



# Terms & Conditions

Applied Business Solutions UK Limited

**THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 20 (LIABILITY).**

**1. INTERPRETATION**

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

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

**Business Hours:** 09:00 until 17:00 on a Business Day.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 25.5.

**Contract:** the contract entered into between the Customer and the Supplier for the sale of Goods and/or supply of services as specified in the Order in accordance with these Conditions and any other documents agreed between the parties.

**Contractual Start Date:** the date notified to the Customer (whether in the Proposal or otherwise) or the date which the Supplier commences providing Goods and/or Services, whichever is the earlier.

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

**Controller,** processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

**Cost:** the fee(s) payable by the Customer to the Supplier in accordance with clause 3.

**Customer:** the person/company who accepts the Supplier's written terms for the sale and/or supply of goods and services, or whose written order in respect thereof is accepted by the Supplier.

**Customer Default:** has the meaning set out in clause 15.3.

**Data Protection Legislation:** the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

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

**Goods:** all or part of the Software, hardware, network and any related equipment provided to the Customer by the Supplier as set out in the Order.

**Group Company:** any subsidiary or holding company of the Supplier.

**Installation Address:** the address specified in the Customer's Order at which the Goods are located and where the Services are to be provided, or such other address as may be agreed in writing by the Supplier.

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

**Licensed Software:** means all software, supplied or implemented, which is provided in accordance with these terms and conditions and also with the licence of the Software Provider.

**Master Password:** the password used solely by the Supplier's employees for access to the Network.

**NCE Subscription Services:** the services and use related to the NCE subscription licences provided in the Order to be performed by the Supplier in accordance with these Conditions.

**NCE Subscription Terms:** means the terms and conditions relating to the provision of the NCE Subscription Services.

**Network:** the network of computer and devices used by the Customer for the use of the Software.

**Order:** the Customer's order for Services as set out in the Customer's purchase order or overleaf as the case may be.

**Proposal:** the proposal document issued by the Supplier to the Customer specifying the Goods and/or Services to be provided.

**Renewal Date:** the renewal date of the Contract Start Date as defined by the Supplier and specified in the Proposal or as otherwise agreed in writing by the Supplier.

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Proposal.

**Software:** the software developed and licensed by the Supplier or developed and licensed by a third party, which is to include any bespoke software specifically supplied to a Customer.

**Software Provider:** the Supplier or a third party (such as Sage, Pegasus or Exchequer) who is providing the Software.

**Supplier:** Applied Business Solutions UK Limited registered in England and Wales with company number 03272968 or one of its related Group Companies as may be notified to the Customer from time to time.

**Support Services:** the service and/or support provided by the Supplier in accordance with the Order and these Conditions.

**Support Services Start Date:** the date on which the Supplier confirms to the Customer (in writing) that the Service and Support team has commenced, as specified on the relevant Support Services invoice.

**UK Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.3 Any words following the terms including, include, in particular, for example or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4 A reference to writing or written includes email.

1.5 Headings in these Conditions are for convenience only and have no effect on the interpretation.

**2. GENERAL**

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Customer shall be deemed to have accepted and be subject to these Conditions from the Contractual Start Date or the signing of the Order, whichever is the earlier.

2.3 The Customer, warrants, represents and undertakes to the Supplier that:

2.3.1 the person placing the Order and signing these Conditions (if applicable) has full capacity and authority to enter into the Contract and to engage the Supplier in accordance with these Conditions;

2.3.2 the Contract will form legal and binding obligations on it.

2.4 Any samples, drawings, visio diagrams, technical drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues, brochures or service definition booklet are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall be followed and considered at the Customer's own risk and shall not form part of the Contract or have any contractual force.

2.5 Subject to the prior agreement of both parties being obtained in writing, these Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

**3. COST**

3.1 The Cost of the Goods, Software, Licensed Software and/or Support Services provided in accordance with these Terms shall be provided by the Supplier on the Order attached hereto.

3.2 Any quotation given by the Supplier shall:

3.2.1 not constitute an offer;

3.2.2 be exclusive of VAT and any other relevant taxes;

3.2.3 is only valid for a period of 30 Business Days from its date of issue; unless agreed otherwise by the parties in writing.

3.3 The Supplier reserves the right to increase the Costs for the Customer:

3.3.1 in any subsequent year in line with any increase in the cost of the Goods, Software, Licensed Software or Support Services incurred by the Supplier and in any other circumstance beyond the control of the Supplier; and

3.3.2 to take into account any inflationary increases beyond 5% at any point during the term of the Contract. Inflation is measured using the ONS published Consumer price inflation statistics over a 12 month period.

**4. SOFTWARE DEVELOPMENT**

The Supplier may offer chargeable software development services to alter or enhance third party software in order to meet the Customer's requirements. Notwithstanding any other provision in the Contract, the Customer acknowledges that:

4.1 the source code for this development is owned by the Supplier;

4.2 any modifications by any other party would leave the Software unsupported; and

4.3 future enhancements or updates to the software developed will incur further charges (to be specified by the Supplier on request), including changes or updates to remain compatible with other third party software after version upgrades.

**5. PAYMENT**

5.1 The Customer shall make any payments due to the Supplier on the date(s) specified and agreed in writing by the Supplier at the time of order for the Goods, Software, Licensed Software or Support Services in accordance with these Conditions.

5.2 For the avoidance of doubt and subject to any terms specified in the Order, if no payment date(s) have been agreed in writing, the Customer shall make payment to the Supplier:

- 5.2.1 within 30 days of the date of each invoice; and
- 5.2.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 5.3 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 5.4 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 22, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 5.4 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4.05% a year for any period when that base rate is below 0%, and is to be paid on a monthly basis on all outstanding balances on the 28th of each calendar month subsequent to the agreed payment period. Nothing in this clause shall prejudice the Supplier's rights under the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.6 Any discount previously agreed with the Supplier shall no longer apply following any breach by the Customer of this clause 4.
- 6. TITLE AND RISK**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery in accordance with clause 10. The Supplier's confirmation of delivery shall be exclusive proof of delivery of the Goods. The Supplier shall have no liability for any loss, damage or destruction howsoever caused to the Goods after delivery.
- 6.2 Title to Goods which have been financed by a third party and leased to the Customer shall not pass to the Customer but shall pass to the relevant lender in accordance with their respective terms on receipt of full payment by the Supplier in respect of the relevant Goods.
- 6.3 Title to Goods which are not financed shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods or Services 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.
- 6.4 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.4.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 6.4.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 6.4.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery (with the Supplier's interest noted on any such policy of insurance);
- 6.4.4 notify the Supplier immediately if it becomes subject to any of the events listed in clauses 22.2.2 to 22.2.6 inclusive; and
- 6.4.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events in 22.2.2 to 22.2.6 inclusive, then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6.6 The Customer shall not copy, modify or duplicate for resale any Goods, Software or Licensed Software supplied to the Customer by the Supplier. Should the customer breach this clause 6.6, any profits received as a result of such breach shall be paid into a separate bank account and held on trust for the Supplier.
- 7. SUPPLY OF SERVICES**
- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.
- 7.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 7.3 The Supplier reserves the right to amend the Order if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.5 Where the Services include the supply of NCE Subscription Services, the NCE Subscription Terms annexed overleaf shall apply in addition to these Conditions.
- 8. SUPPORT SERVICES**
- 8.1 The Supplier shall only be required to provide the Support Services in respect of the Goods, Software and/or Licensed Software during Business Hours on a Business Day.
- 8.2 Any Support Services supplied by the Supplier outside of Business Hours shall be deemed to be outside of the contracted hours and will incur an additional charge to the Customer at the rates applicable at that time.
- 8.3 The Supplier shall at all times use its best endeavours to respond to a Customer request in a reasonable time however time is not of the essence in respect of response times and the Supplier shall have no liability for any loss of any nature howsoever caused due to a delay or failure to provide the Support Services.
- 8.4 The Customer consents to the Supplier carrying out an inspection of the equipment at the Installation Address prior to the provision of the Support Services with the purpose of ensuring that the equipment, in the Supplier's reasonable opinion, is in full working order and being used in accordance with the manufacturer's requirements.
- 8.5 Following an inspection conducted pursuant to clause 8.4, if the Supplier is of the opinion that work is required to be carried out to the equipment, the Customer shall carry out such work at their own expense within 30 days from the date on which the Supplier notifies the Customer of any such requirements. Failure to carry out any such work shall entitle the Supplier to provide the Customer with written notice that the equipment concerned shall be excluded from the Support Services.
- 8.6 It is the sole responsibility of the Customer to ensure that:
- 8.6.1 their Network is adequately protected against computer viruses, vulnerabilities and spyware and it has sufficient security levels and frameworks to protect against such things;
- 8.6.2 the Customer undertakes daily back-ups of their systems and any data; and
- 8.6.3 has appropriate measures and practices in place with regards data protection and security,
- 8.7 The Customer acknowledges that the Supplier is not obliged to carry cyber insurance for the purposes of providing the Goods and/or Services and therefore it is for the Customer to assess and obtain cyber insurance should they feel it necessary to do so.
- 8.8 The Customer is responsible for identifying and maintaining a suitable disaster recovery procedure in the event of an IT failure and to ensure that it has sufficient processes and systems in place.
- 8.9 The Customer acknowledges that it is responsible for ensuring that it takes regular back-ups of all of its data (at a frequency to be defined by the Customer) and to ensure it has and maintains all appropriate permissions and authorisations. The Supplier recommends daily back-ups, but which may be determined by the Customer to be required more frequently. To the fullest extent permissible by law, the Supplier shall have no liability to the Customer or any third party in this regard.
- 8.10 The Supplier shall have no liability to the Customer or any third party for the Customer's failure to comply with clauses 8.6 to 8.9 (inclusive).
- 8.11 The Supplier reserves the right to charge the Customer in addition for any Goods and/or Services provided that are outside of the original Order/Proposal at its current hourly rates.
- 8.12 The Supplier's obligations in respect of providing the Support Services for the maintenance of the Goods, Software and Licensed Software shall not extend to the following:
- 8.12.1 Goods, Software or Licensed Software not specified in the Order and which includes any part of the Goods, Software or Licensed Software that has been changed in any way from the description detailed in the Order; and
- 8.12.2 any necessary work arising from:
- 8.12.2.1 operator error;
- 8.12.2.2 a breach by the Customer of any of its obligations under these Conditions;
- 8.12.2.3 a wilful act or omission in respect of the Goods, Software or Licensed Software or any other cause, except for fair wear and tear, which is not due to the negligence of the Supplier;
- 8.12.2.4 failure by the Customer to comply with this clause 8; and/or
- 8.12.2.5 any maintenance or repair work undertaken in respect of the Goods, Software or Licensed Software by a third party not previously approved in writing by the Supplier.
- 8.13 The Contract for the Support Services shall automatically renew on the term basis specified in the order or proposal and shall continue for successive periods on each anniversary of the Contract Start Date unless and until terminated in accordance with clause 22. The Supplier shall issue an invoice in respect of each renewal prior to each Renewal Date.
- 9. BEYOND ECONOMICAL REPAIR**
- 9.1 If, either during the inspection permitted under clause 8.4 or during the provision of the Support Services, the Supplier determines that the Customer's equipment is considered to be beyond reasonable economical repair or the necessary spare parts are not readily available, the Supplier shall provide the Customer with written notice of the same, at which point the obligations of the Supplier in respect of the Support Services shall be suspended.
- 9.2 If the Customer fails to replace the equipment in line with the Supplier's expectations within 30 days of written notice being provided by the Supplier, the Supplier shall then be entitled to exclude such equipment from the Support Services Contract. The Supplier shall refund the Customer a fair proportion of any charges which have been paid by the Customer in advance.
- 9.3 Clauses 9.1 and 9.2 shall equally apply in respect of any Software or Licensed Software in use by the Customer which, in the reasonable opinion of the Supplier, is no longer economically practicable to maintain or requires upgrading or updating.

## 10. DELIVERY OF GOODS

- 10.1 Delivery of the Goods, Software and/or Licensed Software shall take place when the Supplier delivers the Goods, Software and/or Licensed Software to the Installation Address.
- 10.2 The Supplier shall aim to deliver the Goods, Software and/or Licensed Software by the estimated date of delivery detailed in the Order (Delivery Date), however the time of delivery is not of the essence of the Contract and shall not be guaranteed by the Supplier.
- 10.3 The Supplier shall not be held liable for any loss or damage howsoever caused to the Customer, should the Supplier be unable to deliver the equipment within the quoted period.

## 11. INSTALLATION

- 11.1 The Goods shall be installed by the Supplier at the Installation Address on the date of delivery and all subsequent maintenance, Support Services (or any other services as may be agreed between the parties from time to time) shall be provided at the same location.
- 11.2 If the Customer relocates the Goods to a location other than the Installation Address and which is deemed by the Suppliers to be outside of the Supplier's service area, the Supplier reserves the right to:
- 11.2.1 charge a relocation fee to the Customer as a result of the relocation of the Goods; and/or
- 11.2.2 cancel the Contract without giving notice or incurring a penalty, regardless of the age of installation.
- 11.3 The Customer shall be responsible for:
- 11.3.1 the installation area and the safety and supply of all electrical appliances. Should the electrical supply be deemed sub-standard by the Supplier, the Customer will, at their own expense, provide all necessary equipment and facilities to provide the correct electrical supply to the satisfaction of the Supplier's specification; and
- 11.3.2 ensuring it has at all times all appropriate power, internet connections and telephone lines deemed necessary by the Supplier in connection with the Goods and Services.
- The Supplier shall be entitled to charge the Customer in addition for any additional Goods and/or Services required as a result of the Customer's failure to comply with this clause 11.3.
- 11.4 If the Supplier is prevented or delayed from carrying out the installation through no fault of the Supplier, then the Supplier will be entitled to charge the Customer at the Supplier's current prices for the additional works carried out by or on behalf of the Supplier to enable it to complete the installation. The Supplier shall also be entitled to charge the Customer for compensation for any losses or costs incurred by the Supplier due to such delay.
- 11.5 The Customer shall provide to the Supplier a copy of their insurance policy in respect of the Installation Address within 7 days of any request made by the Supplier.
- 11.6 If the Customer determines that the Goods or Services (or any part thereof) are defective or not in accordance with the Contract, it shall notify the Supplier within 30 days of delivery or installation (as the case may be). The Supplier shall be entitled to a reasonable period of time to inspect the issue and re-perform the Services and/or repair or replace any Goods that it deems necessary in its absolute discretion. Any Goods which cannot be repaired or replaced or any Services that cannot be re-performed, shall be refunded by the Supplier in its absolute discretion. The Customer's right to repair, replacement, re-performance or refund (as the case may be) shall be the Customer's sole remedy. If the Good The Customer shall co-operate with the Supplier at all times and shall make its facilities and premises available to the Supplier for this purpose.

## 12. SOFTWARE

- 12.1 The Supplier shall provide the Customer with any Software and/or Licensed Software as set out in the Order.
- 12.2 The Customer shall ensure that they have all sufficient licenses, permissions and consents for the use of the Software and/or Licensed Software provided by the Supplier and shall demonstrate proof of such licences, permissions and consents to the Supplier upon reasonable demand. The Customer shall be responsible for the costs of any additional licences identified by the Supplier as being required, such costs to be notified to the Customer in writing.
- 12.3 The Customer agrees to enter into any necessary end-user licence agreements with the owners of any Licensed Software supplied by the Supplier.
- 12.4 Where reasonably practicable, the Supplier shall accept any third party terms in respect of the Licensed Software on the Customer's behalf and provide access to such terms on request, but the Customer shall always be responsible for reviewing, accepting and complying any such third party terms.
- 12.5 The Customer acknowledges that any Software written or developed by the Supplier for the Customer's use 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.
- 12.6 Further to clause 12.5, the Customer acknowledges that the Supplier shall be under no obligation to supply the Customer with any updates or add-ons to the Software unless agreed otherwise by the parties in writing.
- 12.7 The Customer accepts that any defects in the Licensed Software are the liability of the provider of the Licensed Software and not the Supplier. The Supplier shall assist the Customer in lodging any justified claims against the providers of the Licensed Software but shall not be responsible for any costs supporting such a claim, nor any liability, loss

of profits, loss of business or any other indirect, special or consequential loss or damage howsoever caused arising from the use of the Licensed Software or failure to provide the Licensed Software.

- 12.8 The Customer shall obtain the written consent of the Supplier before they (or any third party acting on their behalf) make any modifications to the Software. Failure to comply with this clause 12.8 could result in the Supplier withdrawing any Support Services provided in respect of the Goods or Software.

- 12.9 The Customer acknowledges that support contracts for accounting software do not provide for accounting or tax advice, but instead seek to offer help and support with regards to the use of the software.

## 13. LEASE

- 13.1 The Supplier shall permit the Customer to lease, rent or finance the Goods, Software or Licensed Software via a third party provided that full payment shall be received by the Supplier in accordance with clause 4.
- 13.2 The Supplier shall be entitled at its own discretion to separate out a Customer's Order if it comprises Goods and Services covering multiple elements and the Contract shall be deemed to have continued irrespective of such separation. Any issues or disputes concerning a particular element, will be dealt with independently but for the avoidance of doubt, the Customer shall not be entitled to terminate the Contract in its entirety and the remaining elements shall be deemed to continue on these Conditions.
- 13.3 If, pursuant to an agreement permitted under clause 13.1, payment is to be made by a third party, the Customer agrees that immediately on delivery of the Goods, Software or Licensed Software the Customer will sign the acceptance note for the third party concerned.
- 13.4 The Customer undertakes to take all necessary steps to ensure that payment is made to the Supplier by the third party in accordance with these Conditions for any leased or financed Goods, Software or Licensed Software. If the lease is not approved and notwithstanding any other provision, the Customer shall be responsible for making all payments due and owing to the Supplier in accordance with these Conditions.

## 14. NETWORKS

- 14.1 The Supplier reserves the right to use a Master Password to access the Customer's Network for any purposes associated with the Supplier's obligations as specified in the Contract.
- 14.2 Subject to the Supplier's limit in regards to liability under clause 21.6, the Supplier undertakes that the Master Password shall only ever be used by employees of the Suppliers in accordance with clause 14.1.

## 15. CUSTOMER'S OBLIGATIONS

- 15.1 The Customer shall:
- 15.1.1 ensure that the terms of the Order are complete and accurate;
- 15.1.2 co-operate with the Supplier in all matters relating to the Services;
- 15.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
- 15.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 15.1.5 prepare the Customer's premises for the supply of the Services;
- 15.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 15.1.7 comply with all applicable laws, including health and safety laws;
- 15.1.8 keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- 15.1.9 comply with any additional obligations as set out in the Order;
- 15.1.10 ensure that the system on which the Software and/or Licensed Software is running:
- 15.1.10.1 is and continues to be;
- 15.1.10.2 well and adequately maintained;
- 15.1.10.3 contained in the hardware compatibility lists of all suppliers of software intended to be running on that system and in respect of that software;
- 15.1.10.4 within the hardware and performance specifications required by the Supplier of all software running on the system; and
- 15.1.10.5 does not contain any extraneous programs, data or hardware which are not reasonably necessary for the use of the system for its intended purpose;
- 15.1.11 install patches and upgrades to the Software when necessary for the functioning of the Software as and when the Supplier notifies the Customer to do so. The Supplier reserves the right to charge the Customer for these patches or upgrades;
- 15.1.12 maintain a comprehensive log of all faults or problems encountered in running the Software which is accessible by the Supplier upon request;
- 15.1.13 provide the Supplier with a list of all persons who are to be on the Network who are authorised and entitled to administration passwords and the disclosure of security information;
- 15.1.14 manage and monitor the list of all persons who are to be on the Network and who are to have remote access and accounts software access; and

- 15.1.15 report any errors, warnings or issues with the hardware or within the Software to the Supplier's help desk as soon as is reasonably practicable.
- 15.2 The Customer acknowledges that any items not detailed in the Order shall be the sole responsibility of the Customer and, should the Supplier deem such consumables defective or detrimental to the Goods, Software or Licensed Software, the Customer shall be required to replace such consumables at their own expense.
- 15.3 If the Supplier's performance of any of its obligations under the Order is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):
- 15.3.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 15.3.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 15.3; and
- 15.3.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 16. TRAINING AND SUPPORT**
- 16.1 The Customer shall designate 2 of their employees who shall be trained by the Supplier in respect of the usage of the Goods, Software or Licensed Software from the date of delivery.
- 16.2 Should any new employees of the Customer require training at a later point, this will be deemed outside of the Support Services and the Supplier reserves the right to charge the Customer at the Supplier's current rates for any such additional training.
- 16.3 The Customer acknowledges that the Supplier's support desk is only to be contacted by those employees who have received the relevant training in respect of the Goods, Software or Licensed Software.
- 17. WARRANTIES**
- 17.1 The Supplier warrants that the Goods are free from any defects in materials and workmanship for a period of 90 days from the point of delivery (**Warranty Period**).
- 17.2 Subject to clause 17.3, if:
- 17.2.1 the Customer gives notice in writing to the Supplier during the Warranty Period that some or all of the Parts do not comply with the warranty set out in clause 17.1;
- 17.2.2 all sums due and owing to the Supplier are at the time of the Warranty claim, are paid up in full;
- 17.2.3 the Supplier is given the opportunity of examining the Goods; and
- 17.2.4 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 for a full inspection and assessment, the Supplier shall, at its option, repair and/or replace the Goods at the Supplier's own cost as the Supplier deems necessary to meet the obligations of the schedule of equipment detailed in the Order.
- 17.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 17.1 if:
- 17.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 17.4;
- 17.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- 17.3.3 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
- 17.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 17.3.5 the Goods have been used otherwise than in accordance with the relevant manufacturer's specifications and express instructions from the Supplier;
- 17.3.6 the Goods have been repaired or modified by anybody other than the Supplier;
- 17.3.7 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- 17.3.8 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 17.4 Should the Customer fail to notify the Supplier of any such defect within the Warranty Period in accordance with clause 17.1, they shall no longer be entitled to reject the Goods and the Supplier shall have no liability for such defects.
- 17.5 Except as provided in this clause 17, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.2.
- 17.6 These Terms shall apply to any repaired or replacement Goods supplied by the Supplier.
- 18. INTELLECTUAL PROPERTY RIGHTS**
- 18.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.
- 18.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to copy the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 18.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 18.2.
- 18.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.
- 19. DATA PROTECTION**
- 19.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation. In this clause 19, Applicable Laws means (for so long as and to the extent that they apply to the Supplier) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK.
- 19.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the controller and the Supplier is the processor.
- 19.3 Without prejudice to the generality of clause 19.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of the Contract.
- 19.4 Without prejudice to the generality of clause 19.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 19.4.1 process that personal data only on the documented written instructions of the Customer unless the Supplier is required by Applicable Laws to otherwise process that personal data. Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- 19.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 19.4.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 19.4.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
- 19.4.4.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
- 19.4.4.2 the data subject has enforceable rights and effective legal remedies;
- 19.4.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- 19.4.4.4 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 19.4.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 19.4.6 notify the Customer without undue delay on becoming aware of a personal data breach;
- 19.4.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
- 19.4.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 19 and allow for audits by the Customer on providing reasonable notice and during the normal working hours of the Supplier and inform the Customer as soon as reasonably practicable if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 19.5 The Customer consents to the Supplier appointing a third party processor of personal data under the Contract if the Supplier deems this to be necessary. The Supplier confirms that it has entered or (as the case may be) will enter with the third party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 19 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 19.
- 19.6 Either party may, at any time on not less than 30 days' notice, revise this clause 19 by replacing it with any applicable controller to processor standard clauses or similar

- terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).
- 20. DATA CENTRES**
- 20.1 The Customer acknowledges that the Supplier may utilise data centres as part of the Services to host Customer server environments where data centre hosting forms part of the Services as outlined in the Proposal. The Supplier shall use reasonable endeavours in accordance with good industry standards to protect against security incidents affecting Customers when data centres are utilised in line with the level of Services agreed to be provided by the Supplier.
- 20.2 Accordingly, the Supplier recommends that the Customer implements its own policies and procedures relating to data security and takes regular back-ups of data in accordance with clause 8.9 above.
- Whilst the Supplier treats data security very seriously, if such data centres are subject to a security attack, failure or malfunction, such events are outside of the Supplier's control. The Supplier is unable to offer any guarantees, warranties or commitments in this regard other than as set out in clause 20.1 above. The Supplier, to the fullest extent permissible by law, shall not be liable to the Customer or any other third party for any costs, losses, liabilities or expenses that the Customer may suffer or incur in connection with such event.
- 21. LIABILITY**
- 21.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 21.2 The restrictions on liability in this clause 21 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 21.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 21.4 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 21.4.1 death or personal injury caused by negligence;
- 21.4.2 fraud or fraudulent misrepresentation; and
- 21.4.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 21.5 Subject to clause 21.4, the Supplier's total liability to the Customer under the Contract (whether in tort or otherwise) shall not exceed £25,000 or the total amount paid by the Customer in respect of the Goods, Software or Licensed Software, whichever is the lower.
- 21.6 This clause 21.6 sets out specific heads of excluded loss and exceptions from them:
- 21.6.1 Subject to clause 21.4, the types of loss listed in clause 21.6.3 are wholly excluded by the parties, but the types of loss and specific losses listed in clause 21.6.4 are not excluded.
- 21.6.2 If any loss falls into one or more of the categories in clause 21.6.3 and also falls into a category, or is specified, in clause 21.6.4, then it is not excluded.
- 21.6.3 The following types of loss are wholly excluded:
- 21.6.3.1 loss of profits;
- 21.6.3.2 loss of sales or business;
- 21.6.3.3 loss of agreements or contracts;
- 21.6.3.4 loss of anticipated savings;
- 21.6.3.5 loss of use, damage or corruption of software, data or information;
- 21.6.3.6 losses resulting from viruses, hacking or security attacks or incidents;
- 21.6.3.7 loss of or damage to goodwill; and
- 21.6.3.8 indirect or consequential loss.
- 21.6.4 The following types of loss and specific loss are not excluded:
- 21.6.4.1 sums paid by the Customer to the Supplier pursuant to the Contract, in respect of any Services not provided in accordance with the Contract;
- 21.6.4.2 wasted expenditure;
- 21.6.4.3 additional costs of procuring and implementing replacements for, or alternatives to, Services not provided in accordance with the Contract. These include consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials; and
- 21.6.4.4 losses incurred by the Customer arising out of or in connection with any third party claim against the Customer which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include demands, fines, penalties, actions, investigations or proceedings, including those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the Customer.
- 21.7 The Supplier has given commitments as to compliance of the Services with relevant specifications and laws in clauses 2.5 and 20.1. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 21.8 Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall

expire 90 days from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

- 21.9 The Customer acknowledges that the Supplier is acting as a supplier only and that the Customer has agreed that the Equipment is suitable for their requirements.
- 21.10 The Customer shall be responsible for all data stores on any Goods, Software or Licensed Software and all back-up procedures.
- 21.11 The Customer shall be liable for all and any costs required to repair data in the event of missing or corrupt back-up data.
- 21.12 The Supplier shall have no liability where the requirement for services or support is the result of any action or inaction of the Customer, their employees or any third party.
- 21.13 The Supplier shall have no liability for the loss of a Customer's data in circumstances where it has been sent by the Supplier to the Software Provider for repair.
- 21.14 This clause 20 shall survive termination of the Contract.

## **22. TERMINATION**

- 22.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party 180 days' written notice, with such notice to expire on or before the Renewal Date.
- 22.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
- 22.2.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- 22.2.2 the Customer party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- 22.2.3 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;
- 22.2.4 the Customer's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- 22.2.5 the Customer fails to pay any amount due under the Contract on the due date for payment;
- 22.2.6 there is a change of control of the Customer; or
- 22.2.7 the Supplier deems the Goods, Software or Licensed Software to be beyond economical repair in accordance with clause 9.
- 22.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 22.2.2 to clause 22.2.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **23. CONSEQUENCES OF TERMINATION**

- 23.1 On termination of the Contract:
- 23.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
- 23.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 23.2 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.
- 23.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## **24. NON-SOLICITATION**

The Customer agrees that should any member of staff currently employed by the Supplier be recruited by the Customer, or by any person or entity to whom such person(s) have been introduced directly or indirectly by the Customer, the Customer will pay 25% plus VAT of the employee's current salary as compensation to the Supplier.

## **25. GENERAL**

### **25.1 Force majeure.**

- 25.1.1 A Force Majeure Event means any circumstance not in a party's reasonable control including, without limitation:
- 25.1.1.1 acts of God, flood, drought, earthquake or other natural disaster;
- 25.1.1.2 epidemic or pandemic (including but not limited to the pandemic caused by the virus known as "Coronavirus or Covid-19);
- 25.1.1.3 security breach, cyber-attack, incident or malfunction of any data centre;

- 25.1.1.4 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- 25.1.1.5 nuclear, chemical or biological contamination, or sonic boom;
- 25.1.1.6 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
- 25.1.1.7 collapse of buildings, fire, explosion or accident;
- 25.1.1.8 any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);
- 25.1.1.9 non-performance by suppliers or subcontractors (other than by companies in the same group as the party seeking to rely on this clause); and
- 25.1.1.10 interruption or failure of utility service.
- 25.1.2 Provided it has complied with clause 25.1.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (Affected Party), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 25.1.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 25.1.4 The Affected Party shall:
- 25.1.4.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 2 Business Days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
- 25.1.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 25.1.5 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 12 weeks, the party not affected by the Force Majeure Event may terminate the Contract by giving 4 weeks' written notice to the Affected Party.
- 25.2 Assignment and other dealings.**
- 25.2.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 25.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 25.3 Confidentiality.**
- 25.3.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, Customers or suppliers of the other party, except as permitted by clause 25.3.2.
- 25.3.2 Each party may disclose the other party's confidential information:
- 25.3.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 25.3; and
- 25.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 25.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 25.4 Entire agreement.**
- 25.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 25.4.2 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. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 25.4.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 25.5 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 25.6 Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 25.7 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 25.7 shall not affect the validity and enforceability of the rest of the Contract.
- 25.8 Notices.**
- 25.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office.
- 25.8.2 Any notice or communication shall be deemed to have been received:
- 25.8.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
- 25.8.2.2 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.
- 25.8.3 This clause 25.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 25.9 Third party rights.**
- 25.9.1 Unless it expressly states otherwise, 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.
- 25.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 25.10 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by, and construed in accordance with, the law of England and Wales.
- 25.11 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.