

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 9.4, CLAUSE 18 (LIMITATION OF LIABILITY) AND CLAUSE 21 (INDEMNITY)

1. INTERPRETATION

The definitions and rules of interpretation in this condition apply in these terms and conditions.

1.1 Definitions:

Agreement Start Date: the date set out in the IT Support Contract.

Authorised Users: those employees and independent contractors of the Customer who are entitled to use the Software under this agreement.

Business Hours: the times during which the Supplier will use reasonable endeavours to provide IT Support as set out in the IT Support Contract.

Call: a communication (including an email) received by the Supplier from the Customer reporting a defect or malfunction in the Equipment.

Contract: the contract between the Supplier and the Customer for the sale of Goods and / or Services in accordance with these conditions.

Customer: the person, firm or company who purchases Goods and / or Services from the Supplier.

Customer Data: the data inputted into the information fields of the Software by the Customer, by Authorised Users, or by the Supplier on the Client's behalf, including but not limited to any personal data. In addition, any data including but not limited to personal data, provided and/or referred to the Supplier for processing in accordance with the terms of the Contract.

Data Processing Addendum: the agreement outlining the required contractual provisions between the Customer and Supplier in respect of personal data.

Deliverables: all products and materials developed by the Supplier in relation to the Services in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

Equipment: all or part of the network, hardware, software and third-party Software as specified or identified in the IT Support Contract.

Goods: the goods (or any part of them) which the Supplier is to provide in accordance with these conditions.



Initial Term: the fixed period for which IT Support is to be provided as specified in the IT Support Contract.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

IT Support: the provision of a maintenance service for the Equipment together with proactive support visits as set out in the IT Support Contract.

IT Support Contract: the IT support contract between the Supplier and the Customer incorporating these conditions.

Pre-existing Materials: materials which existed before the commencement of the Services.

Renewal Period: the period commencing after the Initial Term, as set out in the IT Support Contract, during which the Supplier will continue to provide IT Support in accordance with the IT Support Contract.

Services: the services to be provided by the Supplier under the Contract (including but not limited to IT Support or in accordance with a Specification).

Software: any software or operating system installed in respect of the Goods and / or Equipment.

Specification: the IT Support Contract, proposal or schedule agreed with the Customer setting out details of the Services, Equipment and other information in relation to the Services.

Supplier: AGT Computer Services Limited, registered in England with company number 06588035 whose registered office is at 414 Blackpool Road, Ashton, Preston, Lancashire, PR2 2DX

System Audit: means an inspection of the Equipment or part thereof but does not include repair or replacement.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Condition, clause and paragraph headings shall not affect the interpretation of the Contract.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** includes faxes and email.
- 1.9 References to conditions or clauses are to the conditions or clauses of the Contract.
- 1.10 Words of a technical nature used in these conditions will (unless inconsistent with the context) be construed in accordance with general trade use in the computer industry in England.

2. APPLICATION OF CONDITIONS

- 2.1 These conditions shall:
 - 2.1.1 apply to and be incorporated in the Contract; and
 - 2.1.2 prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

3. EFFECT OF PURCHASE ORDER

The Customer's purchase order constitutes an offer by the Customer to purchase the Goods and / or Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement or

execution of Services or delivery of Goods pursuant to the purchase order, shall establish a contract for the supply and purchase of those Goods and / or Services on these conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order shall not govern the Contract.

4. GOODS AND SOFTWARE

- 4.1 The Supplier reserves the right to amend any Goods specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 4.2 The description of any Goods contained in any order form, invoice, descriptive matter, specifications, catalogue or advertising material published or issued by the Supplier is for identification only and the use of such description will not constitute a sale by description. Any typographical or other error or omission in such literature or any other document issued or provided by the Supplier may be corrected by the Supplier without any liability on the part of the Supplier.
- 4.3 All Software, whether supplied, installed or implemented is provided within the terms and conditions of any licence of the Software provider.
- 4.4 If the Software comprised in the Goods is not owned by the Supplier, then the Customer will be required to enter into an end-user licence agreement with the owner of the Software concerned.
- 4.5 Where Software has been written or developed by the Supplier for the Customer, the Customer acknowledges that such Software may only be compatible with the current versions of other software and/or hardware and the Supplier provides no guarantee that it will be compatible with later versions of other software and/or hardware. For the avoidance of doubt, unless otherwise agreed between the parties in writing, the Supplier is under no obligation to supply the Customer with any updates or add-ons to the Software.

5. DELIVERY OF GOODS AND INSTALLATION

- 5.1 Delivery of the Goods will take place by the Supplier delivering the Goods to such place as agreed in writing with the Customer.
- 5.2 Any dates and times quoted for delivery are estimates only and unless otherwise agreed in writing, delivery times are not of the essence of the Contract.
- 5.3 If the Supplier fails to deliver Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

- 5.4 The Supplier shall have no liability for any liability to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instructions related to the supply of Goods.
- 5.5 The Supplier is entitled to make partial deliveries by instalments and these conditions will apply to each partial delivery.
- 5.6 If the Goods are delivered in instalments, each delivery will constitute a separate Contract and failure by the Supplier to deliver any one or more instalments in accordance with these conditions will not entitle the Customer to treat the Contract as a whole as terminated.
- 5.7 Where the Supplier agrees in writing to install Goods or the Supplier otherwise undertakes any installation then the Customer will complete all necessary works that may be required to receive the installation of the Goods including all necessary IT infrastructure and suitable electrical supply.
- 5.8 If the Supplier is prevented or delayed from carrying out the installation through no fault of the Supplier then the Supplier shall be entitled to charge the Customer:
 - 5.8.1 at the Supplier's then current rates for any additional works carried out by or on behalf of the Supplier to enable it to complete the installation; and / or
 - 5.8.2 for compensation for any losses or costs incurred by the Supplier by reason of such delay.

6. QUALITY OF GOODS

- 6.1 The Supplier warrants that on delivery, and for a period of 90 days from the date of delivery (**warranty period**), the Goods shall:
 - 6.1.1 conform in all material respects with their description;
 - 6.1.2 be free from material defects in material and workmanship.
- 6.2 Subject to clause 6.3, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:
 - 6.2.1 the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
 - 6.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and

- 6.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost.
- 6.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 6.1 if:
 - 6.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.2;
 - 6.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 6.3.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
 - 6.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 6.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 6.3.6 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.
- 6.5 The terms of these conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

7. TITLE AND RISK

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the earlier of:
 - 7.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - 7.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 7.4.

- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - 7.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 20.1.4 to clause 20.1.10; and
 - 7.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 7.4 Subject to clause 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 7.4.1 it does so as principal and not as the Supplier's agent; and
 - 7.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 20.1.4 to clause 20.1.10, then, without limiting any other right or remedy the Supplier may have:
- 7.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - 7.5.2 the Supplier may at any time:
 - 7.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - 7.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. IT SUPPORT

- 8.1 Where the Customer has entered into an IT Support Contract, IT Support will commence on the Agreement Start Date. At the end of the Initial Term, the IT Support Contract shall continue indefinitely until terminated by either party giving one month's written notice to the other.
- 8.2 The Supplier will provide IT Support during Business Hours. If the Customer requests the Supplier to carry out IT Support outside of Business Hours, the Supplier will use its reasonable endeavours to comply with this request but will charge the Customer for such services at its then current rates or as set out in the IT Support Contract.
- 8.3 With regard to IT Support, the Supplier shall use reasonable endeavours to:
 - 8.3.1 respond to valid Calls within the response times set out in the IT Support Contract, but any such timeframes shall be estimates only and time shall not be of the essence of the Contract (the time taken to respond to a Call will only be measured during Business Hours);
 - 8.3.2 rectify defects or malfunctions in the Equipment on the telephone or by use of remote access in accordance with the IT Support Contract;
 - 8.3.3 if a defect or malfunction in the Equipment cannot be resolved on the telephone or by remote access, the Supplier will use reasonable endeavours to visit the Customer's premises within the timeframes set out in the IT Support Contract (and subject to any charges set out in the IT Support Contract or these conditions);
 - 8.3.4 when carrying out work in accordance with these conditions, the Supplier will use its reasonable endeavours to return the Equipment to service and, subject to these conditions, reinstate the Customer's applications.
- 8.4 The Supplier may at its reasonable discretion provide a permanent replacement part for the Equipment, either new or refurbished, and on exchange that part becomes the property of the Customer, and the faulty part replaced becomes the property of the Supplier (provided the Supplier obtains the Customer's prior consent before retaining such property).
- 8.5 The Supplier may repair the Equipment away from the Customer's premises when it considers it necessary to do so.

- 8.6 The Supplier may, at its discretion, lend the Customer temporary replacement equipment (as compatible as may be available) while repairs are carried out. Equipment loaned to the Customer remains the Supplier's property and will be returned to the Supplier on demand. The Customer is entirely responsible for such equipment and will indemnify the Supplier in respect of any loss or damage to that equipment.
- 8.7 The Supplier may make use of new releases, patches and updates of any Software owned by third parties to rectify known problems where this is permitted under the applicable software licence agreement.
- 8.8 Where the Supplier is required to carry out or does carry out work that is subsequently found to be outside IT Support, the Supplier shall be entitled to charge for that work at its then current rates.
- 8.9 Whilst every effort is made to maintain a remote access link to the Equipment, the Supplier will not be liable for any loss suffered by the Customer if for any reason the remote access link is unavailable or interrupted for any period of time.
- 8.10 The Supplier will, as often as it thinks necessary (save in the event of an emergency) upon reasonable notice carry out a System Audit within Business Hours to confirm that, in the Supplier's opinion, the Equipment is in reasonable operating condition.
- 8.11 For the avoidance of doubt, IT Support does not extend to:
- 8.11.1 any Equipment not specified or included in the IT Support Contract including any part of the Equipment which is in any way changed from that included in the IT Support Contract;
 - 8.11.2 any Equipment which was, in the Supplier's reasonable opinion, operating in an unstable or unsuitable manner prior to the commencement of IT Support;
 - 8.11.3 any work arising as a result of any breach by the Customer of any of its obligations under these conditions;
 - 8.11.4 any work arising from any incident, wilful act or any error or omission in the operation of the Equipment or any other cause (except for wear and tear) which is not due to the neglect or default of the Supplier;
 - 8.11.5 any failure or defect caused by hardware or software not covered by these conditions;
 - 8.11.6 failures or defects due to manufacture or design defects over which the Supplier has no control;

- 8.11.7 refurbishment or repair of casings or outer surfaces;
- 8.11.8 any work to accessories, alterations, attachments or any other equipment that is external to the Equipment not identified within the IT Support Contract;
- 8.11.9 reinstatement of customised versions of the standard desktop/operating system;
- 8.11.10 reinstatement of the Customer's software and data not identified within the IT Support Contract;
- 8.11.11 any consultancy, training or software or hardware that the Supplier may provide;
- 8.11.12 integration of the Equipment or any part thereof with other systems;
- 8.11.13 cleansing of viruses and spyware, or resolving the consequences of security breaches and incompatibilities in hardware and/or software;
- 8.11.14 upgrading the Customer's operating platform to be able to operate the Customer's selected software applications;
- 8.11.15 consumable supplies or accessories such as magnetic media, batteries, print heads, toner cartridges, ink, paper, and any other items identified as consumable by the Equipment manufacturer, unless listed in the IT Support Contract;
- 8.11.16 any Equipment in respect of which a notice has been served by the Supplier under clause 8.12 or clause 8.14;
- 8.11.17 any work arising by reason of any maintenance or repair work carried out in respect of the Equipment by a third party not previously approved in writing by the Supplier;
- 8.11.18 in respect of any personal digital assistants or other mobile solutions comprised within the Equipment, anything other than support of any third-party Software to enable synchronisation to such server of the Customer as is specified in the IT Support Contract;
- 8.11.19 any services which are specifically excluded in the IT Support Contract;
- 8.11.20 data recovery services (which will be charged separately in accordance with the Supplier's then current rates).

- 8.12 The Supplier will give the Customer written notice if, in its reasonable opinion, the Equipment (or any part of it) is identified as “end of life”, becomes beyond reasonable repair or spare parts become not readily available, or if faults and/or its condition are such that overhaul or replacement is necessary at which point any obligations of the Supplier to provide IT Support in respect of such equipment will be suspended. If the Customer declines to have the Equipment overhauled or replaced at its expense within thirty days of such notification, the Supplier may on written notice exclude such equipment from this Contract and refund to the Customer by way of credit note a fair proportion of any charges which have been paid by the Customer in respect of such equipment from the end of the notice period and will remove any loan equipment relating to the said equipment from the end of the notice period.
- 8.13 The provisions of clause 8.12 will apply equally in respect of any software included within the Equipment which, in the reasonable opinion of the Supplier, is no longer economically viable to maintain or requires upgrading or updating.
- 8.14 Prior to commencement of IT Support, the Supplier may during Business Hours inspect the Equipment, or any part of it, at the Customer's premises to confirm that it is, in the Supplier's reasonable opinion, in full working order in accordance with the manufacturer's requirements. If work is required to put the Equipment in such full working order the Supplier will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, the Supplier may on written notice exclude such equipment from IT Support and will refund to the Customer by way of credit note a fair proportion of any charges which have been paid by the Customer in respect of such equipment from the end of the notice period.

9. CUSTOMER'S OBLIGATIONS IN RELATION TO IT SUPPORT

- 9.1 When receiving IT Support, the Customer shall:
- 9.1.1 keep the Equipment in the environmental conditions recommended by the Equipment manufacturer and the Supplier (where applicable) and ensure that the external surfaces, cables and fittings of the Equipment are kept clean and in good condition;
 - 9.1.2 ensure that the Equipment is only used by properly trained staff in accordance with the manufacturer's user instructions, current computing practice and instructions issued by the Supplier from time to time;
 - 9.1.3 ensure that only personnel authorised by the Supplier adjust, or the Customer's in-house IT support personnel, modify,

configure, maintain, repair, replace or remove any part of the Equipment;

- 9.1.4 maintain adequate records of the use, maintenance and malfunction of the Equipment and will provide the Supplier with such information and assistance concerning the Equipment, its application, use, location and environment as the Supplier may reasonably require to enable it to carry out IT Support;
- 9.1.5 immediately notify the Supplier if there is any failure of the Equipment and will allow the Supplier full and free access to the Equipment and all documentation, software, materials and services necessary for the provision of the IT Support;
- 9.1.6 ensure that relevant trained and experienced staff are available when required by the Supplier and to provide the Supplier with information required by the Supplier to diagnose and/or repair the Equipment;
- 9.1.7 where the Supplier provides remote diagnostic services in respect of the Equipment, the Customer will put and keep in place a remote access link to the Equipment which is acceptable to the Supplier;
- 9.1.8 inform the Supplier immediately in writing that the Equipment or any part of it has changed;
- 9.1.9 notify the Supplier of a change in the location of any part of the Equipment. Whilst any Equipment is being moved, all of the Supplier's obligations to provide IT Support will be suspended. IT Support will be reinstated following re-installation of the Equipment provided that the Equipment has not been damaged or affected during the move. If the Equipment has been damaged or affected during the move the Supplier shall have the option to inspect such Equipment at its then current rates;
- 9.1.10 put and keep in place adequate security measures to protect the Equipment and any other software or data from viruses, harmful code or unauthorised access. The Supplier shall not be responsible for any unauthorised access to the Equipment by means of hacking, any unauthorised access of the Equipment with intent to commit or facilitate the commission of an offence or any unauthorised modification of Equipment by a third party;
- 9.1.11 be solely responsible for any connection charges, line rental charges and call charges in relation to the Equipment;
- 9.1.12 adhere to any responsibilities set out in the IT Support Contract

- 9.2 The Customer hereby agrees that the Supplier shall have the right at any time to access the Equipment remotely for the purpose of providing IT Support. The Customer acknowledges and agrees that such remote diagnostic services may be undertaken at times where the Customer is unavailable (for example, outside the Customer's working hours) and the Supplier shall have the right to perform any diagnostic and maintenance services as it sees fit even if it has not been possible to contact the Customer and inform the Customer of the proposed performance of such services.
- 9.3 Unless specifically agreed in the IT Support Contract, the Customer is responsible for the cost of any third-party Software upgrades which the Supplier advises are required.
- 9.4 **IT IS THE CUSTOMER'S SOLE RESPONSIBILITY, IN A MANNER ACCEPTABLE TO THE SUPPLIER, TO OPERATE AND VERIFY A PROPER BACK UP ROUTINE, MAINTAINING ALL BACK UP COPIES IN A SECURE ENVIRONMENT SUCH THAT THEY CAN, AND WILL BE PROVIDED TO THE SUPPLIER WHEN REQUIRED.**

10. SUPPLIER'S GENERAL OBLIGATIONS

- 10.1 The Supplier shall use reasonable endeavours to:
- 10.1.1 deliver the Services in accordance with any Specification in all material respects;
 - 10.1.2 meet the performance dates specified in any Specification, but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 10.2 The Supplier may at its discretion appoint a project manager to liaise with the Customer on all matters relating to the Services. The Supplier shall use reasonable endeavours to ensure that the same person acts as project manager throughout the provision of the Services but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.

11. CUSTOMER'S GENERAL OBLIGATIONS

- 11.1 The Customer shall:
- 11.1.1 ensure that any information contained in any purchase order (including any applicable specification) is correct;
 - 11.1.2 co-operate with the Supplier in all matters relating to the Services;

- 11.1.3 appoint a project manager (or suitably qualified member of staff) who shall have the authority to contractually bind the Customer on matters relating to the Services;
 - 11.1.4 provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
 - 11.1.5 provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects;
 - 11.1.6 ensure in the interests of health and safety that the Supplier's personnel, while on the Customer's premises, are at all times familiar with the Customer's premises and safety procedures;
 - 11.1.7 be responsible (at its own cost) for preparing the relevant premises for the supply of the Services;
 - 11.1.8 comply with any applicable laws;
 - 11.1.9 take all such steps as may be necessary to ensure the health, safety and welfare of any of the Supplier's personnel who visit any premises of or on behalf of the Customer.
- 11.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.
- 11.3 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the completion of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier, except that the Customer shall not be in breach of this clause 11.3 if it hires an employee or sub-contractor of the Supplier as a result of a recruitment campaign not specifically targeted to any employees or sub-contractors of the Supplier.
- 11.4 Any consent given by the Supplier in accordance with condition 11.3 shall be subject to the Customer paying to the Supplier on demand a sum equivalent to 50% of the then current annual remuneration of the

Supplier's employee or sub-contractor or, if higher, 50% of the annual remuneration to be paid by the Customer to such employee or sub-contractor.

12. CHANGE CONTROL

- 12.1 The project managers of the Customer and Supplier shall meet on a regular basis to discuss matters relating to the Services. If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.
- 12.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
 - 12.2.1 the likely time required to implement the change;
 - 12.2.2 any variations to the Supplier's charges arising from the change;
 - 12.2.3 the likely effect of the change in respect of the Services;
 - 12.2.4 any other impact of the change on the terms of the Contract.
- 12.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Services, the relevant Specification and any other relevant terms of the Contract to take account of the change.
- 12.4 Notwithstanding clause 12.3 the Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services.
- 12.5 The Supplier may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with clause 13.4.

13. CHARGES AND PAYMENT

- 13.1 In respect of the sale of Goods:
 - 13.1.1 payment will be made by the Customer on the date(s) agreed in writing between the Supplier and the Customer at the point of order of the Goods;
 - 13.1.2 unless otherwise agreed in writing by the Supplier, payment will be made by way of direct debit;

- 13.1.3 invoices for Goods will ordinarily be issued on delivery of the Goods. If the Goods are specific to the Customer or if the Customer fails to take delivery when required by the Supplier, the Supplier may invoice the Customer at any time after the Goods become available;
- 13.1.4 the Supplier may require the Customer at any time prior to delivery to pay a deposit to secure any order or part thereof;
- 13.1.5 any quantity discount given by the Supplier at the point of order may be removed if the order quantity is subsequently reduced.
- 13.2 In respect of IT Support:
 - 13.2.1 the charges quoted in the IT Support Contract are for the Initial Term only. The Customer will be notified of the charges applicable to any Renewal Period within 45 days before the end of the Initial Term or, if during the Renewal Period, on 45 days' written notice (as applicable);
 - 13.2.2 for the Initial Term the Customer will pay the charges to the Supplier on the Agreement Start Date, or within 30 days of the Supplier's invoice.
- 13.3 Clause 13.4 shall apply if the Services are to be provided on a time-and-materials basis. Clause 13.5 shall apply if the Services are to be provided for a fixed price. The remainder of this clause 13 shall apply in either case.
- 13.4 Where the Services are provided on a time-and-materials basis:
 - 13.4.1 the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates as amended from time to time;
 - 13.4.2 the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
 - 13.4.3 the Supplier shall be entitled to charge at an overtime at its standard rates for time worked by members of the project team outside the hours referred to in clause 13.4.2 on a pro-rata basis;
 - 13.4.4 the Supplier shall invoice the Customer at the start of the project monthly in advance for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 13.

- 13.5 Where the Services are provided for a fixed price the total price for the Services shall be the amount set out in the Specification. The total price shall be paid to the Supplier in instalments as set out in the Specification on its achieving any relevant milestone. On achieving a performance date in the Specification, the Supplier shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate).
- 13.6 Unless otherwise stated in writing, the Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt.
- 13.7 All waiting time spent by any employees or agents of the Supplier (which includes any time which had been allocated to a Customer by the Supplier and which is not utilised by such Customer for any of the reasons set out in this clause) as a result of any delay, variation or failure by the Customer to comply with these conditions (which for these purposes includes any delays or postponements by the Customer of any installation dates specified by the Supplier, of dates of scheduled service visits or otherwise) will be payable by the Customer to the Supplier at the Supplier's then current rates.
- 13.8 The Customer shall pay any chargeable expenses and disbursements which are incurred by the Supplier's personnel on behalf of the Customer including but not limited to hotels, subsistence, travelling, mileage at 40p per mile, supplies, telephone charges, copying charges and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of Goods and / Services.
- 13.9 If any payments from the Customer under these conditions are payable by instalments, the Customer will pay such instalments in advance by direct debit or such other method as the Supplier may agree, at the intervals agreed in writing with the Supplier.
- 13.10 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on any due date the Supplier may:
- 13.10.1 charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
- 13.10.2 suspend all Goods and / or Services until payment has been made in full.

- 13.11 Time for payment shall be of the essence of the Contract.
- 13.12 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 13.13 All amounts due under the Contract shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
- 13.14 If any payments due to the Supplier in respect of Goods or Services is to be paid by a third party then the Customer agrees that immediately on delivery of the Goods or performance of the Services in question the Customer will sign the acceptance note for the leasing company or other third party and will generally take all steps as may be necessary to ensure that payment is made to the Supplier for the Goods and / or Services in accordance with these conditions.

14. TUPE

- 14.1 The Customer warrants to the Supplier that none of its employees nor the employees of any other party will become employees of the Supplier by reason of the provision of the services by the Supplier under these conditions, the Transfer of Undertakings (Protection of Employment) Regulations 2006 (**Regulations**) or otherwise.
- 14.2 The Customer will indemnify and / or repay to the Supplier any costs, expenses or other sums for which the Supplier is or may be liable by reason of the applicable or alleged application of the Regulations in relation to provision of such services by the Supplier including (without limitation) the dismissal of any such person and / or any compensation or damages which the Supplier pays to any such person.

15. THIRD PARTY PROVIDERS

The Customer acknowledges that when acquiring Goods, Services and / or IT Support from the Supplier it may end up corresponding with, and purchasing products and services from, third parties and that they do so solely at their own risk. The Supplier makes no representation, warranty, commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third party, or any transactions completed with any such third party. Any contract entered into and any transaction completed with any third party is between the Customer and the relevant third party, not the Supplier. The Supplier recommends that the Customer refers to any third

party's terms and conditions before corresponding with or entering into any transactions with them.

16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier. The Supplier hereby licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. If the Supplier terminates the Contract under clause 20.1, this licence will automatically terminate.
- 16.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.
- 16.3 The Customer warrants and represents that the use by the Supplier of any data, materials or equipment supplied by the Customer for use by the Supplier will not infringe the Intellectual Property Rights of any third party and the Customer will fully indemnify the Supplier in this respect.
- 16.4 If any Software has to any extent been written or developed by the Supplier then subject to clause 4.4, the Supplier hereby grants a non-exclusive, non-transferable licence for the use of such Software by the Customer for the duration of this Contract and all copies of such Software are the property of the Supplier and notwithstanding clause 7 no title or ownership thereof will be transferred to the Customer.

17. CONFIDENTIALITY AND SUPPLIER'S PROPERTY

- 17.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier or its agents, and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 17.2 Each party may be given access to confidential information from the other party in order to perform its obligations under the Contract. A

party's confidential information shall not be deemed to include information that:

- 17.2.1 is or becomes publicly known other than through any act or omission of the receiving party;
 - 17.2.2 was in the other party's lawful possession before the disclosure;
 - 17.2.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - 17.2.4 is independently developed by the receiving party, which independent development can be shown by written evidence.
- 17.3 Subject to clause 17.5, each party shall hold the other's confidential information in confidence and not make the other's confidential information available to any third party, or use the other's confidential information for any purpose other than the implementation of the Contract.
- 17.4 Each party shall take all reasonable steps to ensure that the other's confidential information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract.
- 17.5 A party may disclose confidential information to the extent such confidential information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 17.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 17.6 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 17.7 The above provision of this clause 17 shall survive termination of the Contract, however arising.

18. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

18.1 The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

18.1.1 any breach of the Contract howsoever arising;

18.1.2 any use made by the Customer of the Services, the Deliverables or any part of them; and

18.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

18.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

18.3 Nothing in these conditions excludes the liability of the Supplier:

18.3.1 for death or personal injury caused by the Supplier's negligence; or

18.3.2 for fraud or fraudulent misrepresentation.

18.4 Subject to clause 18.2 and clause 18.3:

18.4.1 the Supplier shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

18.4.1.1 loss of profits; or

18.4.1.2 loss of business; or

18.4.1.3 depletion of goodwill or similar losses; or

18.4.1.4 loss of anticipated savings; or

18.4.1.5 loss of goods; or

18.4.1.6 loss of contract; or

18.4.1.7 loss of use; or

18.4.1.8 loss or corruption of data or information or memory erasure of media stored on disk; or

18.4.1.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

18.4.2 the Supplier's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the higher of £15,000 or the price paid for the Goods and / or Services under or in connection with the Contract.

19. CUSTOMER DATA

19.1 The Customer shall own all rights, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

19.2 Any Customer Data uploaded to the server (whether by the Supplier or otherwise) is done so at the Customer's own risk.

19.3 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case;

a. the Customer warrants that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully process the personal data in accordance with this agreement on the Customer's behalf; and

b. each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

19.4 The Customer acknowledges that any data transmitted over the internet or through any other form of transmission including by telephone or other electronic means cannot be guaranteed to be free from the risk of interception even if transmitted in encrypted form and that the Supplier has no liability for the loss, corruption or interception of any such data.

19.5 Both the Customer and Supplier agree to the terms set out within the Data Processing Addendum.

20. TERMINATION

- 20.1 Without prejudice to any other rights or remedies to which the Supplier may be entitled, the Supplier may terminate the Contract without liability to the Customer if:
- 20.1.1 the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
 - 20.1.2 the Customer commits a material breach of any other term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 20.1.3 the Customer repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;
 - 20.1.4 the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 20.1.5 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 20.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 20.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the Customer;
 - 20.1.8 the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;

- 20.1.9 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- 20.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer's assets and such attachment or process is not discharged within 14 days;
- 20.1.11 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 20.1.4 to clause 20.1.10 (inclusive);
- 20.1.12 there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 20.2 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 20.3 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 20.4 On termination of this Contract for any reason the Customer will return or delete any of Supplier's confidential information and return to the Supplier all property of the Supplier under the Customer's possession or control and the Supplier will return or delete any of the Customer's confidential information and return to the Customer all property of the Customer under the Supplier's possession or control.
- 20.5 On termination of the Contract any licence to use Software granted by the Supplier will immediately terminate and the Customer will return to the Supplier any such Software and all copies thereof and will not use or permit the use of any such Software. The Customer acknowledges and agrees that the Supplier will be entitled to remove such Software from all operating systems of the Customer whether by means of remote access or otherwise. The Customer will not do or omit to do anything which might prevent or hinder such removal.
- 20.6 If the Customer terminates this Contract (or the Supplier terminates by reason of any acts or omissions of the Customer) then:
 - 20.6.1 in respect of any Goods such termination can only be made with the Supplier's written consent and on terms that the

Customer will indemnify the Supplier in full against all loss (including loss of profit) costs, charges and expenses incurred by the Supplier as a result of such termination;

20.6.2 in respect of IT Support if the termination occurs prior to the end of the Initial Term or any Renewal Period, the Supplier may without prejudice to any other remedies available to it demand and receive from the Customer an early termination charge. This charge will be calculated to recover such costs as the Supplier has reasonably incurred in equipping itself to deliver IT Support and which have not been fully recovered by the Supplier from the charges paid by the Customer at the date of termination; and

20.6.3 in respect of Services the Customer shall be liable for the full value of the Supplier's charges set out in the Specification as well as any and all charges, fees and additional costs accrued up to the point of termination, which may include but not be limited to software costs and travelling expenses.

21. INDEMNITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

21.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with:

21.1.1 the Customer's breach of any of the Customer's obligations under the Contract; and

21.1.2 the enforcement of the Contract.

22. FORCE MAJEURE

The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (**Force Majeure Event**).

23. WAIVER

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or

remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

24. RIGHTS AND REMEDIES

Except as expressly provided in the Contract, the rights and remedies provided under the Contract are in addition to, and not exclusive of, any rights or remedies provided by law.

25. SEVERANCE

25.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

25.2 If any provision or part-provision of the Contract is deemed deleted under clause 25.1, the parties shall negotiate in good faith to amend such provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

26. ENTIRE AGREEMENT

26.1 The Contract, inclusive of the Data Processing Addendum, 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 their subject matter.

26.2 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.

26.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

27. ASSIGNMENT

27.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

27.2 The Supplier may at any time assign, transfer, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

28. NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

29. THIRD PARTY 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.

30. NOTICES

30.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

30.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or

30.1.2 sent by fax to its main fax number;

30.1.3 sent by email to such email address as notified by that party.

30.2 Any notice or communication shall be deemed to have been received:

30.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

30.2.2 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;

30.2.3 if sent by fax or email, at 9.00 am on the next Business Day after transmission.

30.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

31. GOVERNING LAW

The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England.

32. JURISDICTION

Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).