

OnIT Services Limited
General Terms and Conditions

Please read the following Terms and Conditions carefully.

1. DEFINITIONS

In this Agreement:

1.1 the following terms shall have the following meanings unless the context otherwise requires:

"this Agreement"	these Terms and Conditions together with the relevant Annexes and the relevant Order Form;
"Annex"	an annex containing a further description of the services or software provided by the Company to the Customer, including further rights and obligations for the Parties in relation thereto;
"Business Day"	any day other than (i) a Saturday, (ii) a Sunday or (iii) a day when the clearing banks are not open for business in the City of London;
"Business Hours"	08:00 to 18:00 on any Business Day, unless otherwise agreed in the Order Form;
"Change Control Form"	the form attached to the Order Form, which template must be used by the Parties if they wish to amend this Agreement;
"Commencement Date"	the date stipulated in the Order Form;
"Company"	OnIT Services Limited, a company registered in England and Wales under number 4646434 and having its registered office at The Counting House, High Street, Tring, Hertfordshire, HP23 5TE;
"Confidential Information"	any information in any form or medium obtained by one Party from or on behalf of the other pursuant to this Agreement which is expressly marked as confidential or which is manifestly confidential whether disclosed or obtained before, on or after the date of this Agreement together with any reproductions of such information or any part of this information (and the Company's Confidential Information shall include but not be limited to the Software and any information relating to the Company's employees, agents, subcontractors and other customers, and the Customer's Confidential Information shall include but not be limited to the content of the Data);
"Customer"	the customer whose details are set out in the Order Form;
"Customer Location"	the Location of the Customer where the Services and/or the Equipment will be supplied and/or installed as detailed on the Order Form;
"Data"	data concerning the business of the Customer or the Customer's customers, including "personal data" (as the same is defined in the GDPR) about Customer's employees, agents or customers;
"Data Protection Laws"	means an applicable law, rule, regulation, declaration, decree, directive, statute, or other enactment, order, mandate or resolution issued or enacted by any government entity (including any domestic or foreign, supra-national, state, county, municipal, local, territorial or other government, which includes to the extent applicable, Directive 95/46/EC, Directive 2002/58/EC, European Commission decisions and guidance) each as transposed into domestic legislation of each Member State or other country and as amended, replaced or superseded from time to time, including by the GDPR and laws implementing or supplementing the GDPR, and any industry self-regulatory principles that are applicable in the location or region where the Services are provided or received, related to the processing of personal data or the interception, recording or monitoring of communications;
"EEA"	means the European Economic Area;
"GDPR"	means EU General Data Protection Regulation 2016/679;
"Equipment"	the hardware and other materials (if any) which the Company buys from third parties for re-sale to the Customer as set out in the Order Form
"Fee"	the fee payable by the Customer to the Company for the supply by the Company of the Services and/or Software and/or Equipment as stipulated in the relevant Annex and Order Form;
"Initial Period"	the period described in the Order Form and starting on the Commencement Date;
"Intellectual Property Rights"	all intellectual and industrial property rights of any nature anywhere in the world, including without limitation copyright, database rights, patents, design rights, registered designs, trade mark rights, service mark rights, domain name rights and topography rights, whether or not registered or capable of protection by registration and the right to apply for any of them;
"Order Form"	the document containing the specific information relating to the particular software or services supplied by the Company to the Customer;
"Party"	either the Company or the Customer;
"Services"	the services provided by the Company to the Customer pursuant to this Agreement, as may be more particularly described in the relevant Annex;
"Software"	the software provided by the Company to the Customer pursuant to this Agreement, as may be more particularly described in the relevant Annex;
"Term"	the term of this Agreement referred to in Clause 10.1;
"VAT"	any value added tax as provided for in the Value Added Tax Act 1994 and supplemental legislation (whether delegated or otherwise), any tax of a similar nature which any be substituted for or levied in addition to it and any sales tax;

1.2 references to "Clauses" and "Paragraphs" are to clauses of these Terms and Conditions and paragraphs in an Annex;

1.3 the headings to Clauses and Paragraphs are inserted for convenience only and shall not affect the interpretation or construction of this Agreement;

1.4 words imparting the singular shall include the plural and vice versa. Words imparting a gender shall include the other gender and the neutral and references to persons shall include an individual, company, corporation, firm or partnership;

1.5 references to "includes" or "including" or like words or expressions shall mean without limitation; and

1.6 references to any statute or statutory provision shall include any subordinate legislation made under it, any provision which it has modified or re-enacted (whether with or without modification) and any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

2. AGREEMENT

2.1 The terms of this Agreement apply to the exclusion of any terms and conditions submitted, proposed or stipulated by the Customer. These Terms and Conditions apply to all Services and Software.

2.2 Save as expressly provided herein, this Agreement shall operate to the entire exclusion of any other agreement, understanding or arrangement of any kind between the Parties hereto preceding the date of this Agreement and in any way relating to the subject matter of this Agreement and to the exclusion of any representations not expressly stated herein save for any fraudulent misrepresentations or any misrepresentation as to a fundamental matter. Each of the Parties acknowledges that it has not entered into this Agreement based on any representation that is not expressly incorporated into this Agreement.

2.3 This Agreement constitutes the whole agreement and understanding of the Parties as to the subject matter hereof and there are no provisions, terms, conditions or obligations, whether oral or written, express or implied, other than those contained or referred to herein.

2.4 Except as expressly provided otherwise in this Agreement, no change to this Agreement shall be binding unless it is agreed in writing signed by each of the Company and the Customer and expressed to be for the purpose of such amendment and in the format described in the Order Form.

2.5 In the event of any conflict between the provisions of these Terms and Conditions and the provisions of the Annexes and the Order Form, then the following order of precedence shall apply:

2.5.1 Order Form, prevails over

2.5.2 these Terms and Conditions, which prevails over

2.5.3 an Annex.

2.6 If the Customer provides the Company with a purchase order for the Services or Software, the purchase order shall be purely for the Customer's administrative purposes only and shall not form part of this Agreement.

2.7 This Agreement shall be legally formed and the Parties shall be legally bound when both Parties have signed the Order Form.

2.8 This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

2.9 Each Order Form, with its relevant Annexes, constitutes a separate agreement. There may be more than one agreement between the Parties in force at the same time as this Agreement.

3. SUPPLY OF SERVICES, SOFTWARE AND EQUIPMENT

3.1 In consideration for the payment of the Fee and the Equipment Price by the Customer, the Company shall materially provide the Services, Software and Equipment to the Customer, referred to in the Order Form.

3.2 The Company warrants that:

3.2.1 it shall use all reasonable skill and care in providing the Services;

3.2.2 its employees, agents and subcontractors have the necessary skill to provide the Services;

3.2.3 the Services will be provided in a professional, competent and workmanlike manner;

3.2.4 it has all necessary rights, permissions and consents to enter into this Agreement;

3.2.5 it shall ensure that the Company's employees, contractors and agents co-operate with, and make themselves available at all reasonable times for discussion and meetings with, the Customer and the Customer's employees, contractors and agents; and

3.2.6 it shall use reasonable endeavours to ensure that while its employees, agents and subcontractors are on the Customer's premises, they will conform to the Customer's normal codes of staff and security practice as are advised to them by the Customer; and

3.2.7 the Equipment will be free from material defects or damage caused solely by the Company.

3.3 The Company does not warrant that the Services, Software or Equipment will be uninterrupted or error-free or that they will meet the individual requirements of the Customer. The Company is not responsible for any Services, Software or Equipment not expressly stipulated in this Agreement that the Company will provide. Except for any matter upon which the Company specifically agrees in writing with the Customer to advise or do, the Company shall not be liable for advising on, or failing to advise on, or doing, or failing to do, anything else (including on any laws, rules, regulations, bye-laws or codes of practice).

3.4 Except where expressly provided for within this Agreement, the Company excludes all conditions, warranties and representations, whether express or implied by statute, common law or otherwise, to the fullest extent permitted by law in respect of the Services, the Software and the Equipment. The Company shall, if so reasonably requested and where possible, assign to the Customer at the Customer's cost the benefit of any warranty, guarantee or indemnity given by the supplier of the Equipment to the Company.

3.5 The Company may supply the Equipment to the Customer whether as expressly stipulated in the Order Form or while providing the Services.

3.6 The Company shall endeavour to supply the Equipment by such time as stipulated in the Order Form, but time for delivery of the Equipment shall not be of the essence. If installation of the Equipment is included in the Services, the Customer shall promptly provide access to the Customer Location to install any Equipment on notice from the Company that such Equipment is ready for installation.

3.7 The Customer shall pay the Equipment Fee to the Company before the Company delivers the Equipment. The Company shall not be under any obligation to supply the Equipment to the Customer until the Customer has paid the Equipment Fee to the Company.

3.8 Risk in the Equipment shall pass to the Customer on delivery of the Equipment to the Customer's premises.

3.9 Notwithstanding delivery, the property in the Equipment will remain in the Company and subject to the following provisions of this Clause 3, the Customer will hold the Equipment as bailee for the Company until payment in full of all Fees and all other sums due from the Customer to the Company on any account whatsoever (in this Clause 3, referred to as "**Payment**").

3.10 The Customer shall keep the Equipment in good condition, and separate and clearly identified as the property of the Company until Payment.

3.11 After delivery and until Payment, the Customer shall keep the Equipment fully insured with a reputable insurance company and if the Equipment is lost, damaged or destroyed shall hold the proceeds of insurance for and to the order of the Company pending Payment.

3.12 The Company may at any time without notice recover possession of the Equipment and the Customer grants to the Company an irrevocable licence to enter for that purpose any premises occupied by the Customer.

3.13 The Customer shall not attach the Equipment to buildings, structures or land so as to become a fixture without the prior written consent of the Company.

3.14 The Company may require payment for Equipment before it has carried out the Services and before it has bought the Equipment from the relevant third party.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall (and shall procure that its agents, employees, contractors and customers shall):

- 4.1.1 provide proper, adequate, safe, comfortable and suitable environmental and operating conditions if the Company undertakes any work at the Customer's (or its agents', employees', contractors' or customers') premises;
- 4.1.2 ensure that the Customer's employees, contractors, agents and customers fully co-operate with, and make themselves available at all reasonable times for discussion and meetings with, the Company and the Company's employees, contractors and agents;
- 4.1.3 promptly provide to the Company such information and assistance that will enable the Company to carry out fully, accurately and promptly its obligations under this Agreement to the best of its ability;
- 4.1.4 promptly comply with the reasonable requests of the Company from time to time in connection with this Agreement;
- 4.1.5 take all care and assume all responsibility with sending and receiving the Data to the Company. The risk of and responsibility for input of content of the Data supplied by the Customer or its employees, agents, contractors or customers is with the Customer. The Customer shall ensure that the content of the Data supplied by it is true, accurate and complete; and
- 4.1.6 be responsible for ensuring that, and hereby warrants and undertakes to the Company that, the Data and the sending and receipt of them by the Customer and the Company, and the use and processing of them by the Company to perform the Services in accordance with this Agreement or by the Customer:
 - 4.1.6.1 conforms in all respects with all applicable laws, rules, regulations, bye-laws and codes of practice;
 - 4.1.6.2 does not infringe the privacy rights or Intellectual Property Rights of any third party;
 - 4.1.6.3 is not defamatory, malicious, abusive, obscene, indecent, discriminatory or harassing; and
 - 4.1.6.4 does not contain any material detrimental to the Company, including without limitation any viruses, trojan horses, trap doors, back doors, easter eggs, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.
- 4.2 It is the Customer's responsibility to ensure that the Software and Services are sufficient and suitable for its purposes and meet its individual requirements.
- 4.3 It is the Customer's responsibility to ensure that the Customer and its employees, agents, contractors and customers have in place and have the right to use any hardware, communications links, equipment and software to enable the Company to provide the Services and Software in accordance with this Agreement and to its maximum performance level possible. The Customer is also responsible for ensuring that it and its employees, agents, contractors and customers provide the Company with the data required by the Company to enable the Company to properly provide the Services and the Software (including the Data). The Company shall not be responsible or liable for any failure to provide the Services or Software to the extent caused by the Customer's failure to ensure the provision of the relevant data or procure the relevant hardware, communications links, equipment and software or for any reason caused by a third party.
- 4.4 The Customer warrants to the Company that the Customer is authorised to receive the Services and Software.
- 4.5 The Customer agrees, during the Term and for a period of one year following its termination, not to solicit or induce any officer, employee or agent of the Company who was involved with the provision of Services or Software to the Customer to terminate their employment or engagement with the Company without the prior written consent of the Company. For the avoidance of doubt, any general recruitment advertisement placed by or on behalf of the Customer shall not be deemed to be solicitation for the purposes of this Clause 4.5.

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 The Customer acknowledges that as between the Company and the Customer, the Company and its licensors own all Intellectual Property Rights in the Software, even if any of the Software is created by the Company at the specific request of the Customer. The Customer shall not have any rights over or to use the Software other than as expressly provided under this Agreement.
- 5.2 The Company acknowledges that as between the Company and the Customer, the Customer and its licensors own all Intellectual Property Rights in the Data. The Customer shall be responsible:
 - 5.2.1 for having all rights in the Data;
 - 5.2.2 for ensuring that all the Customer's employees, agents, contractors and customers have all rights to use and process the Data; and
 - 5.2.3 for enabling the Company to have the right to use and process the Data;
 so that the Company can lawfully perform this Agreement.
- 5.3 The Customer hereby grants to the Company a royalty-free, worldwide, perpetual, non-exclusive, assignable, sublicensable licence to use the Data for the purposes of performing this Agreement. Subject to the rest of the provisions in this Agreement, the Company shall not use the Data for any other purpose without the Customer's express prior written consent.
- 5.4 Except for the purpose of performing and complying with this Agreement, the Company shall not without the Customer's prior written consent:
 - 5.4.1 disclose the Data to any third party;
 - 5.4.2 make any copies of the Data;
 - 5.4.3 modify the Data; or
 - 5.4.4 reproduce or store any of the Data in any web site or in any public or private electronic retrieval system or service.
- 5.5 Except to the extent expressly provided in this Agreement, the Customer shall only use the Services and Software for its own usual business purposes and shall not, without the Company's prior written consent, allow any third party to use or access the Services or Software or supply the Services or Software to any third party; and then only as contemplated by this Agreement.
- 5.6 If either Party becomes aware of any improper or wrongful use of the Intellectual Property Rights used by the other, that Party shall forthwith inform the other of such use. The informing Party shall if requested assist the other (at the other's cost) in taking any steps in connection with the protection or defence thereof as the other may determine.
- 5.7 The Customer shall comply with the terms of any licence of the Software and shall indemnify the Company in respect of any losses, claims or breach of the same

6. CONFIDENTIALITY

- 6.1 Each Party shall keep and procure to be kept secret and confidential the Confidential Information of the other Party (whether before, on or after the date of this Agreement) and shall not use nor disclose the same save:
 - 6.1.1 for the purposes of the proper performance of this Agreement; or
 - 6.1.2 as otherwise permitted by this Agreement; or
 - 6.1.3 with the prior written consent of the other Party.
- 6.2 Where one Party discloses Confidential Information of the other Party to its employee, consultant, subcontractor, supplier, customer, agent, professional adviser or insurer, it shall do so subject to obligations equivalent to those set out in this Clause 6. Each Party shall use its reasonable endeavours to ensure that any such employee, consultant, subcontractor, supplier, customer, agent, professional adviser or insurer complies with such obligations.
- 6.3 Each Party shall at all times:
 - 6.3.1 adopt, retain and keep updated adequate procedures and physical security measures which protect the Confidential Information of the other Party from inadvertent disclosure or release to unauthorised persons; and

- 6.3.2 hold the Confidential Information of the other Party in strict confidence and in any event with no less standard of confidentiality than that which it applies to its own confidential information.
- 6.4 The obligations of confidentiality in this Clause 6 shall not extend to any matter which either Party can show:
- 6.4.1 is in, or has become part of, the public domain other than as a result of a breach of the confidentiality obligations of this Agreement; or
- 6.4.2 was in its written records prior to receipt; or
- 6.4.3 was independently developed by it; or
- 6.4.4 was independently disclosed to it by a third party entitled to disclose the same.
- 6.5 If either Party is required to disclose the Confidential Information of the other Party under any applicable law, or by order of a court or governmental body or authority of competent jurisdiction, then the Party so required shall, prior to any disclosure where practicable, notify the other Party and, at the other Party's request and cost, assist that other Party in opposing any such disclosure.
- 6.6 Nothing in this Agreement shall preclude the Customer, nor any customer, employee or agent of the Customer, from taking such steps as are necessary in order to comply with the professional or ethical rules or guidelines of any relevant professional body of which the Customer or its customer, employee or agent may be or become a member.
- 6.7 Neither Party shall make any announcement of any kind in respect of the subject matter of this Agreement except with the prior written consent of the other Party (not to be unreasonably withheld or delayed) or as is required by law.
- 6.8 Subject to Clause 6.7, the Company may identify the Customer as its customer and the type of Software or Services provided by the Company to the Customer, provided that in doing so the Company shall not (without the Company's prior written consent) reveal any Confidential Information of the Customer.
- 6.9 The obligations of this Clause 6 shall continue after termination of this Agreement for whatever reason.

7. DATA PROTECTION

- 7.1 In performing this Agreement, each Party shall:
- 7.1.1 comply with all applicable Data Protection Laws; and
- 7.1.2 procure that its employees, agents, consultants and contractors comply with all applicable Data Protection Laws.
- 7.2 The Parties agree and acknowledge that in respect of the Company's obligations as to the Data under this Agreement, the Company is merely a data processor and the Customer is the data controller.

8. LIMITATION OF LIABILITY

- 8.1 This Clause 8 prevails over all other Clauses and sets forth the entire liability of each Party to the other, and their sole and exclusive remedies of the other in respect of:
- 8.1.1 performance, non-performance, purported performance, delay in performance or mis-performance of this Agreement or of any goods or services in connection with this Agreement; or
- 8.1.2 otherwise in relation to this Agreement or entering into this Agreement.
- 8.2 Neither Party excludes or limits its Liability for:
- 8.2.1 its fraud; or
- 8.2.2 death or personal injury caused by its Breach of Duty; or
- 8.2.3 any breach of the obligations implied by Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982;
- 8.2.4 any other Liability which cannot be excluded or limited by applicable law; or
- 8.2.5 in the case of the Customer, any indemnity from the Customer to the Company under this Agreement.
- 8.3 Subject to the rest of this Clause 8, neither Party accepts and hereby excludes any Liability for Breach of Duty other than any liability arising pursuant to the terms of this Agreement.
- 8.4 Subject to the rest of this Clause 8, neither Party shall have Liability to the other in respect of any:
- 8.4.1 indirect or consequential losses, damages, costs or expenses;
- 8.4.2 loss of actual or anticipated profits;
- 8.4.3 loss of contracts;
- 8.4.4 loss of use of money;
- 8.4.5 loss of anticipated savings;
- 8.4.6 loss of revenue;
- 8.4.7 loss of goodwill;
- 8.4.8 loss of reputation;
- 8.4.9 loss of business;
- 8.4.10 loss of operation time;
- 8.4.11 loss of opportunity; or
- 8.4.12 loss of, damage to or corruption of, data,
- 8.4.13 suffered by the other in respect of this Agreement whether or not such losses were reasonably foreseeable or the Party in default or its agents had been advised of the possibility of the other incurring such losses. For the avoidance of doubt, Clauses 8.4.2 to 8.4.12 apply whether such losses are direct, indirect, consequential or otherwise.
- 8.5 Subject to the rest of this Clause 8 and the exclusions and limits set out in the rest of this Agreement, the total aggregate Liability of each Party arising out of or in connection with a claim or claims made by the other in respect of loss or damage suffered by the other shall not exceed 125% of all Fees payable to the Company by the Customer in the 12 months preceding the date of the latest claim. In any event the Company shall have no liability to the Customer unless the Company shall have received notice of the same within 2 years of the cause of action accruing.
- 8.6 The limitation of Liability under Clause 8.5 has effect in relation both to any Liability expressly provided for under this Agreement and to any Liability arising by reason of the invalidity or unenforceability of any term of this Agreement.
- 8.7 The Customer's Liability for failure to pay the Fees shall not be limited.
- 8.8 The Customer acknowledges and accepts that the Company only provides the Services to it on the express condition that the Company will not be responsible for nor shall it have any Liability to the Customer or any third party directly or indirectly for:
- 8.8.1 inaccuracies or errors in or omissions from any Data provided by the Customer or its employees, agents, contractors or customers; or
- 8.8.2 inaccuracies or errors in or omissions from any Services as a result of any source or information maintained or provided by a third party; or

8.8.3 any act or omission of the Customer, its employees, agents, contractors or customers or any third party.

8.9 In this Clause 8:

8.9.1 "Breach of Duty" means the breach of any (i) obligation arising from the express or implied terms of a contract to take reasonable care or exercise reasonable skill in the performance of the contract or (ii) common law duty to take reasonable care or exercise reasonable skill (but not any stricter duty); and

8.9.2 "Liability" means liability in or for breach of contract, Breach of Duty, misrepresentation, restitution or any other cause of action whatsoever relating to or arising under or in connection with this Agreement, including, without limitation, liability expressly provided for under this Agreement or arising by reason of the invalidity or unenforceability of any term of this Agreement (and for the purposes of this definition, all references to "this Agreement" shall be deemed to include any collateral contract).

9. FEES

9.1 In consideration for obtaining the Services provided by the Company pursuant to this Agreement, the Customer shall pay to the Company the Fee.

9.2 The Fee shall be as set out in the Order Form.

9.3 Where an initial fee is payable, the initial fee shall be an initial up-front payment. In such case, performance of the Services or the right to use Software is conditional on the Company first receiving the initial fee in cleared funds in full from the Customer.

9.4 The Company may charge for its reasonable expenses incurred in the course of performing this Agreement.

9.5 The Company may issue invoices to the Customer for the Fee on a monthly basis.

9.6 The Company may issue invoices to the Customer for the expenses incurred by it or its subcontractors in the course of performing this Agreement as and when the expenses arise or if earlier when the Company knows the value of its anticipated expenses.

9.7 Unless otherwise provided in the Order Form, the Customer shall pay the Company:

9.7.1 for the initial fee upon signature of the Order Form or receipt of the invoice for the initial fee, whichever shall be the earlier date, and in any event in advance of receipt of the Services or Software; and

9.7.2 for all other Fees, within 30 days of the date of the Company's invoice for the Fees; and

9.7.3 for the expenses within 5 Business Days of the date of the Company's invoice.

9.8 All sums due to the Company are exclusive of VAT and other duties or taxes (if applicable) which the Customer shall pay to the Company in addition at the same time as payment of the Fee and expenses.

9.9 The Customer shall pay the Company by any payment method reasonably stipulated by the Company.

9.10 Payment shall be in the currency in force in England from time to time.

9.11 Payment of all sums due to the Company under this Agreement shall be made by the Customer in full without any set-off, deduction or withholding whatsoever.

9.12 If the Customer is late in paying any part of any monies due to the Company, the Company may (without prejudice to any other right or remedy available to it whether under this Agreement or by any statute, regulation or bye-law) do either or both of the following:

9.12.1 charge interest on the amount due but unpaid at the annual rate of interest set under Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 from time to time from the due date until payment (after as well as before judgment), such interest to run from day to day and to be compounded monthly; and

9.12.2 suspend the performance of this Agreement and any other agreement between the Company and the Customer until payment in full has been made.

10. TERM AND TERMINATION

10.1 This Agreement shall commence on the Commencement Date and, subject to earlier termination pursuant to this Agreement, shall continue in force for the Initial Period and thereafter unless or until terminated by either Party giving to the other no less than 1 (one) months' notice [to take effect at the end of a calendar month.

10.2 Either Party may terminate this Agreement immediately by notice in writing to the other Party if:

10.2.1 the other Party is in material breach of any of its obligations under this Agreement which is incapable of remedy; or

10.2.2 the other Party fails to remedy, where capable of remedy, any material breach of any of its obligations under this Agreement after having been required in writing to remedy such breach within a period of no less than 30 days; or

10.2.3 the other gives notice to any of its creditors that it has suspended or is about to suspend payment or if it shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986, or an order is made or a resolution is passed for the winding-up of the other Party or an administration order is made or an administrator is appointed to manage the affairs, business and property of the other Party or a receiver and/or manager or administrative receiver is appointed in respect of all or any of the other Party's assets or undertakings or circumstances arise which entitle the court or a creditor to appoint a receiver and/or manager or administrative receiver or administrator which entitle the court to make a winding-up or bankruptcy order or the other Party takes or suffers any similar or analogous action in consequence of debt.

10.3 Termination of this Agreement shall be without prejudice to any accrued rights or remedies of either Party.

10.4 Termination of this Agreement will not affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.

10.5 Upon termination of this Agreement for any reason:

10.5.1 the Company shall cease to perform this Agreement;

10.5.2 all outstanding Fees for Services or Software provided, and the Equipment Price shall become immediately payable, whether invoiced or not;

10.5.3 any Equipment which has not been paid for in full shall be immediately returned to the Company and the Customer shall provide access to the Company to enable the Company to remove the same; and

10.5.4 the owner of Confidential Information may at its option require the other Party to delete promptly all Confidential Information from any computer disks, tapes or other material in its possession or under its control or promptly deliver up or destroy materials and tangible items in its possession or under its control which contain any Confidential Information belonging to the Party requiring the action. The owner of Confidential Information may require the other Party to provide a written declaration, signed by an officer or other authorised individual stating that there has been full compliance with this Clause 10.5.4.

11. FORCE MAJEURE

11.1 Save for obligations in respect of payment of the Fees, neither Party shall be liable for any breach, hindrance or delay in performance of its obligations under this Agreement which is caused by circumstances beyond its reasonable control including without limitation, mechanical breakdown, third party software, failure or problems with public utility supplies (including without limitation electrical, telecoms or general Internet failure), shortage of or inability to obtain materials, equipment or transportation ("**Event of Force Majeure**"), regardless of whether the circumstances in question could have been foreseen.

11.2 Each of the Parties agrees to notify the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

11.3 The performance of each Party's obligations shall be suspended during the period that the circumstances persist, and such Party shall be granted an extension of time for performance equal to the period of the delay.

11.4 Each Party shall bear its own costs incurred by the Event of Force Majeure.

- 11.5 If performance of any obligations is delayed under this Clause 11, each Party shall nevertheless accept performance as and when the other shall be able to perform.
- 11.6 If the Event of Force Majeure continues without a break for more than [one month], either Party may terminate this Agreement immediately by notice to the other, in which event neither Party shall be liable to the other Party by reason of such termination.
- 11.7 If the Company has contracted to provide identical or similar services or software or deliverables to more than one customer and is prevented from fully meeting its obligations to the Customer by reason of an Event of Force Majeure, the Company may decide at its absolute discretion which contracts it will perform and to what extent.

12. NOTICES

- 12.1 Any notice or other communication required or authorised to be given under this Agreement shall be in writing and may be served by personal delivery or by pre-paid or recorded delivery letter or by overnight courier or by facsimile addressed to the relevant Party at its address stated in this Agreement or at such other address or facsimile number as is notified by the relevant Party to the other for this purpose from time to time or at the address or facsimile number of the relevant Party last known to the other.
- 12.2 Any notice so given by post shall be deemed to have been served two Business Days after the same shall have been posted by recorded delivery or overnight courier and any notice so given by facsimile shall be deemed to have been served upon receipt of an answerback signal from the receiving machine, and in proving such service it shall be sufficient to prove that the letter or facsimile was properly addressed or numbered and, as the case may be, posted as a prepaid or recorded delivery letter or despatched or an answerback signal received.

13. ASSIGNMENT

- 13.1 Subject to any assignee (in the case of an assignment) confirming in writing to be bound by the provisions of this Agreement, the Company may assign or subcontract its rights, liabilities or obligations under this Agreement either in whole or in part to any other person, firm or company. The Company shall promptly give notice to the Customer of any such assignment.
- 13.2 The Customer shall not assign, transfer or charge or purport to assign, transfer or charge this Agreement or any of its rights, liabilities or obligations under this Agreement without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).

14. DISPUTE RESOLUTION

- 14.1 The Parties will attempt in good faith promptly to resolve any dispute or claim arising out of or in relation to this Agreement in accordance with the following procedure:
- 14.1.1 The Parties shall use their best efforts to negotiate in good faith and settle amicably any dispute or claim that may arise out of or relate to this Agreement (or its construction, validity or termination) (a "**Dispute**"). If a Dispute cannot be settled through negotiations by appropriate representatives of each of the Parties having authority to settle the matter, either Party may give to the other a notice in writing (a "**Dispute Notice**"). Within seven days of the Dispute Notice being given, the Parties shall each refer the Dispute to their senior representatives nominated by the managing director of each Party, who shall meet in order to attempt to resolve the Dispute.
- 14.1.2 If the Dispute is not settled by agreement in writing between the Parties within 14 days of the Dispute Notice, either of the Parties may refer the Dispute to mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. The mediation shall be conducted by a single mediator appointed by mutual agreement, or (failing mutual agreement within seven days of a notice from either Party to the other calling upon the other so to agree) by the Centre for Dispute Resolution. Both Parties agree to co-operate fully with such mediator, provide such assistance as is necessary to enable the mediator to discharge his duties, and to bear equally between them the fees and expenses of the mediator.
- 14.1.3 The mediation shall be conducted in London in English. The mediation shall be conducted without prejudice to the rights of any of the Parties in future proceedings.
- 14.1.4 If the matter has not been resolved by a mediation procedure within sixty (60) days following referral of the Parties to the CEDR procedure or if the Dispute cannot be resolved using the processes and procedures set out above, then it shall be resolved by reference to the courts in accordance with Clause 15.5 (governing law and jurisdiction).
- 14.1.5 If either Party does not agree with any Dispute being referred for mediation or determination in accordance with this Clause 14, then the Dispute shall be determined by the courts under Clause 15.5. For the avoidance of doubt, either Party may apply to the Court or initiate proceedings without recourse to the process in this Clause 14.

15. GENERAL

- 15.1 No failure or delay by either Party in exercising any right under this Agreement shall operate as a waiver of such right or extend to or affect any other or subsequent event or impair any rights or remedies in respect of it or in any way modify or diminish that Party's rights under this Agreement.
- 15.2 If any Clause or other provision in this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall in no way affect any other Clause or provision or part of any Clause or provision, all of which shall remain in full force and effect.
- 15.3 Nothing in this Agreement shall create or be deemed to create a partnership, an agency or a relationship of employer and employee between the Parties.
- 15.4 A person who is not a Party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 15.5 This Agreement shall be governed by and construed in accordance with English law and the Customer hereby submits to the jurisdiction of the English courts. The Parties irrevocably agree that the English courts shall have exclusive jurisdiction over any claim or matter brought by the Customer in relation to this Agreement. Nothing in this Clause 15.5 shall limit the right of the Company to take proceedings against the Customer in any other court of competent jurisdiction. All dealings, correspondence and contacts between the Parties shall be made or conducted in the English language.

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