

TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these terms and conditions.

Business Day: Monday to Friday, excluding public holidays in England.

Commencement Date: has the meaning given in clause 2.1.

Conditions: these terms and conditions as amended from time to time in accordance with clause 19.8.

Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its employees, consultants, officers, representatives, advisers, agents or sub-contractors (together, its Representatives) to the other party or that party's Representatives in connection with these Conditions which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Customer: the person or business who purchases the Goods and/or Services from the Supplier by placing an Order.

Data Protection Legislation: prior to 25 May 2018 the Data Protection Act 1998 (the "DPA") and on or after 25 May 2018 the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the United Kingdom.

Deliverables: the deliverables set out in an Order.

Delivery Location: has the meaning given in clause 4.2.

Designated Representative: has the meaning given in clause 21.2.

Dispute: has the meaning given in clause 21.

Dispute Notice: has the meaning given in clause 21.

Dispute Resolution Procedure: the procedure described in clause 21.

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

Goods: the goods (or any part of them) as set out in an Order including any specification for the goods set out or expressly referenced therein that the Supplier has agreed to provide to the Customer in accordance with the terms set out in that Order and which may for the avoidance of doubt include software.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and 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.

Order: an order from the Customer for the supply of Goods and/or Services, whether set out in the Supplier's order form, or in a quotation, or in a purchase order, or in such other document, in all cases as agreed and signed by both Parties.

Services: the services, including the Deliverables, as described in an Order including any specification for the services set out or expressly referenced therein which the Supplier has agreed to provide to the Customer in accordance with the terms set out in that Order.

Supplier: Kascade. Kascade is a trading name of Computerworld (Systems) Limited. Throughout these Terms, references to Kascade shall also include Computerworld (Systems) Limited. Computerworld (Systems) Limited and Kascade are used interchangeably to represent our business and services.

Supplier Materials: has the meaning given in [clause 9.1\(g\)](#).

- 1.2 Clause and paragraph headings shall not affect the interpretation of these Conditions or an Order.
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to writing or written includes e-mail.
- 1.9 Any phrase introduced by the words including, includes, in particular or for example, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.10 If there are an inconsistencies between any of the provisions in the main body of these Conditions or an Order, the terms of the Order shall prevail.

2. BASIS OF AGREEMENT

- 2.2 An Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions, which shall only be deemed to be accepted when the Supplier issues written acceptance of the Order (including by signing the Order) at which point and on which date the Order shall come into existence (Commencement Date).
- 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 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 an Order or have any contractual force.
- 2.4 These Conditions apply to an Order 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 ten (10) Business Days from its date of issue.
- 2.6 All of these Conditions including any additional schedules, annexes or appendices shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. GOODS

- 3.2 Details of the Goods being ordered by the Customer shall be described and/or specified in an Order and the Customer shall ensure that the Order is complete and accurate before placing the Order with the Supplier. The Supplier shall supply the Goods to the Customer in accordance with the Order for such Goods.
- 3.3 The Supplier reserves the right to change the ordered Goods (a) if required by any applicable statutory or regulatory requirement or (b) where the Goods are to be supplied to the Supplier's specification (which do not materially affect their quality or performance).

4. DELIVERY OF GOODS

- 4.1 Upon delivery in accordance with clause 4.4, the Customer is responsible for immediately checking that the Goods comply with the specification set out in the Order. The Customer has two (2) business days from delivery to check for damage, shortages and any other issues which may not be apparent immediately on delivery.
- 4.2 The Customer must not accept the Goods if they are incorrect, if they have been delivered in the incorrect quantity or if the packaging is damaged. If any inconsistencies are found between the Goods delivered and the Order specification, the Customer shall inform the Supplier within two (2) business days of delivery occurring as set out in clause 4.4. The Supplier is not liable for any inconsistencies in the Goods notified to it after this period has expired.
- 4.3 With each delivery of Goods, the Supplier shall include a delivery note which shows the date of the Order, and which includes a brief description (or product code) and quantity of Goods being delivered. The Customer shall (if requested) retain any delivery packaging and make such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 4.4 The Supplier shall either (1) deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location), or (2) by the Customer collecting the Goods from the Supplier's premises after the Customer has been notified that the Goods are ready for collection.
- 4.5 Delivery of the Goods shall be completed on completion of unloading of the Goods at the Delivery Location, or upon collection by the Customer.
- 4.6 The Parties shall endeavour to agree a date (and time) for delivery of the Goods, but any dates or times quoted in an Order for delivery of the Goods are approximate only.
- 4.7 The Supplier shall not be liable for any delay in delivery of the Goods 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.
- 4.8 If the Customer fails to take delivery of the Goods or collect the Goods as applicable within seven (7) 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 Order in respect of those Goods,

the Supplier may at its option (a) store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance) or (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price stated in the Order or charge the Customer for any shortfall below the price stated in the Order.

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

5. QUALITY OF GOODS

5.1 The Supplier warrants that on delivery the Goods shall:

(a) conform in all material respects with the specification for the Goods as set out in the relevant Order;

(b) be free from material defects in design, material and workmanship;

The above warranty shall not apply to Goods manufactured by or obtained from a third party for which the Customer shall only receive the benefit of any warranty or guarantee as provided by the third party supplier.

5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace defective Goods, or refund the price of the defective Goods in full if:

(a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1; and

(b) the Supplier is given a reasonable opportunity of examining such Goods; and

(c) 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.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;

(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

(c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of the Supplier;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

(f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no further liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the

Supplier.

6. TITLE AND RISK

- 6.1 Risk in the Goods shall pass to the Customer on completion of delivery or collection, save where clause 4.6 applies, where risk shall pass when the Supplier notifies the Customer that the Goods are ready.
- 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.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) 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;
 - (d) notify the Supplier immediately if it becomes subject to any of the events listed in clauses 15.2(b) to 15.2(d); and
 - (e) give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clauses 15.2(b) to 15.2(d), then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time:
- (a) require the Customer to deliver up all Goods in its possession; 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 Details of the Services being ordered by the Customer shall be described and/or specified in an Order and the Customer shall ensure that the Order is complete and accurate before placing the Order with the Supplier. The Supplier shall supply the Services to the Customer in accordance with the Order for such Services.
- 7.2 The Supplier shall use commercially 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 Services as ordered and the Charges (if applicable) if necessary due to (1) compliance with any applicable law or regulatory requirement, (2) any unforeseen problems with the Customer's set up before or during installation and/or configuration (as applicable) has been implemented; or (3) 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 Where a Customer pre-orders "units" of consultancy time, all such units shall remain available for use by the Customer for a period of up to two (2) years from the Commencement Date of the relevant Order, whereupon all unused units shall lapse (unless the Supplier has consented in writing to extend the period) without entitlement to a credit

or refund. When applying pre-ordered units of consultancy time to Services, oldest unused units shall be applied in priority to more recently ordered units..

7.5 Where a Customer orders a specific project or installed solution, installation shall be deemed complete where the Supplier has used commercially reasonable efforts to perform and fulfil its obligations but aspects of the installation and set-up are still to be completed which the Supplier cannot complete for reasons beyond its direct control until a later date.

7.6 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

8. Returns and Refunds

8.1 Where permitted by the Supplier's supply chain, the Customer may be entitled to return unused Goods within 30 days from the date of delivery of the Goods to the Customer. The Customer acknowledges and accepts that all returns are at the sole and absolute discretion of the Supplier, and any returns will depend on any relevant manufacturers' returns policies and may be subject to reasonable restocking fees or other conditions.

8.2 Where the Supplier has taken delivery of Goods on behalf of the Customer, the Supplier has no liability whatsoever in respect of the Goods on delivery. The Customer acknowledges that it is the Customer's responsibility to inspect and agree the condition of the Goods. Where the Supplier has taken delivery of the Goods on behalf of the Customer, any damaged items are subject to the manufacturer's returns policies, which the Customer acknowledges may be void on use of the Goods by the Customer.

8.3 The Supplier will not accept any returns where the Goods have been used or opened, save to the extent that the Goods are faulty through no fault of the Customer, to be determined at the sole and absolute discretion of the Supplier.

8.4 Where the Goods contain software on which the seals have broken, this software is non-refundable.

8.5 Where the Goods contain any software licences provided electronically (i.e. other than in physical format) this software licence is non-refundable.

8.6 The Customer acknowledges and accepts that the Supplier is not always the manufacturer of the Goods. Where possible, the Supplier shall pass to the Customer the benefit of any manufacturer's warranty or guarantee provided to the Supplier in respect of those Goods.

8.7 Supplier may, at its sole discretion, provide reasonable assistance to troubleshoot any problems the Customer experiences with the Goods. The Customer acknowledges that where the Supplier is not the manufacturer of the Goods, the Supplier may be contractually limited in respect of the assistance the Supplier is permitted to provide. The Customer may be required to contact the manufacturer to troubleshoot the issues. Any information obtained by the Customer shall be retained along with any call/case reference numbers, and presented to the Supplier upon request.

8.8 The Supplier will not accept returns with a value below £50, save where the Supplier is not the manufacturer and the relevant manufacturer's policies or warranties state otherwise.

8.9 Where it is established that the Goods are faulty or defective within a relevant manufacturer's warranty period, the Supplier will arrange with the Customer to have the Goods collected or returned. Where the manufacturer's warranties require the Customer to contact a third-party directly, the Supplier will provide the Customer with any relevant information that it holds to allow the Customer to arrange collection or return of the Goods with the relevant third-party.

8.10 Where the Supplier has confirmed to the Customer that the return of the Goods is permitted, the Customer is responsible for ensuring that the Goods are returned to the Supplier (or any

relevant third party) in same condition and in the original packaging. The Goods must be returned with all disks, manuals, cables and any other peripherals, accessories, consumables and other parts or items with which they were boxed or inseparably supplied to ensure satisfaction of any relevant manufacturer's warranty or other policies, safe transit and ease of identification. Customer will re-box the Goods for transport, to ensure that external packaging is not damaged or defaced.

- 8.11 If the Supplier accepts the Customer's return of the Goods, the Supplier will issue a credit note to the Customer so the invoice for the Goods is deemed cancelled and where the Customer has already paid for the Goods, the Supplier will provide the Customer with a refund.
- 8.12 Where the Goods are returned to the Supplier, they shall be tested on receipt. If the Supplier determines that there is no fault present in the Goods, these shall be returned to the Customer at the Customer's sole cost. If a fault is found, then the Products will be repaired and/or replaced under the terms of the manufacturer's warranty, to the extent that such warranty remains in force at that time.
- 8.13 In the event that any manufacturer's warranty or guarantee has lapsed, expired, been invalidated and/or does not apply to the Goods, the Supplier shall have no liability to the Customer for any such Goods.
- 8.14 In the event that the Customer is a consumer, any statement made herein about the rights that the Customer has against the Supplier that arise if the Goods are defective or are not fit for a purpose do not affect the Customer's statutory rights.

9. CUSTOMER'S OBLIGATIONS

9.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) where relevant, 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 Services;
- (c) 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;
- (d) where required, prepare the Customer's premises for the supply of the Services;
- (e) 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;
- (f) comply with all applicable laws, including health and safety laws;
- (g) 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; and
- (h) comply with any further obligations set out in an Order or in a schedule, annex or appendix to these Conditions, where relevant.

9.2 If the Supplier's performance of any of its obligations pursuant to an 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):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the 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;
- (b) 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 9.2; and
- (c) 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 Each Order shall specify the price for Goods or, if no price is quoted, the price shall be as set out in the Supplier's published price list as at the date of the order. Prices for Goods are quoted ex works unless stated otherwise, and the Customer shall pay any additional costs and charges such as packaging, insurance or transport of the Goods.
- 10.2 Charges for Services shall be set out in an Order and may be fixed or calculated on a time and materials basis depending on the Services being ordered and in accordance with the terms of the Order. For the avoidance of doubt, any and all fixed pricing shall be chargeable at that fixed price rate regardless of the actual time spent by the Supplier and whether the estimated time has been exceeded or not
- 10.3 If charges are to be calculated on a time and materials basis:
- (a) the charges shall be calculated in accordance with (i) the daily fee rates set out in the Order or (ii) if not set out in the Order, the Supplier's daily fee rates as set out in its current price list at the Commencement Date of the Order;
 - (b) the Supplier's daily fee rates for each individual person are calculated on the basis of a normal seven (7) hour working day between 0900 and 1700 GMT on Business Days;
 - (c) the Supplier shall be entitled to charge an overtime rate being two times the daily fee 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 10.3(b).
 - (d) 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, accommodation costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services. Unless otherwise set out in an Order, (i) the travel/mileage rate charged shall be £0.45p per mile, (ii) overnight accommodation where required shall be charged at the cost as incurred by the Supplier but shall be proportionate and reasonable having regard to the circumstances and the availability of suitable accommodation, (iii) incidental expenses (such as parking charges, tolls, meals in conjunction with accommodation, ad hoc equipment purchases, or otherwise) shall be charged at the cost as incurred by the Supplier. The Supplier shall where possible request the Customer's prior approval of any expenses to be incurred, but if such approval is delayed or there is insufficient time to obtain pre-approval, the Supplier may incur and invoice the Customer for such expenses up to a maximum of £500 per day; and
 - (e) the Supplier shall be entitled to charge the Customer for the cost of any materials incurred by the Supplier in the performance of the Services.
- 10.4 If charges are for specific projects or installed solutions:

- (a) save where the charges for specific projects or installed solutions are set out in an Order, Services shall be provided on a time and materials basis;
- (b) where the Parties have agreed a 'site start date' (SSD), but the Customer postpones the SSD (or Customer fails to pay an invoice when it falls due) prior to the SSD, which results in a delay to the project or install timetable, the Customer will be liable for the following additional charges calculated by reference to the "Professional Services Charge" (as defined and specified in the relevant Order):
 - (i) notice of postponement or non-payment within 0-5 Business Days of SSD – 100% of the Professional Services Charge
 - (ii) notice of postponement or non-payment within 6-10 Business Days of SSD – 50% of the Professional Services Charge
 - (iii) notice of postponement or non-payment within 11-20 Business Days of SSD – 30% of the Professional Services ChargeFor the avoidance of doubt, the Supplier shall use commercially reasonable endeavours to mitigate its loss in respect to any liquidated damages above.

10.5 The Supplier reserves the right to:

- (a) 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:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
 - (iii) 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.

10.6 The Supplier shall invoice the Customer on the dates set out in an Order, or if not set out in an Order, at any time on or after delivery of the Goods or the provision of the Services. For specific projects or installed solutions, the Customer shall pay the charges (together with any applicable VAT) in the following instalments:

- (a) 40% of the total charges, payable within five (5) Business Days of the Order Commencement Date;
- (b) 40% of the total charges, payable upon delivery to the Customer of any Goods to be installed as part of the project or solution, or prior the SSD, whichever is earlier;
- (c) 20% of the total charges, together with any additional charges and expenses properly incurred in accordance with the terms of the Order or these Conditions, payable within ten (10) Business Days of completion of installation.

10.7 Unless otherwise specified in an Order or elsewhere in these Conditions, the Customer will pay all charges due (together with any applicable VAT):

- (a) within thirty (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
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier,

and

(c) time for payment shall be of the essence.

- 10.8 All amounts payable by the Customer pursuant to an Order 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 pursuant to an Order 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 by its due date, then, without limiting the Supplier's remedies under clause 15:
- (a) a late payment charge and interest may be applied to any outstanding and undisputed charges due from the Customer from the due date until payment of the overdue sum, whether before or after judgment. Interest will accrue each day at 2% a year above the Bank of England's base rate from time to time; and
 - (b) the Supplier may withdraw any discount that was originally applied to the charges or to which the Customer is entitled whereupon the Customer shall become liable to pay the full undiscounted price for the Goods and/or Services in question.
- 10.10 If the Customer wishes to Dispute an invoice or any part thereof, it shall raise such Dispute with the Supplier in accordance with clause 21, promptly but in any event within ten (10) Business Days of the date of the invoice it wishes to Dispute.
- 10.11 All amounts due pursuant to an Order 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).

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. Nothing in an Order or these Conditions shall be deemed or construed as an assignment or transfer of legal interest by the Supplier to the Customer of any Intellectual Property Rights which are and shall at all times shall remain the Supplier's property.
- 11.2 The Client shall enter into such software and other licences as shall be required in connection with the Goods and/or Services.
- 11.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.
- 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 Order for the purpose of enabling the Supplier to provide the Services to the Customer.

12. DATA PROTECTION AND DATA PROCESSING

- 12.1 Both parties will comply with all applicable requirements of the Data Protection Legislation.
- 12.2 For the purpose of these Conditions, the words Data Controller, Data Processor, Personal Data, Data Subject and process/processing have the meanings given to them in the Data Protection Legislation.

- 12.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and the Supplier is the Data Processor. The Customer warrants that it will comply with all its obligations as Data Controller under the Data Protection Legislation, and that it will where the Supplier is to process Personal Data on the Customer's behalf, provide the Supplier with complete and accurate details of the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject, and will ensure that a schedule is added to the relevant Order containing such detail as may be required to ensure compliance with the Data Protection Legislation. The Supplier shall not be deemed to have breached any of its obligations as Data Processor by virtue of a breach of the Data Protection Legislation by the Customer as Data Controller.
- 12.4 Without prejudice to the generality of clause 12.1, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of the relevant Order.
- 12.5 Without prejudice to the generality of clause 12.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under an Order or these Conditions:
- (a) process that Personal Data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (Applicable Laws). Where the Supplier is relying on laws of a member of the European Union or European Union law 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;
 - (b) 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);
 - (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - (d) 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:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) 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
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;

- (e) 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;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of an Order unless required by Applicable Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 12 and allow for audits by the Customer or the Customer's designated auditor, such audits to be conducted on reasonable notice (but in any event on giving Supplier not less than seven (7) days' notice, unless the Customer has reasonable grounds for giving shorter notice) and during normal business hours on Business Days.

12.6 The Customer hereby consents to the Supplier appointing third party processors of the Personal Data on the condition that the Supplier confirms for each such third party processor that it has entered or (as the case may be) will enter into a written agreement with the third party processor incorporating terms which are as similar as possible to those set out in this clause 12. 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 in accordance with this clause 12.6.

13. CONFIDENTIALITY

13.1 Each party shall keep the other party's Confidential Information confidential and shall not:

- (a) use such Confidential Information except for the purpose of exercising or performing its rights and obligations under an Order and these Conditions (Permitted Purpose); or
- (b) disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 13.

13.2 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its Representatives in violation of the terms of these Conditions.

13.3 The provisions of this clause 13 shall not apply to any Confidential Information that:

- (a) is or becomes generally freely available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause 13);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
- (d) was known to the receiving party before the information was disclosed to it by the disclosing party;
- (e) the parties agree in writing is not confidential or may be disclosed; or

- (f) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

13.4 The Customer:

- (a) acknowledges and agrees that the Supplier's Confidential Information includes any designs, plans, software or other materials created by the Supplier in connection with the Services; and
- (b) agrees not to make use of any such designs, plans, software or other materials for any purpose other than receipt of the Services.

13.5 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- (a) it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause 13.

13.6 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority (including any relevant securities exchange) or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.6, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

13.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in these Conditions are granted to the other party or to be implied from these Conditions.

13.8 The provisions of this clause 13 shall continue to apply after expiry or termination of a relevant Order for any reason.

14. LIMITATION OF LIABILITY.

14.1 This clause 14 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of these Conditions;
- (b) any use made by the Customer of the Services; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with these Conditions.

14.2 Except as explicitly stated in these Conditions or an Order, all Goods and Services (and any included Deliverables) are provided on an "as is," "as available" basis, and all warranties, conditions and other terms, whether implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded.

14.3 Nothing in these Conditions excludes or limits a party's the liability for:

- (a) death or personal injury caused by the Supplier's negligence;

- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot lawfully be excluded or limited.

14.4 Subject to clause 14.3:

- (a) the Supplier shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits / revenue, savings or business, depletion of goodwill or similar losses, any loss attributable to 'downtime' in the Customer's operations or systems, or any loss of data held on the Customer's computer systems, or for any indirect or consequential loss, costs, damages, charges or expenses however arising; and
- (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of a particular Order shall be limited to the charges paid pursuant to that Order during the twelve (12) months preceding the date on which the claim arose.

14.5 This clause 14 shall survive termination of an Order.

15. TERMINATION

15.1 Without prejudice to any other right or remedy available to it, either party may terminate an Order with immediate effect by giving written notice to the other party if the other party commits a material breach of any term of that Order and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so.

15.2 Without prejudice to any other right or remedy available to it, either party may terminate all Orders with immediate effect by giving written notice to the other party if:

- (a) the other party breaches any of the terms of clause 13 of these Conditions;
- (b) the other party suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (c) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given, or an administrator is appointed, over the other party; or
- (d) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

15.3 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 an Order or any other Order between the Customer and the Supplier (a) if the Customer fails to pay any amount due under an Order on the due date for payment, or (b) if the Customer becomes subject to any of the events listed in clauses 15.2(b) to 15.2(d) or if 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 an Order, with respect to that Order:

- (a) the Customer shall immediately pay to the Supplier all outstanding unpaid and

undisputed invoices together with any interest thereon 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;

- (b) the Customer shall return all of the Supplier Materials and any Goods or 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 Order.

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

16.3 Any provision of these Conditions or an Order that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

17. FORCE MAJEURE

Neither party shall have any liability to the other under an Order or these Conditions if it is prevented from, or delayed in, performing its obligations under an Order or these Conditions, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, or otherwise exercising the level of diligence that could reasonably have been expected of it (having exercised Good Industry Practice), including strikes, lock-outs or other industrial disputes (including any industrial disputes involving the workforce of the Supplier), act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a Force Majeure Event), provided that:

- (a) the other party is notified of such an event and its expected duration as soon as is reasonably practicable; and
- (b) it uses commercially reasonable endeavours to mitigate, overcome or minimise the effects of the Force Majeure Event concerned,

and that if the period of delay or non-performance continues for twelve (12) weeks or more, the party not affected may terminate the affected Order by giving not less than fourteen (14) days' written notice to the other party.

18. NON-SOLICITATION

18.1 Neither party shall solicit the other party's staff or contractors who have been employed or engaged in the Services or the performance of an Order during the lifetime of that Order and for a period of nine (9) months thereafter. For the purposes of this clause 'solicit' means the soliciting of such person with a view to engaging such person as an employee, director, sub-contractor or independent contractor.

18.2 In the event that either party is in breach of clause 18.1 above then the party in breach shall pay to the other by way of liquidated damages an amount equal to 50% per cent of the gross annual budgeted fee income (as at the time of the breach or when such person was last in the service of the relevant party) of the person so employed or engaged. This provision shall be without prejudice to either party's ability to seek injunctive relief.

18.3 The parties hereby acknowledge and agree that the formula specified in clause 18.2 above is a reasonable estimate of the loss which would be incurred by the loss of the person so employed or engaged.

19. GENERAL

19.1 Assignment and other dealings.

- (a) 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 a Contract.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

19.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with these Conditions or an Order shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service to the address set out in the applicable Order. Ordinary day to day communications may be sent by one party to the other by email provided that such emails are sent between an authorized valid business email account of each party as specified in an Order or as otherwise notified by the parties to one another from time to time. For the avoidance of doubt, e-mail notices shall not amount to notice in writing or a written instrument for the purposes of clause 15.
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am GMT on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by email, at 9.00 am GMT on the next Business Day after transmission.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

19.3 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.

19.4 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.

19.5 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.

19.6 Entire agreement.

- (a) These Conditions and each Order constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into an Order 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 these Conditions or an

Order. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in an Order.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

19.7 Third Party Rights. Neither these Conditions or any Order gives rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

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

19.9 Governing law and jurisdiction. These Conditions and each Order and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation shall be governed by and construed in accordance with the law of England and Wales, and each party 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 these Conditions, any Order or its subject matter or formation.

20. TUPE

20.1 Neither the Supplier or the Customer intend that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) will apply to any Orders entered into by them, whether upon its commencement, during its term or upon its expiry or termination. Accordingly, the parties have agreed the terms set out in this clause 20.

20.2 The Customer shall, subject to clause 20.3 below, indemnify and keep indemnified the Supplier at all times against any employment related liabilities suffered or incurred by the Supplier arising from or in connection with any claims, demands or allegations made by or on behalf of any employee (whether current or former) of the Customer or, as the case may be, a previous supplier that their employment or any rights, powers, duties or liabilities relating to it has or should have transferred to the Supplier pursuant to TUPE (or otherwise) as a result of or in connection with the provision of any of the Services (whether the basis of such claim, demand or allegation arising prior to, on or after the Commencement Date).

20.3 If, notwithstanding clause 20.1, the employment of any employee of the Customer or any previous supplier transfers (or is claimed to transfer) to the Supplier pursuant to or by virtue of TUPE as a result of or in connection with the provision of any of the Services:

(a) the Supplier will notify the Customer in writing as soon as reasonably possible after becoming aware of that transfer or allegation;

(b) the Customer shall within 28 days of such notification (Offer Period) be at liberty to offer employment to the relevant employee on their existing terms and conditions of employment and with continuity of service preserved. If that offer of employment is accepted, the Supplier will as soon as reasonably possible release the relevant employee from its employment;

(c) if within the Offer Period the Customer has not made an offer of employment in accordance with sub-clause (b) above or if the relevant employee fails to accept such offer of employment the Supplier may terminate the employment of that employee within 28 days of the expiry of the Offer Period (Termination Period); and

(d) if any such person is not dismissed within the Termination Period by the Supplier or the Supplier does not comply with its obligations under this clause 20.3, he/she will be deemed to be an employee of the Supplier and the indemnity in clause 20.2 shall no longer apply.

20.4 The Supplier shall, subject to clause 20.5 below, indemnify and keep indemnified the Customer (for its benefit and the benefit of any replacement supplier) at all times against any employment related liabilities suffered or incurred by the Customer or, as the case may be, the replacement supplier arising from or in connection with any claims, demands or allegations made by or on behalf of any employee (whether current or former) of the Supplier or any of its sub-contractors that their employment or any rights, powers, duties or liabilities relating to it has or should have transferred to the Customer or, as the case may be, any replacement supplier pursuant to TUPE (or otherwise) as a result of or in connection with the cessation of any of the Services (whether on the expiry or termination of an Order or otherwise). The Supplier shall not indemnify the Customer or a replacement supplier for more than it would if the liabilities were incurred directly by the Customer.

20.5 If, notwithstanding clauses 20.1, the employment of any employee of the Supplier or any of its sub-contractors transfers (or is claimed to transfer) to the Customer or any replacement supplier pursuant to or by virtue of TUPE as a result of or in connection with the cessation of any of the Services (whether on the expiry or termination of an Order or otherwise):

- (a) the Customer will, or shall procure any replacement supplier will, notify the Supplier in writing as soon as reasonably possible after becoming aware of that transfer or allegation;
- (b) the Supplier shall within 28 days of such notification (Offer Period) be at liberty to offer employment to the relevant employee on their existing terms and conditions of employment and with continuity of service preserved. If that offer of employment is accepted, the Customer will, and shall procure any replacement supplier will, as soon as reasonably possible release the relevant employee from its employment;
- (c) if, within the Offer Period, the Supplier has not made an offer of employment in accordance with sub-clause (b) above or if the relevant employee fails to accept such offer of employment the Customer or, as the case may be, replacement supplier may terminate the employment of that employee within 28 days of the expiry of the Offer Period (Termination Period); and
- (d) if any such person is not dismissed within the Termination Period by the Customer or, as the case may be replacement supplier Customer or does not comply with its obligations under this clause 20.5, he/she will be deemed to be an employee of the

Customer or, as the case may be, replacement supplier and the indemnity in clause 20.4 shall no longer apply.

20.6 For the avoidance of doubt, the employment related liabilities referred to in clauses 20.2 and 20.4 include (without limitation) those in connection with:

- (a) salaries or wages (including unlawful deduction from wages), accrued holiday pay, expenses, pension benefits, life assurance, health or medical expenses insurance and all other emoluments and any PAYE tax deductions and National Insurance contributions relating thereto;
- (b) any claim for pay in lieu of notice, damages for wrongful dismissal, redundancy pay (whether contractual, statutory or otherwise) and compensation for unfair dismissal (including any such claim arising from a dismissal or constructive dismissal which is deemed to have been effected by a transferee);
- (c) any claim for discrimination of any nature;
- (d) any claim for personal injury; and

(e) any failure to comply with any obligation to inform and/or consult with such persons or their representatives.

- 20.7 If, following the expiry of the Termination Period, a claim or allegation is made or threatened against the Supplier which involves or gives rise to any employment related liability in respect of which the Customer is required to indemnify the Supplier under clause 20.2, then the Supplier shall allow the Customer to handle the claim and will provide (and procure any sub-contractor shall provide) such reasonable assistance as the Customer may reasonably require.
- 20.8 If, following the expiry of the Termination Period, a claim or allegation is made or threatened against the Customer which involves or gives rise to any employment related liability in respect of which the Supplier is required to indemnify the Customer under clause 19.4, then the Customer shall allow the Supplier to handle the claim and will provide (and procure any sub-contractor shall provide) such reasonable assistance as the Supplier may reasonably require.
- 20.9 The Parties do not require the consent of any replacement supplier to rescind or vary these Conditions at any time, even if that variation or rescission affects the benefits conferred on the replacement supplier.
- 20.10 No Party shall recover any employment related liabilities under this clause 20 where such employment related liabilities have been recovered by the relevant party by virtue of other sections of these Conditions.

21. DISPUTE RESOLUTION

- 21.1 If a dispute arises under or in connection with these Conditions or an Order (Dispute), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice (Dispute Notice) of the Dispute to the other party describing the Dispute and requesting that it is resolved under

the dispute resolution procedure described in this clause 21.

- 21.2 If the parties are unable to resolve the Dispute within thirty (30) days of delivery of the Dispute Notice, each party shall promptly (and in any event within five (5) Business Days):
 - (a) appoint a representative who has authority to settle the Dispute and is at a higher management level than the person with direct responsibility for the administration of these Conditions or an Order (Designated Representative); and
 - (b) notify the other party of the name and contact information of its Designated Representative.
- 21.3 Acting reasonably and in good faith the Designated Representatives shall discuss and negotiate to resolve the Dispute, including agreeing the format and frequency for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party shall be complied with as soon as reasonably practicable).
- 21.4 If the parties are unable to resolve the Dispute within thirty (30) days after the appointment of both Designated Representatives, either party may proceed with any other available remedy.
- 21.5 Notwithstanding any other provision of these Conditions or an Order, a party may seek interim or other equitable relief necessary (including an injunction) where damages would be an inadequate remedy.