

Red Mosquito Limited Standard Terms & Conditions for Sale of Goods and Services

The Customer's attention is particularly drawn to the provisions of clause 14 (Limitation of liability).

1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions and rules of interpretation apply in this agreement.

Definitions:

Business Day means a day other than a Saturday, Sunday or public holiday in Scotland, when banks in Glasgow are open for business;

Commencement Date has the meaning given in clause 2;

Conditions means these terms and conditions as amended from time to time in accordance with clause ;

Contract means the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions;

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

Customer means the person or firm who purchases the Goods and/or Services from the Supplier;

Data Controller has the meaning set out in section 1(1) of the Data Protection Act 1998;

Data Subject means an individual who is the subject of Personal Data;

Deliverables means the deliverables set out in the Order produced by the Supplier for the Customer;

Delivery Location has the meaning given in clause;

Equipment means all or part of the network, hardware, software and Third Party Software as set out in the Order;

Force Majeure Event has the meaning given to it in clause 17;

Goods means the goods (or any part of them) set out in the Order;

Goods Specification means the specification for the Goods set out in the Quotation, and any other specification, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier;

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

Initial Period means the initial period agreed between the parties and set out in the Order;

Order means the Customer's order for the supply of Goods and/or Services, as set out in the Customer's written acceptance of the Quotation;

Personal Data has the meaning set out in section 1(1) of the Data Protection Act 1998 and relates only

to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller and in relation to which the Supplier is providing services under the Contract;

Processing and process means have the meaning set out in section 1(1) of the Data Protection Act 1998;

Quotation means the Supplier's quotation issued to the Customer;

Renewal Period means the period commencing after the Initial Period and agreed in writing between the parties which may be renewed or varied by written agreement;

Services means the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Order;

Service Specification means the description or specification for the Services set out in the Quotation to the Customer;

Supplier means Red Mosquito Limited registered in Scotland with company number SC258294;

Supplier Materials has the meaning given in clause 9.1.8.

Third Party Software means software developed and licensed by a third party for which the Supplier has agreed to provide support as set out in the Services;

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assignees.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes fax and email.
- (f) Words and expressions of a technical nature used in these terms will (unless inconsistent with the context) be construed in accordance with general trade use in the computer industry in the United Kingdom.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (whether by email, via an online ticketing system or otherwise) at which point and on which date the Contract shall come into existence.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues, website or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.

- 2.4 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 trade, custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 10 Business Days from its date of issue.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

- 3.1 The Goods are described in the Goods Specification.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3 shall survive termination of the Contract.3.4 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 3.5 If any software is written or developed by the Supplier for the Customer, the Customer agrees that:-
 - 3.5.1 such software may only be compatible with the version of the software or hardware that the Customer has at the date of the Order;
 - 3.5.2 the Supplier gives no guarantee that it will be compatible with later versions of any such software or hardware; and
 - 3.5.3 unless agreed otherwise in writing, the Supplier is under no obligation to supply the Customer with any updates or add-ons to the software.

4. DELIVERY OF GOODS

- 4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on delivery of the Goods at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any failure to deliver Goods or delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If the Customer fails to take or accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
 - 4.4.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - 4.4.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.5 If ten Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.6 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. **QUALITY OF GOODS**

The Customer shall have the benefit of any unexpired warranty provided by the manufacturer in relation to any Goods supplied. The Supplier provides no other warranty in connection therewith.

6. **TITLE AND RISK**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods 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.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

6.3.3 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;

6.1.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause o to clause o;and

6.1.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 Subject to clause 6.5, 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:

6.1.1 it does so as principal and not as the Supplier's agent; and

6.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause o to clause o, then, without limiting any other right or remedy the Supplier may have:

6.5.1 the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

6.5.2 the Supplier may at any time:

- (a) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
- (b) 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.

7. SUPPLY OF SERVICES

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the 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 The Supplier shall be entitled to replace any project manager appointed by it to liaise with the Customer in relation to the provision of the Services at any time.

8. DATA RECOVERY

- 8.1 If the Supplier is providing data recovery Services, the following provision of this clause 8 will apply, in addition.
- 8.2 The Customer authorises the Supplier, its employees and agents to conduct an evaluation of the media and/or data provided to the Supplier by the Customer to enable the Supplier to determine the nature of any damage or infection and provide a Quotation including an estimate of recovery cost and timing. The Customer shall be solely responsible for the safe delivery and arranging insurance for any shipping or other delivery of the media and/or data to the Supplier. The Customer further authorises the Supplier to take reasonable measures to determine recoverability and to recover data from the said media and/or data. The Customer agrees that the Supplier's evaluation will be limited to the media and/or data provided to it by the Customer.
- 8.3 The Customer warrants to the Supplier in relation to the media and/or data provided by it to the Supplier that either (1) the Customer is the legal owner of it or (2) has a legitimate right to it and is fully authorised to act on the owner's behalf. The Customer will indemnify the Supplier against any losses, costs, damages or expenses (including legal and other professional costs and expenses) incurred by the Supplier as a result of breach of this warranty.
- 8.4 If, after evaluating the Customer's media and/or data, the Customer chooses to decline recovery services, it will only be billed for, and shall be responsible for paying, the Supplier's standard evaluation fee, from time to time and shipping and applicable taxes. If the Customer chooses to proceed, it shall issue an Order. The price will not change based on any findings in the recovery process unless further encryptions become evident once the full data source is made available, in which case, the Supplier reserves the right to increase the price payable accordingly. If the Customer opts out of the recovery at any time after acceptance of an Order by the Supplier, the Customer shall be responsible for paying the full price for resource allocation, applicable expenses, storage, labour, and applicable taxes.
- 8.5 The Customer undertakes to the Supplier to uplift any property made available to and/or left with the Supplier by the Customer (including, but not limited to , hardware and any data provided on any media whatsoever (including cloud based storage), within a period of 30 days from the date on which

the Quotation is issued by the Supplier. The Customer agrees that if it fails to do so, the Supplier shall be entitled to dispose of it with no damages, penalty, fees or expenses due to the Customer or any third party in respect thereof and the Customer further undertakes to indemnify the Supplier against any losses, costs, damages or expenses (including legal and other professional costs and expenses) incurred by the Supplier as a result of breach of this provision.

- 8.6 The Supplier shall have no liability to the Customer for any damages, losses, costs, claims or expenses whatsoever and whensoever arising in relation to the physical functioning of media, equipment, applications and/or operating systems nor for the condition and/or existence of data on storage media or cloud based storage supplied by the Customer to the Supplier before, during or after service.
- 8.7 The Customer agrees that the Supplier may, using its sole judgement and discretion, use some or all of a range of different hardware and software processes, techniques or systems to recover data and may use any means it considers appropriate to recover the Customer's data in accordance with the Quotation which may include, but shall not be limited to, third party purchases of software or any other materials (hardware and/or software). These shall, for all purposes, be treated as necessary expense items purchased by the Supplier on behalf of Customer and shall be included within the price.
- 8.8 The Customer and the Supplier agree that in the event that any recovered data is unsatisfactory, the Supplier shall be entitled, but not obliged, to make additional attempts to recover satisfactory unencrypted or otherwise recovered data.
- 8.9 A storage fee will be charged by the Supplier to the Customer of £10 per week if all sums due are not paid within 5 days after recovery of data is complete.
- 8.10 The Customer agrees that no guarantee is given by the Supplier that data recovery will be successful and shall ensure that all encrypted data is backed up prior to provision of the Services beginning. The Supplier will not back up data provided. The provision of data without back up is entirely at the Customer's own risk and the Supplier shall have no liability in connection with any losses, damages or expenses arising as a result of any failure by the Customer to comply with this clause.
- 8.11 The Customer agrees that the Supplier cannot and does not guarantee that data will be successfully transmitted by it using any medium, including but not limited to cloud or internet mediums, courier or postal service and that the Supplier shall have no liability therefor.
- 8.12 If the Supplier is unable to recover any data, it will inform the Customer accordingly and no part of the price will fall due. Any monies paid in advance by the Customer will be refunded in full. If the Supplier is able to recover part but not all of the Customer's data, it will inform the Customer accordingly and the price shall be payable pro-rata based on the proportion of data recovered. The price payable will be calculated by reference to the proportion of data recovered based on size on disk, not number of files.
- 8.13 It is the Customer's responsibility to verify the completeness or consistency of any recovered data provided under this agreement. The Supplier gives no warranty on storage devices provided to you. It is the Customer's responsibility to immediately back up data after it has been received from the Supplier and acknowledges that it is good practice to always have a second copy at all times. Any damaged or faulty storage devices that are returned by the Supplier should be taken to a manufacturer for repairs. The Supplier does not store copies of recovered data.
- 8.14 Any Quotation provided covers recovery of data encrypted by one malware instance only unless otherwise explicitly stated and only for the recovery of the data encrypted by the ransomware variant which is initially reported to the Supplier and evidenced by the sample files requested by the Supplier.. The Supplier cannot and does not guarantee that secondary or multiple infections do not exist and cannot and does not guarantee that secondary infections or malware variants, where discovered, will not affect the ability to recover in full all of the Customer's data.

- 8.15 By issuing an Order, the Customer agrees that the media and/or data provided to the Supplier is already damaged, accepts and agrees that data recovery efforts can result in further damage and further agrees that the Supplier will have no liability for any such damage caused. The Customer further agrees that the Supplier shall not be liable for any complications whatsoever arising from the ransoming or encryption/decryption of ransomed data and shall indemnify the Supplier in connection therewith.

9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

- 9.1.1 ensure that the terms of the Order and any information it provides in the Service Specification and the Goods Specification are complete and accurate;
- 9.1.2 co-operate with the Supplier in all matters relating to the Services and, without prejudice to the foregoing generality, shall appoint a project manager, with authority to bind the Customer, to liaise with the Supplier in connection with the provision of the Services ;
- 9.1.3 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 to provide the Goods and/or Services;
- 9.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Goods and/or Services, and ensure that such information is complete and accurate in all material respects;
- 9.1.5 prepare the Customer's premises , at its own cost, for the supply of the Goods and/or Services including, but not limited to, completion of all necessary works required to received installation of any Goods including all necessary IT infrastructure and a suitable electricity supply;
- 9.1.6 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;
- 9.1.7 comply with all applicable laws, including health and safety laws and shall ensure that the Supplier's employees and agents whilst on the Customer's premises are familiar with all appropriate health and safety procedures;
- 9.1.8 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;
- 9.1.9 comply with any additional obligations as set out in the Service Specification and the Goods Specification;
- 9.1.10 ensure that, at all time, an adequate back- up copy of all of its operating system software, application software, data files and other documentation required for the proper functioning of its business is maintained by it;
- 9.1.11 safely and securely store software installation disks, codes, serial numbers and passwords relating to software licensing and agrees and acknowledges that the Supplier does not store these and shall have no responsibility therefor; and
- 9.1.12 ensure that appropriate insurance cover for business disruption or loss as a result of the Supplier's failure to deliver the Services in a timely fashion is put in place and all premiums therefor paid.

- 9.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 9.2.1 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;
 - 9.2.2 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 9;
 - 9.2.3 the Supplier shall be entitled to charge the Customer at its' then current prices (as set out on its website) for any additional works carried out for and on behalf of the Supplier to enable it to complete the installation; and
 - 9.2.3 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.

10. CHARGES AND PAYMENT

- 10.1 The price for Goods:
- 10.1.1 shall be the price set out in the Order (which may include requirement for payment of a deposit) or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the Order; and
 - 10.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.
- 10.2 Where the charges for Services are calculated on a time and materials basis:
- 10.2.1 the charges shall be calculated in accordance with the Supplier's daily fee rates, as set out in the Order;
 - 10.2.2 the Supplier's daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;
 - 10.2.3 the Supplier shall be entitled to charge an overtime rate at its standard rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 10.2.2; and
 - 10.2.4 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of goods and /or services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.
- 10.3 Where the charges for the Services are calculated on a fixed fee basis, the total price for the Services shall be the amount set out in the Order and the Customer shall pay the Supplier in instalments as set out in the Order.
- 10.4 The Supplier reserves the right to:
- 10.4.1 increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first

- anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;
- 10.4.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- (a) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods;
- 10.5 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer monthly in advance.
- 10.6 Unless specified otherwise in the Quotation, the Customer shall pay each invoice submitted by the Supplier:
- 10.6.1 in relation to Goods on issue of the invoice and in relation to Services within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- 10.6.2 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.
- 10.7 All waiting time spent by any employees or agents of the Supplier (which includes any time allocated to a Customer by the Supplier and not utilised by such Customer) as a result of any delay, variation or failure by a Customer to comply with these conditions, (which includes, without limitation, any delays or postponements by the Customer of any installation dates specified by the Supplier or dates of scheduled service visits) will be charged to and payable by the Customer at the Supplier's then current rates.
- 10.8 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 or Goods at the same time as payment is due for the supply of the Services or Goods.
- 10.9 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 15 (Termination), the Supplier shall be entitled (but not obliged) to suspend any further performance of its obligations under the Contract until full payment of all sums due is made and 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 9 will accrue each day at 4% a year above the base rate of Lloyds TSB Bank plc's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 10.10 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).
- 10.11 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 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 terms and conditions.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 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.
- 11.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, non-transferable, royalty-free licence during the term of the Contract to copy and modify the Deliverables, including, but not limited to, any software included in the Goods, (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.
- 11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.
- 11.4 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.
- 11.5 All software, whether installed, supplied or implemented is provided by the Supplier subject to the terms and conditions of the relevant software provider and if any software comprised within the Goods is not owned by the Supplier then the Customer must enter an end-user licence agreement with the owner of that software within 5 Business Days of being asked to do so by the Supplier.

12. DATA PROTECTION AND DATA PROCESSING

- 12.1 The Customer and the Supplier acknowledge that for the purposes of the Data Protection Act 1998, the Customer is the Data Controller and the Supplier is the data processor in respect of any Personal Data.
- 12.2 The Supplier shall process the Personal Data only in accordance with the Customer's instructions from time to time and shall not process the Personal Data for any purposes other than those expressly authorised by the Customer.
- 12.3 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Personal Data.
- 12.4 Each party warrants to the other that it will process the Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments.
- 12.5 The Supplier warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:
 - 12.5.1 take appropriate technical and organisational measures against the unauthorised or unlawful processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data to ensure a level of security appropriate to:
 - (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
 - (b) the nature of the data to be protected ;and
 - 12.5.2 take reasonable steps to ensure compliance with those measures.
- 12.6 Each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any

of its obligations under this clause 12.

- 12.7 The Customer acknowledges that the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Personal Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly from the Customer's instructions.
- 12.8 The Supplier may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:
- 12.1.1 is on terms which are substantially the same as those set out in this agreement; and
 - 12.8.2 terminates automatically on termination of this agreement for any reason.
- 12.9 The Customer agrees that any data transmitted over the internet or through any other form of transmission including by telephony 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 is not liable for the loss, corruption or interception of such data.

13. CONFIDENTIALITY

- 13.1 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 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- 13.2.1 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 13.2; and
 - 13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

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

- 14.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 14.1.2 fraud or fraudulent misrepresentation;
 - 14.1.3 breach of the terms implied by section 11B of the Supply of Goods and Services Act 1982 (implied terms about title etc);
 - 14.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (implied terms about title etc); or
 - 14.1.5 defective products under the Consumer Protection Act 1987.

- 14.2 Subject to clause 14.1, the Supplier shall not be liable to the Customer, whether in contract, delict, for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 14.2.1 loss of profits, including, but not limited to , any loss of profits or business opportunities arising during any period during which data is being restored as part of the Services;
 - 14.2.2 loss of sales or business;
 - 14.2.3 loss of agreements or contracts;
 - 14.2.4 loss of anticipated savings;
 - 14.2.5 loss of use or corruption of software, data or information, memory erasure of data stored on disk, whether partial or total and howsoever arising, by reason of the Customer's failure to comply in full with the terms of the Contract including but not limited to, loss which occurs as a result of failure to maintain adequate back-up or installation, service or maintenance work being carried out by or on behalf of the Supplier, costs associated directly or indirectly with data re-inputting or for any other reason;
 - 14.2.6 loss or damage arising from any act or omission of any third party telecommunication provider, or fault or failure of their Equipment (including any prevention of any remote servicing facility in respect of Equipment);
 - 14.2.7 loss of or damage to goodwill; and
 - 14.2.8 any indirect or consequential loss.
- 14.3 The Customer agrees that if any damage to any program or data files of the Customer occurs then the Supplier's responsibility will be confined to assisting the Customer to restore the latest back up copy and installing application software made available to it on site by the Customer. If on-site assistance is required to reconstruct files, the Supplier shall be entitled to charge the Customer for the cost of such assistance at the Supplier's then current rates.
- 14.4 The Customer shall indemnify the Supplier against all costs, claims, expenses (including, but not limited to professional and other fees costs, and expenses) and damages, howsoever incurred arising as a result of any claims from third parties in connection with any data retrieval, including, but not limited to, those arising in connection with any breach of website terms and conditions or acceptable use policies.
- 14.5 Subject to clause 14.1, the Supplier's total liability to the Customer, whether in contract, delict, breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to the total charges paid under the Contract.
- 14.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 11C to 11E of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 14.7 This clause 14.4 shall survive termination of the Contract.
- 15. TERMINATION**
- 15.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than one months' written notice.
- 15.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 15.2.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within [10] days after receipt of notice in

writing to do so;

- 15.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 15.2.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 15.2.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 15.3 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:
- 15.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or
 - 15.3.2 there is a change of control of the Customer.
- 15.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods 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 o to clause o, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

16. CONSEQUENCES OF TERMINATION

- 16.1 On termination of the Contract:
- 16.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Goods 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;
 - 16.1.2 the Customer shall return all of the Supplier Materials and any Deliverables or Goods 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 this Contract;
 - 16.1.3 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 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 and the Customer will not do or omit to do anything which might prevent or hinder such removal; and
 - 16.1.4 If 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 shall be calculated to recover such costs as the Supplier has reasonably incurred in equipping itself to deliver the Goods and/or the Services and which have not been fully recovered by the Supplier from the any sums paid by

the Customer at the date of termination.

16.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

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

17. FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

18. GENERAL

18.1 Assignment and other dealings

18.1.1 The Supplier may at any time assign, grant security over, 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.

18.1.2 The Customer shall not assign, transfer, grant security over, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

18.2 Notices.

18.2.1 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 (if a company) or its principal place of business (in any other case) or sent by fax to its main fax number or sent by email to the address (if any) specified in the Order;

18.2.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email at 9.00 am on the next Business Day after transmission, always provided that no failure of delivery message has been received by the sender.

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

18.3 Severance.

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

18.4 Waiver.

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of

that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.5 No partnership or agency.

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

18.6 Entire agreement.

18.6.1 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.

18.6.2 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 misrepresentation based on any statement in the Contract.

18.6.3 Nothing in this clause shall limit or exclude any liability for fraud.

18.7 Variation.

Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

18.8 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 Scotland.

18.9 Jurisdiction.

Each party irrevocably agrees that the courts of Scotland 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.