the Services.
- 14.9 The Company acknowledges that Customer Data is and shall remain the property of the Client and the Client reserves all IPRs which may at any time subsist in the Customer Data. To the extent that any Customer Data vest in the Company by operation of law, such IPRs shall be assigned by the Company to the Client immediately on the creation of such Customer Data.
- 14.10 The Company shall:
 - 14.10.1 Not alter, store, copy, disclose or use Customer Data other than in strict accordance with this Agreement;
 - 14.10.2 Preserve, so far as possible, the integrity of Customer Data and prevent any loss, disclosure, theft, manipulation or interception of Customer Data and shall advise the Client immediately in the event thereof;
 - 14.10.3 Return Customer Data to the Client when requested by the Client.

15. MISCELLANEOUS

- 15.1 The Company may recommend that another party carries out work, supplies goods, software or services to the Client. The Client shall not be obliged to engage any such recommended party and shall not be prejudiced in any way should it choose not to do so. However, if it does engage any such recommended party, the Company does not guarantee the work, goods, software or services unless it has been negligent in making the recommendation.
- 15.2 In the case where the Company provides goods or software originally manufactured or developed by third parties it passes on statements, warranties and representations in good faith but doesn't verify them or guarantee their accuracy.
- 15.3 The Company cannot accept responsibility for any statements or representations unless such are made in writing.
- 15.4 If Goods or Services are provided to the Client at a reduced or no charge for a trial period, the Company shall commence charging for the provision of the Goods and / or Services at the price agreed between the parties prior to the commencement of the trial period, from the end of the trial period unless the Client serves thirty days' notice to terminate this Agreement at the end of

the trial period and the Minimum Term shall be deemed to commence at the end of the trial period.

- 15.5 The signing by the Company of any of the Client's documentation shall not imply any modification to this Agreement.
- 15.6 For the purpose of this Agreement, communications made between the Company and the Client by electronic mail shall be regarded as made in writing and signed by the party sending the electronic mail, save for the serving of notices under the terms of this Agreement, which is subject to the provisions of clause 26.
- 15.7 The Company shall be entitled to correct any clerical or typographical error made by its employees at any time.
- 15.8 If the Company sells Goods or loans or rents Equipment to the Client to enable the delivery of the Services, the Equipment will be provided under the terms of the Company's Supplementary Terms for the Sale of Goods and Rental or Loan of Equipment.
- 15.9 The parties agree to comply with the provisions of the Bribery Act 2010; and
 - 15.9.1 Maintain such processes and procedures to ensure compliance therewith; and
 - 15.9.2 Promptly report to the other party any request or demand for any undue financial or other advantage of any kind it receives in connection with the performance of this Agreement.
- 15.10 Nothing in this Agreement shall prohibit the Company from supplying the same or similar Goods or Services to other persons.
- 15.11 If the Client wishes to change the scope of the Services, it shall submit details of the requested change to the Company in accordance with the provisions of the Supplementary Terms.

16. THIRD PARTY RIGHTS

Save as expressly stated, these terms and conditions do not confer any rights on third parties as provided for under the Contracts (Rights of Third Parties) Act of 1999 and it is not the intention of the parties to this Agreement to confer such rights.

17. GOVERNING LAW

This Agreement and the rights and obligations of the parties hereto shall be governed by the laws of England and both parties hereby agree to submit to the exclusive jurisdiction of the English courts and if this Agreement is translated into any other language, the English Language version shall prevail.

18. DISPUTE RESOLUTION

- 18.1 If the Client is not satisfied with any aspect of the delivery of the Services, in the first instance the Client should make a complaint to the Company using the procedure set out in the Supplementary Terms.
- 18.2 The parties to this Agreement will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.
- 18.3 Nothing in this clause 18 shall prevent either party from:
 - 18.3.1 Referring the dispute to the appropriate regulatory authority in accordance with any right either party may have to request a determination;
 - 18.3.2 Exercising any remedies or rights that may be available in respect of any breach of this Agreement.

19. FORCE MAJEURE

- 19.1 Subject always to the provisions of this clause 19, neither party shall in any circumstance be liable to the other for any loss of any kind whatsoever including any damages whether directly or indirectly caused or incurred by reason of any delay or failure in the performance of its obligations hereunder which is due to Force Majeure.
- 19.2 If either party becomes aware of circumstances of Force Majeure which prevent or are likely to prevent its performance of any obligations under the terms of this Agreement, it shall:
 - 19.2.1 Notify the other in writing as soon as reasonably possible and in any case within five Working Days of the onset of such Force Majeure, specifying its nature and extent of the circumstances;

- 19.2.2 Use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Agreement; and
- 19.2.3 Notify the other party as soon as the Force Majeure event has ceased to affect performance of the agreement and resume performance of its obligations as soon as reasonably possible.
- 19.3 If either party is unable to perform its obligations due to Force Majeure, the other party shall be released to an equivalent extent from its obligations relating thereto, including making payment for affected Services.
- 19.4 If either party is unable to perform its obligations due to Force Majeure for a period exceeding two months, the other party shall be entitled to terminate this Agreement by giving notice in writing, in which case neither party shall have any liability to the other except rights and liabilities which accrued prior to such termination shall continue to subsist.
- 19.5 For the avoidance of doubt:
 - 19.5.1 The Company acknowledges and agrees that any default of any of its subcontractors, suppliers or agents shall not constitute a Force Majeure event and such default shall not excuse the Company from the performance of its obligations under this Agreement; and
 - 19.5.2 During the period of any Force Majeure event, the Client shall be entitled to engage an alternative supplier to provide a replacement to the Services.

20. ADVERTISING

Neither party shall be entitled to use any trademark or trade name of the other, refer to the other, this Agreement or the Services to be rendered hereunder, either directly or indirectly, in connection with any promotion or publication without the prior, written consent of the other (such consent not to be unreasonably withheld or delayed).

21. ASSIGNMENT

- 21.1 The Company shall be entitled to subcontract all or any part of the Services. For the avoidance of doubt, such subcontracting will not relieve the Company of any of its obligations under this Agreement.
- 21.2 The Company shall be entitled to:
 - 21.2.1 Assign the benefit of this Agreement. For the avoidance of doubt, such assignment shall not relieve the Company of any of its obligations under this Agreement; or
 - 21.2.2 Assign the benefit of this Agreement to a third party in the event of a sale of its order book or all or substantially all of its assets on written notice to, but not requiring the consent of, the Client.
 - 21.2.3 Notwithstanding the provisions of Clauses 7 and 8, disclose to a proposed assignee any information in its possession that relates to this Agreement solely for the purposes of the proposed assignment.

22. VARIATION

- 22.1 If the Client requests a change to the Services or Goods provided under the terms of this Agreement, such request shall be made in writing and will not be deemed accepted until acknowledged and agreed in writing by the Company; and
 - 22.1.1 If the Company fails to accept such change, such failure shall not affect the provision of any foregoing Services.
- 22.2 Subject to the provisions of sub-clause 22.3, the Company shall be entitled to change the terms of this Agreement by giving the Client not less than one month's notice, in order to:
 - 22.2.1 Comply with legal or regulatory obligations;
 - 22.2.2 Maintain the security and integrity of the Services;
 - 22.2.3 Improve or clarify the Agreement;
 - 22.2.4 Protect the use of Intellectual Property;
 - 22.2.5 Change the Charges under the provisions of sub-clause 9.12.
- 22.3 If the Company makes any change to the terms of this Agreement other than those listed in clauses 22.2.1 to 22.2.3 and such change results in material adverse effect, the Client shall be

entitled to terminate this Agreement by giving one month's notice without incurring cancellation Charges, PROVIDED THAT:

22.3.1 such notice is given within fourteen days of the variation being made; and

22.3.2 If notice is not given by the Client within fourteen days of the notification of the variation, the variation shall be deemed agreed by both parties.

22.4 No modification, amendment or other variation to this Agreement shall affect the rights of either party accrued prior to the date of the variation.

22.5 No modification, amendment or other variation to this Agreement made by the Client shall be valid unless agreed in writing and signed by both parties.

23. STAFF

23.1 Each party agrees not to approach employees or subcontractors of the other in order to entice them to join the other in a role that relates directly to the provision of the Services whether as an employee or in any other capacity, during the term of this Agreement or for a period of six months after its termination. If either party breaches the terms of this clause 23.1 the party in breach agrees, by way of liquidated damages and not a penalty, to pay the other a sum equal to the annual salary or otherwise of the employee or subcontractor concerned.

23.2 Nothing in this Agreement or the Company's performance thereof shall be construed as creating any relationship as between employer and employee, agent and principal, joint venture or any mutual obligation between the parties other than set out in this Agreement.

23.3 The Company shall, at its sole discretion determine the allocation of its personnel in furnishing the Services.

23.4 The parties consider that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE Regulations') will not apply on the commencement or cessation (in whole or in part) of the provision of Services by the Company; and

23.4.1 Subject to the provisions of sub-clause 10.13, both parties agree to indemnify the other in respect of any liabilities arising out of or in connection with any claim or decision by a court or tribunal that the contract of employment of any staff has transferred to the other under the TUPE Regulations or otherwise as a result of the parties entering into this Agreement, including (without limitation), any liability for failure to inform and consult under the TUPE Regulations;

23.4.2 If any contract of employment of any staff of either party has effect (or is argued to have effect) as if originally made between one party and staff of the other as a result of the TUPE Regulations or otherwise at any time, then the affected party shall be entitled, on becoming aware of that effect (or argued effect) to terminate the contract of employment of such staff and the other party agrees, subject to the provisions of sub-clause 10.13, to indemnify the affected party against any liabilities arising out of such termination and against any sum payable to or in respect of such staff prior to termination of employment.

24. WAIVER

24.1 No forbearance, delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them.

24.2 Any single or any partial exercise of any such powers or rights or remedies shall not preclude any other or further exercise of them.

24.3 Any waiver to be effected must be agreed in writing and shall:

24.3.1 Be confined to the specific circumstances in which it is given;

24.3.2 Not affect any other enforcement of the same or any other right;

24.3.3 Unless expressly stated, be revocable at any time (in writing).

25. SEVERABILITY

If any part of this Agreement is found by any competent jurisdiction to be invalid, unlawful or unenforceable then such part will be severed from this Agreement. The remainder of this Agreement will continue to be valid and enforceable to the full extent permitted by law.

26. NOTICES

- 26.1 Any notice to be given hereunder shall be delivered or sent by recorded delivery first class post addressed to the company secretary at the address of the other party set out in this Agreement and shall be deemed to have been received by the addressee within two Working Days of sending.
- 26.2 Notices shall not be deemed validly served if sent only by email or fax
- 26.3 For the avoidance of doubt, day-to-day operational matters excluding formal notifications (including notices to terminate) may be communicated by fax or email.
- 26.4 Either party may at any time notify the other of a change of address or person for the purpose of the serving of notices under the terms of this Agreement, subject to the terms of this clause 26.

27. ENTIRE AGREEMENT

- 27.1 This Agreement contains the entire agreement between the parties and supersedes any previous agreement between the parties, including understandings, commitments, agreements, draft agreements oral or written, and terms and conditions attached to the Client's purchase order.
- 27.2 The parties acknowledge and agree that:
 - 27.2.1 The parties have not been induced to enter into this Agreement by, nor have relied on any statement, representation, promise, inducement or any other assurance not set forth herein;
 - 27.2.2 Except for fraudulent misrepresentations, the parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein;
 - 27.2.3 Each party confirms that it is acting on its own behalf and not for the benefit of any third party;
 - 27.2.4 Each party has the power to enter into, exercise its rights under and perform and comply with its obligations under the terms of this Agreement.
- 27.3 Unless expressly stated to the contrary, general guidance documents including user manuals, handbooks or marketing collateral supplied by the Company shall not form part of this Agreement.
- 27.4 The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law