

TERMS AND CONDITIONS – SOFTWARE MEDIA , SUBSCRIPTION AND HARDWARE

M.A.C Solutions Limited (company number 03762835) ("**Company**") and the customer named in an Order Acknowledgement (whether an individual or corporate body) ("**Client**") acknowledge and agree that, by the Company sending an Order Acknowledgement to the Client, a contract for the Company to supply Software Media, Subscription Services and/or Hardware is made between them upon (a) these terms and conditions, and (b) any additional terms and conditions set out in such Order Acknowledgement (collectively an "**Agreement**") to the exclusion of all other terms and conditions.

No terms or conditions endorsed upon, delivered with or contained in any document or other communication (electronic or otherwise) supplied or sent by the Client relating to an Agreement shall form part of such Agreement and the Client waives any right which it otherwise might have to rely on such other terms or conditions. No order or other offer made by the Client shall be deemed accepted by the Company until an Order Acknowledgement is issued by the Company or (if earlier) delivery of the Software Media or Hardware is made or the provision of access to the Subscription Services (as applicable).

1. TERM

- 1.1 This Agreement shall commence on the commencement date set out on the Order Acknowledgement and remain in full force and effect for the term set out in the Order Acknowledgement ("**Term**"), unless terminated in accordance with its terms.
- 1.2 Upon the Company sending an Order Acknowledgement or processing the Client's request, the Client shall have no right to cancel the Agreement unless this is in accordance with clause 12 (Termination).

2. PAYMENT AND INVOICING

- 2.1 Save where otherwise provided in these terms and conditions, the Client will pay to the Company the Price within thirty (30) days of receipt of an invoice for the same valid for Value Added Tax purposes.
- 2.2 All payments by the Client in respect of the Price shall be made in full and cleared funds to a bank account nominated in writing by the Company. The Client shall make all payments in full without any deduction, whether by way of set-off (whether in equity, at law or under contract), counterclaim, discount, abatement or otherwise.
- 2.3 Time for payment shall be of the essence of an Agreement. In the event of late payment, the Company may at its sole discretion charge the Client daily interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 from time to time for the period beginning on the date on which payment is due and ending on the date on which payment is made. Additionally, the Company shall be entitled to recover from the Client any costs incurred in the process of recovering the debt.

3. AMENDMENT

- 3.1 In the event a Currency Fluctuation occurs affecting the Price of any multi-year Subscription Services provided, the Company reserves the right to increase the Price paid for such Subscription Services in accordance with the proportion of such Currency Fluctuation on no less than thirty (30) days' prior written notice to the Client.
- 3.2 The Client may request an amendment to an Agreement (including any related order for Software and/or Hardware set out in a relevant Order Acknowledgement) on giving sixty (60) days' prior written notice to the Company to such effect.
- 3.3 Subject to clause 3.1, no amendment to an Agreement (including any related order for Software and/or Hardware set out in a relevant Order Acknowledgement) shall be effective unless made in writing and signed by each of the parties.
- 3.4 For the avoidance of doubt, the Company's consent to any amendment may be subject to conditions, including without limitation, the removal of any applicable bulk-order Price discount agreed with the Client in respect of Software and/or Hardware (whether or not already delivered, in whole or in part, to the Client), in which event the Company shall be entitled to invoice the Client for such additional amount as corresponds to the resulting adjustment in the Price.

4. END USER LICENCE AGREEMENT

- 4.1 The Client hereby grants the Company the authority to enter any and all End User Licence Agreements required in respect of the Software on the Client's behalf. Any such End User Licence Agreement shall be between the Client and the Software publisher and a copy of the End User Licence Agreement will be available to access upon request by the Client, through the Software Media or as set out in an Order Acknowledgement.
- 4.2 The Company shall not be under any obligation to negotiate the terms of the End User Licence Agreement(s) entered into in accordance with this clause 4 on the Client's behalf.
- 4.3 Where any fee is due in respect of any such End User Licence Agreement for the Software and/or the Subscription Services, the Company shall pay such fee on the Client's behalf. The Company shall submit an invoice to the Client in respect of the relevant End User Licence Agreement fee (except where the Company has agreed to include such fee in the Price), and the Client shall pay such fee within 30 days of receipt of the relevant invoice.

5. DELIVERY

- 5.1 The Company shall deliver Software Media on which the Software is loaded, and/or Hardware (as applicable) to the Client Site(s) or such other premises as set out in the Order Acknowledgement.
- 5.2 Delivery is considered complete upon the completion of unloading the Hardware or the electronic delivery of the Software Media (as applicable). In cases where the Software Media is provided on a physical device, including on a dongle or USB stick, delivery is considered complete upon unloading.
- 5.3 Any dates and/or times specified for delivery of the Software Media and/or Hardware and/or provision of access to the Subscription Services (as applicable) are estimates only, and time of delivery shall not be of the essence. The Company may arrange for earlier delivery of the goods to the Client upon giving reasonable notice to the Client to such effect.
- 5.4 If the Client fails to take delivery of any Software Media and/or Hardware (as applicable) when supplied by the Company in accordance with this Agreement, the Company may at its absolute discretion:
 - (a) store such Software Media and/or Hardware until actual delivery to the Client, in which case the Client shall be liable for the relevant costs of storage and insurance incurred by the Company;
 - (b) if the Client fails to take delivery of such Software Media and/or Hardware within twenty-one (21) days of the original delivery date, and in the interim the Company has increased its list prices for the same, increase the related Price payable by the Client to match such increased prices; and/or

- (c) if the Client fails to take delivery of such Software Media and/or Hardware within one (1) month of the original delivery date, delivery shall be deemed to have occurred for the purposes of any related payment due to the Company.

6. TITLE

- 6.1 Title in the Software Media and/or Hardware (as applicable) shall not pass to the Client until the Company has received:
- (a) all amounts due to it under the relevant Agreement; and
 - (b) all other amounts due to it from the Client which remain outstanding.
- 6.2 Until title in the Software Media and/or Hardware (as applicable) passes to the Client, the Client shall:
- (a) hold such Software Media and/or Hardware on a fiduciary basis as bailee of the Company;
 - (b) store such Software Media and/or Hardware at its own cost separately from its own property and in such manner so as to ensure that such Software Media and/or Hardware remain readily identifiable as the Company's property;
 - (c) not remove, destroy, deface or obscure any identifying mark on or relating to such Software Media and/or Hardware;
 - (d) ensure that such Software Media and/or Hardware (including any related packaging) remain in satisfactory and saleable condition;
 - (e) subject to clause 6.3, where it purports to sell such Software Media and/or Hardware to a third party: (i) do so as principal and not as agent of the Company; (ii) hold the proceeds of any such sale or purported sale on trust for the Company in a separate bank account; (iii) on demand from the Company, assign to the Company its rights to recover the Price from its purchaser; and (iv) not assign to any person other than the Company any rights arising from such sale without the Company's prior written consent; and
 - (f) not create or purport to create any lien, charge or other encumbrance over or otherwise affecting such Software Media and/or Hardware.
- 6.3 If the Client sells or purports to sell the Software Media and/or Hardware (as applicable) title to the Software Media and/or Hardware shall pass to the Client immediately before the time at which resale by the Client occurs.
- 6.4 The Company may, where title to the Software Media and/or Hardware (as applicable) remains with the Company, recover and resell the same, and may enter upon any Client Site(s) or other premises of the Client for such purposes.

7. RISK

- 7.1 Risk in the Software Media and/or Hardware (as applicable) shall pass to the Client on delivery in accordance with these terms and conditions. From such date, the Client shall insure such Software Media and/or Hardware against all insurable risks with a reputable insurance company for not less than the Price due to the Company for the same and use its best endeavours to procure the noting of the Company's interest on the relevant policy. If such Software Media and/or Hardware is destroyed by an insured risk before title has transferred to the Client, the Client shall hold the insurance proceeds on trust for the Company.

8. CLIENT OBLIGATIONS

- 8.1 The Client is responsible for:
- (a) ensuring that the terms of the Order Acknowledgement are complete and accurate;
 - (b) subject to clause 9 (Warranties) ensuring that the Subscription Services, Software Media and Hardware ordered are adequate to meet its requirements;
 - (c) the provision, operation and maintenance of the Client Architecture, and in particular shall ensure that it meets or exceeds each Minimum Architecture Specification;
 - (d) the maintenance of such environmental conditions as are necessary for the proper functioning of the Software and Hardware, including the provision of adequate electrical and air conditioning resources; and
 - (e) ensuring it has adequate ongoing support and maintenance facilities in place in respect of the Software and Hardware;
 - (f) co-operate with the Company in all matters relating to the Subscription Services, Software Media and/or Hardware; and
 - (g) provide the Company with such information as is reasonably required in order to supply the Subscription Services, Software Media and/or Hardware, and ensure that such information is complete and accurate in all material respects.
- 8.2 The Client shall comply in full with the terms of each relevant End User Licence Agreement.

9. WARRANTIES

- 9.1 Subject to clause 9.3 and 14.8, the Company warrants that:
- (a) the Subscription Services and/or Software Media (as applicable) shall conform in all material respects to the relevant description provided by the Company; and
 - (b) the Hardware shall be free from material defects in design, material and workmanship for a period of twelve (12) months from the date of delivery (whichever is the later).
- 9.2 THE WARRANTIES SET OUT IN THIS CLAUSE 9 ARE IN LIEU OF ALL OTHER REPRESENTATIONS, CONDITIONS, WARRANTIES OR OTHER TERMS WHICH MAY BE IMPLIED BY STATUTE OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED CONDITION OF SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER IN RESPECT OF THE HARDWARE, SUBSCRIPTION SERVICES OR THE SOFTWARE MEDIA.
- 9.3 Where the Company is not the software publisher, any defects or defaults in the provision of the Subscription Services, the Software or Software Media (other than where the same fail to conform to the description provided by the Company in its Order Acknowledgement) are in each case a matter for the Client and the relevant Software publisher pursuant to the applicable End User Licence Agreement. The Company will use reasonable endeavours to pass through any available software publisher's warranties to the Client.

10. INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Intellectual Property Rights in the Subscription Services, Software and Hardware shall remain the property of the relevant party, including where applicable a third party software publisher (as identified in each applicable End User Licence Agreement) and manufacturers respectively.
- 10.2 The Client shall not remove, alter, cover or obfuscate any patent, copyright, trademark, tradename, or other proprietary notices, labels or marks of the Company or any third party software publisher on the Software Media or the Subscription Services and in respect of the related Documentation shall reproduce such notices, labels and marks on any permitted copies of the same that the Client makes.

- 10.3 The Client shall promptly notify the Company of any unauthorised use, disclosure, reproduction, or distribution of the Software, the Subscription Services or the Documentation.
- 10.4 Neither party will make use of any logo, trademarks or trade name or Intellectual Property Rights of the other (save those expressly licensed herein) without the other's prior written consent. For the avoidance of doubt, the Client shall not use any trade name or logo or trademark associated with any Software or the Subscription Services, except to the extent expressly permitted by the applicable End User Licence Agreement.
11. **SUBSCRIPTION SERVICES**
- 11.1 Subject to the Client's compliance with clause 8.2 and payment of the Price, the Company hereby grants to the Client a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Client (and its authorised users) to use the Subscription Services and the Documentation during the Subscription Term solely for the Client's internal business operations.
- 11.2 The Client agrees and acknowledges that the Company and/or the third party software publisher shall have the right to suspend the Subscription Services in accordance with the terms of the relevant End User Licence Agreement or where any of the circumstances set out in clause 12.1 or 12.3 arise.
12. **TERMINATION**
- 12.1 A party may terminate this Agreement at any time:
- (a) immediately upon giving written notice to the other party to such effect where:
 - (i) the other party commits a material breach of any provision of an Agreement which is capable of remedy and fails to remedy such breach within thirty (30) days of receipt of a notice from the innocent party specifying the breach;
 - (ii) the other party commits a material breach of any provision of an Agreement which is not capable of remedy; or
 - (iii) an Act of Insolvency occurs with respect to the other party; or
 - (b) on giving five (5) Business Days' notice in writing to such effect where a delay or failure pursuant to a Force Majeure Event persists for more than a continuous period of three (3) months.
- 12.2 Each party shall notify the other in writing if any Act of Insolvency occurs in relation to itself.
- 12.3 The Company may terminate an Agreement immediately upon providing written notice to such effect to the Client where:
- (a) the Client fails to make payment of any amount when due under an Agreement or a Related Agreement, and the same is not remedied within thirty (30) days of the due date;
 - (b) the Client commits a material breach of any provision of a Related Agreement which is capable of remedy and fails to remedy such breach within thirty (30) days of receipt of a notice from the Company specifying the breach, or commits a material breach of any provision of a Related Agreement which is not capable of remedy;
 - (c) the Company terminates any Related Agreement in accordance with its terms;
 - (d) the Client indicates to the Company that it does or shall not agree to, the terms of any relevant End User Licence Agreement;
 - (e) any End User Licence Agreement is terminated in accordance with its terms by the Client or the relevant software publisher; or
 - (f) it becomes aware of any breach of an End User Licence Agreement by the Client, and may immediately notify the relevant third party software publisher of such breach (and of any related information in the Company's possession).
- 12.4 All amounts payable to the Company as set out in the Order Acknowledgement shall become immediately due upon termination notwithstanding any other term of that Agreement.
- 12.5 The termination of an Agreement by either party for any reason shall not prejudice any rights or obligations existing or that may have accrued prior to the date of such expiry or termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
13. **FORCE MAJEURE**
- 13.1 Neither party will be liable for any delay in performing or its failure to perform its obligations under an Agreement if such delay or failure results from a Force Majeure Event. Such delay or failure shall not constitute a breach of an Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented.
14. **LIABILITY**

General

- 14.1 References to liability in this clause 14 includes every kind of liability arising under or in connection with the Agreement including liability in contract, tort (including negligence), misrepresentation, restitution, statutory duty or otherwise.
- 14.2 Nothing in this Agreement limits or excludes any liability for death or personal injury caused by negligence, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any liability that legally cannot be limited.
- 14.3 Subject to clause 14.2, the Company's aggregate liability under this Agreement shall in no event exceed 100% of the total Price paid and payable in the relevant Contract Year.
- 14.4 Subject to clause 14.2, the Company shall not be liable for any indirect or consequential Losses.
- 14.5 Subject to clause 14.2, the Company shall not be liable for Losses in respect of:
- (a) loss of or damage to or errors in data (including costs and expenses associated with its recovery and/or reconstruction);
 - (b) loss of profits;
 - (c) loss of contracts;
 - (d) loss of business revenue;
 - (e) loss of goodwill;
 - (f) loss of anticipated savings;
 - (g) delays in the provision of access to the Subscription Services or delivery of the Software Media and/or Hardware (as applicable); and
 - (h) loss arising from any claim made against the Client by any third party;

14.6 the Client acknowledges and agrees that it is its responsibility to insure itself against (a) indirect Losses, (b) the above categories of Loss, and (c) Losses in excess of the above liability cap.

14.7 The Company's maximum liability in contract, tort or otherwise for physical damage to the Client's tangible personal or real property resulting from the Company's negligence shall not exceed £5 million per event or series of events.

Liability for warranties

14.8 The Company shall not be liable for any Losses arising in respect:

- (a) of a claim that the Subscription Services or any item of Software Media (as applicable) does not comply with the warranty at clause 9.1(a), unless such claim is notified to the Company by a date falling seven (7) days after the provision of access to or delivery of the same in accordance with the relevant Agreement. In default of any notification being made by the Client within such prescribed period, the Client shall be deemed to have accepted all Subscription Services and/or Software Media (as applicable) as being in conformity with clause 9.1(a); and
- (b) of a claim that the Hardware does not comply with the warranty at clause 9.1(b), unless such claim is notified to the Company within seven (7) days' from the date of the Client's awareness of such defect (or the date the Client ought to have been reasonably aware of such defect).

14.9 In the event of notification being made by the Client within the time specified above at clause 14.8 and subject to the Company being given a reasonable opportunity to examine the same, the Company shall, at the Company's discretion either repair, replace each affected item of Subscription Services or Software Media with equivalent Subscription Services or Software Media that conforms to the warranty at clause 9.1(a) or provide a refund of the Price of the defective Subscription Services or Software Media.

14.10 Where any item of Hardware does not comply with the warranty at clause 9.1(b), the Company shall at its sole discretion, repair or replace the same or return the Hardware to the relevant manufacturer for repair or replacement in each case in accordance with, and subject to, the following clauses 14.11-14.15.

14.11 Save where the parties agree otherwise from time to time, in order for the Client to benefit from a remedy pursuant to clause 14.10:

- (a) the Client shall promptly report the relevant defect giving rise to non-compliance to the Company by telephone within Business Hours (and promptly confirm the same in writing);
- (b) the Client shall, within five (5) Business Days of such date of notification, provide the Company with a documented example of the defect in question; and
- (c) thereafter:
 - (i) the Client shall promptly undertake such tests as the Company directs to assist in establishing the nature of such defect;
 - (ii) the Company shall, in consultation with the Client, use reasonable endeavours to determine the nature of such defect and the urgency with which a remedy is needed, and proceed to implement such remedy in accordance with any relevant agreed timescale, including by:
 - (1) arranging for a permitted agent of the Company to attend the relevant Client Site during Business Hours as soon as reasonably practicable; or
 - (2) requiring the Client to disconnect and return the affected Hardware, at its own cost and correctly packaged, to the Company, in which case the Client must include (1) a valid returns (RMA) number obtained from the Company, (2) the invoice number associated with the Hardware, and (3) a description of the fault, in the relevant package.

14.12 Where the relevant Hardware or any component thereof is found to be defective and determined by the Company to require repair or replacement, it shall be exchanged with new Hardware or parts to ensure compliance with the warranty set out in clause 9.1(b). All replacement parts shall become part of the Hardware, and any components removed shall become the property of the Company.

14.13 The applicable warranty period under clause 9.1(b) is unaffected by any remedy implemented by the Company pursuant to clauses 14.10-14.12.

14.14 The warranty in clause 9.1(b) shall not apply where any failure, defect or malfunction of the relevant Hardware:

- (a) is directly or indirectly caused by:
 - (i) any (i) modification, adjustment, or repair to, or (ii) neglect, misuse or abuse of or wilful or accidental damage to, in each case such software or hardware by any party other than the Company and its permitted agents;
 - (ii) any damage to, failure, fluctuation, intermittent operation, or inadequacy of (i) electrical power or related connections, (ii) bandwidth or communication connections or (iii) air conditioning;
 - (iii) environmental factors including excessive dust, humidity, heat, cold or moisture;
 - (iv) any Force Majeure Event;
 - (v) the use of information technology hardware or software other than that provided by the Company under an Agreement;
 - (vi) any relocation or transportation of such Hardware save where (i) the Company is aware of and has consented to the same in writing, and (ii) the Client has complied in full with any directions of the Company in relation to the same;
 - (vii) the Client failing to:
 - (1) comply with the Documentation or with any supplementary instructions provided by the Company or any relevant third party software publisher; or
 - (2) maintain good housekeeping practices, including keeping the Hardware clean and replenishing all consumables (if any) as reasonably required; or
 - (3) (save where the Company is to undertake the same pursuant to a Subscription Service) promptly implement all new versions, releases, updates, upgrades, patches, fixes or other software programs or code supplied to it by the Company in respect of the Software;
 - (viii) the Client being in breach of this Agreement;
 - (ix) the Client's negligence;
 - (x) operator error;
 - (xi) any Client Data; or
- (b) is in respect of exterior casing or parts, save where the functionality of the Hardware is affected by damage to the same.

14.15 The Client acknowledges and agrees that the Company's sole liability in respect of any breach of the warranties in clause 9, shall be to undertake the applicable remedies set out in this section "Liability for warranties".

Indemnity

14.16 The Client shall indemnify, defend and hold harmless, the Company and its employees and agents from any and all Losses arising from or in connection with:

- (a) any claim or any threatened claim, action, proceeding, demand or allegation that the use by the Company of the Client Data infringes a third party's Intellectual Property Rights;
- (b) any breach by the Client of an End User Licence Agreement; and
- (c) in the event of the termination of this Agreement in accordance with its terms (other than by the Client pursuant to clause 12.1), any item of Software or Hardware.

Handling of claims

14.17 The Company shall promptly notify the Client if any claim is made or action brought against the Company that falls within the subject matter of the indemnity in clause 14.16.

14.18 For any third party claims the Company receives falling within the scope of clause 14.16:

- (a) it shall, subject to clauses 14.18(b) to (d) (inclusive) give the Client conduct and control of all negotiations and litigation resulting from such claim or action and the Company shall, at the request and expense of the Client, afford to the Client all reasonable assistance for the purpose of contesting any such claim or action;
- (b) the Client shall consult regularly and fully with the Company in relation to the handling of such claim or action and shall give all due consideration and weight to the Company's recommendations. The Client shall keep the Company fully advised of the progress of such claim or action including by providing the Company with copies of all court and other legal documents relating to it;
- (c) the Client shall not settle any such claim or action without the Company's prior written consent such consent not to be unreasonably withheld or delayed; and
- (d) where the Client has care and conduct of a matter pursuant to this clause 14 it shall on request from the Company immediately provide the Company with security for costs and damages for which the Company has a potential legal liability on terms acceptable to the Company (acting reasonably).

15. DATA PROTECTION

15.1 The parties acknowledge and agree that for the purposes of an Agreement the Client is the Controller and the Company is the Processor in respect of any Personal Data Processed pursuant to the Agreement.

15.2 The Client shall comply with its obligations under Data Protection Laws in respect of all Personal Data Processed pursuant to an Agreement.

15.3 The Client warrants and represents that:

- (a) all Personal Data which it transmits to the Company is accurate and up to date and transmitted in accordance with Applicable Law, including Data Protection Laws; and
- (b) it has and shall maintain throughout the term of an Agreement all appropriate, lawful bases to use such Personal Data in accordance with this Agreement, including ensuring the provision of appropriate Privacy Notices to any relevant Data Subjects covering the Processing of such Personal Data by the Company pursuant to this Agreement.

15.4 The Company shall only Process Personal Data for the purpose of performing the Data Processing Services on reasonable written instructions that the Client may give to the Company from time to time concerning such Processing. The Client shall ensure that any such instructions comply with all Applicable Law and that the Data Processing Services as set out in Schedule 1 are accurate and up to date. The Company shall notify the Client if, in the Company's opinion, any instruction given by or on behalf of the Client breaches Data Protection Laws and may refuse to comply with any such instruction.

15.5 Notwithstanding any provision to the contrary within this clause 15, the Company may take any steps that the Company (acting reasonably and in good faith) determines are necessary in order for it to comply with Data Protection Laws. This shall include without limitation the Company having the right to notify any relevant Supervisory Authority of any circumstance that has arisen in relation to the Processing of Personal Data under this Agreement to the extent that the Company (acting reasonably and in good faith) believes that this is necessary in order to comply with Data Protection Laws.

15.6 The Company shall maintain appropriate technical and organisational security measures in accordance with Data Protection Laws.

15.7 Each party shall provide the other with such information as such other party reasonably requests from time to time to enable such other party to satisfy itself that the party providing the information is complying with its obligations under this clause 15.

15.8 Each party, at its own expense, may inspect the other party's compliance with this clause 15. The Company reserves the right to reasonably limit the scope of such audits or inspections, and require that such inspections:

- (a) must be preceded by advance written request of no less than thirty (30) Business Days prior to the anticipated start date and may occur no more than once in any twelve (12) month period, barring exceptional circumstances, such as the Client's reasonable concern of an actual security incident, in which case an inspection may be performed in response to such circumstance;
- (b) must take place at a time mutually agreed by the Company and the Client;
- (c) if to be conducted by a third party, the third party must be:
 - (i) approved in writing by the Company and the Client (such approval not to be unreasonably withheld or delayed);
 - (ii) subject to appropriate confidentiality and non-disclosure provisions; and
 - (iii) must not unreasonably disrupt the Company's normal business or IT operations.

15.9 Following termination or expiry of this Agreement, the Client may request the destruction or delivery up of all Personal Data processed pursuant to this Agreement. For the avoidance of doubt, the Company is entitled to retain a copy of any Personal Data:

- (a) where necessary to comply with any continuing obligations that either party may have following termination or expiry of an Agreement; or
- (b) which Data Protection Laws requires to be stored.

15.10 The Company may cause or allow Personal Data to be transferred to and/or otherwise processed in a Non-adequate Country, provided that such transfer or Processing complies with Data Protection Laws.

- 15.11 The Client acknowledges and agrees that the Company shall be entitled to use sub-processors to Process Personal Data pursuant to the Agreement. Such sub-processors shall be subject to contractual obligations which are substantially similar to the terms of this clause 15 and the Company shall be liable for all acts and omissions of such sub-processors in relation to the Processing of such Personal Data. If the Company wishes to appoint additional or replacement sub-processors during the term of an Agreement, it shall inform the Client of such proposed appointment in advance and give the Client the opportunity to object to the appointment. The Company shall take into account any objections communicated to the Company by the Client when deciding whether to make the appointment, but the Company shall not be bound by such objections. Where the Company are not reasonably able to appoint an alternative sub-processor, the Company may terminate the Agreement within 30 days of receiving an objection from the Client.
- 15.12 The Company shall, at the Client's expense, provide reasonable assistance to the Client for the fulfilment of the Client's obligation to respond to requests relating to Data Subjects' rights under Data Protection Laws.
- 15.13 The Company shall notify the Client without undue delay if the Company becomes aware of an actual Personal Data Breach involving the Personal Data of the Client.
- 15.14 The Company shall, at the Client's expense, provide such assistance, as reasonably requested by the Client from time to time, in undertaking any data protection impact assessments and/or consultation with a Supervisory Authority that the Client may reasonably undertake pursuant to Data Protection Laws.
- 15.15 The Company shall ensure that its personnel, to the extent that they are involved in the Processing of Personal Data in connection with an Agreement shall be subject to appropriate binding obligations to protect the confidentiality of such Personal Data.
- 15.16 The Company's obligations under this clause 15 exclude any Personal Data relating to its personnel engaged in the performance of the Company's obligations under an Agreement generated by the Company solely for the purposes of its internal human resources procedures and records.

16. NOTICES & POINTS OF CONTACT

- 16.1 All notices in respect of an Agreement shall:

- (a) be communicated to the other party by email, post or by hand; and
- (b) be valid if marked for the attention of the persons, and delivered to the address(es) or email address(es) set out in an Order Acknowledgement to an Agreement or otherwise in accordance with such other directions as may be prescribed in writing by the receiving party from time to time; and
- (c) be deemed to be served:
 - (i) in respect of notices delivered by post or by hand, if delivered during Business Hours on a Business Day, when so delivered; and if delivered outside Business Hours, at the start of Business Hours on the next Business Day; and
 - (ii) in respect of notices delivered by email, at the time when in the ordinary course of the means of transmission it would first be received by the addressee, provided that, where such time does not fall within Business Hours on a Business Day, such notice shall be deemed served at the start of Business Hours on the next Business Day.

17. THIRD PARTY RIGHTS

- 17.1 No person who is not a party to an Agreement has any right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

18. DISPUTE RESOLUTION PROCEDURES

- 18.1 All disputes between the parties shall be referred to the parties' respective representatives for resolution. The respective representatives shall meet as soon as possible should a dispute arise (and in any event within ten (10) Business Days of the dispute being notified in writing by one party to the other) and shall negotiate in good faith and use all reasonable endeavours to resolve the dispute.
- 18.2 A party shall be entitled (by giving the other party notice in writing) to withdraw from the dispute resolution process set out in clause 18.1 above and commence court proceedings relating to any dispute arising from an Agreement.
- 18.3 Save where otherwise required by Applicable Law, each party shall keep confidential all discussions and negotiations relating to any dispute unless and until the matter is referred for resolution by a court.

19. CONFIDENTIALITY

- 19.1 This clause 19, applies in respect of all Confidential Information disclosed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") pursuant to this Agreement.
- 19.2 The Receiving Party shall use the Disclosing Party's Confidential Information solely for the purposes of performing its obligations and exercising its rights under this Agreement. Subject to clause 19.5, the Receiving Party shall not disclose any Confidential Information of the Disclosing Party to any third parties save to those employees, officers, permitted agents, subcontractors and professional advisers of the Receiving Party (the "**Representatives**") who are required to have the information in order for the Receiving Party to perform its obligations and exercise its rights under an Agreement. If the Receiving Party is required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction to make any disclosure that is prohibited or otherwise constrained by an Agreement, the Receiving Party shall (where permitted to do so by law) provide the Disclosing Party with prompt written notice of such requirement prior to such disclosure so that the Disclosing Party may seek a protective order or other appropriate relief. Subject to the foregoing sentence, the Receiving Party may furnish that portion (and only that portion) of the Confidential Information that it is legally compelled or is otherwise legally required to be disclosed; provided, however, that the Receiving Party provides such assistance as the Disclosing Party may reasonably request in obtaining such order or other relief at the Disclosing Party's option and expense.
- 19.3 The Receiving Party shall use at least the same effort to prevent unauthorised use or disclosure of the Disclosing Party's Confidential Information as it uses to protect its own Confidential Information of a similar nature, but in no event less than a reasonable degree of care.
- 19.4 Each party's obligations under clauses 19.1 and 19.2 are of a unique character and each agrees that any breach may result in irreparable and continuing damage to the other party for which there may be no adequate remedy in damages. In the event of such a breach, the damaged party will be entitled to seek injunctive relief and/or a decree for specific performance and such further relief as may be proper.
- 19.5 A party may disclose the other party's Confidential Information to those of its Representatives referred to in clause 19.1, 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.

19.6 The provisions of this clause 19 shall survive for a period of five (5) years from termination or expiry of an Agreement.

20. GOVERNING LAW AND JURISDICTION

20.1 This Agreement shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English courts.

21. COUNTERPARTS

21.1 An Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each of the parties has executed at least one counterpart.

21.2 Each counterpart shall constitute an original agreement but all the counterparts together shall constitute one and the same instrument.

22. ENTIRE AGREEMENT

22.1 An Agreement and any appendix, schedule or annex to the same constitute the entire agreement and understanding of the parties and supersede any previous agreements between the parties relating to the same subject matter.

22.2 Each of the parties acknowledges and agrees that in entering into an Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to an Agreement or not) other than as expressly set out in an Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

23. MISCELLANEOUS

23.1 All amounts to be paid or repaid by one party to the other under the terms of an Agreement shall be exclusive of Value Added Tax (unless otherwise stated), which shall be paid as necessary following receipt by such party of an invoice valid for Value Added Tax purposes.

23.2 The Client shall not novate, assign or otherwise transfer an Agreement except with the prior written consent of the Company.

23.3 Except as expressly provided in an Agreement, the rights and remedies provided under an Agreement are in addition to, and not in place of, any rights or remedies provided by law.

23.4 Any failure by either party to enforce at any time and for any period any one or more of the terms of, or rights arising pursuant to, an Agreement shall not be a waiver of such terms or rights, or of the right at any time subsequently to enforce all the terms of, and rights arising under, an Agreement.

23.5 The invalidity or unenforceability of any term of, or any right arising pursuant to, an Agreement shall not in any way affect the remaining terms or rights.

23.6 Nothing in an Agreement (or any of the arrangements contemplated hereby) shall be deemed to create a partnership between the parties.

24. DEFINITIONS

24.1 In these terms and conditions, the following words and expressions shall have the following meanings unless the context otherwise requires:

"Act of Insolvency"

means in relation to either party:

- (a) the party passes a resolution for winding up (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; or
- (b) becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or
- (c) (being a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or
- (d) has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; or
- (e) ceases or threatens to cease, to carry on business; or
- (f) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such party over all or any material part of such party's property; or
- (g) the convening of any meeting of its creditors for the purpose of considering a voluntary arrangement as referred to in Section 3 of the Insolvency Act 1986 (or any analogous proceeding); or

the levying of distress or execution upon its property;

"Adequacy Decision"

means a finding under Article 25(2) of the Data Protection Directive that a country or territory ensures an adequate level of protection within the meaning of Article 25 of the Data Protection Directive or (as applicable) a finding under Article 45(1) of the General Data Protection Regulation that a country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection within the meaning of Article 45 of the General Data Protection Regulation or UK GDPR (as applicable);

"Applicable Law"

means any applicable law, enactment, order, regulation and mandatory or generally recognised industry code of conduct under any laws relating or applicable to the provision or receipt of the services or the performance of the terms of this Agreement;

"Business Day"

means Monday to Friday each week, excluding (i) designated bank holidays in the United Kingdom; and (ii) 27 December to 31 December (inclusive);

"Business Hours"

means a total of 7.5 hours per Business Day;

"Client Architecture"

means the information technology hardware, cabling, communication and software (including operating system) architecture of the Client, save the Hardware and Software;

"Client Currency"

means the currency used for the Price as specified in an Order Acknowledgement;

"Client Data"

means documents, information, items and materials (including without limitation Personal Data) provided by the Client to the Company including information regarding the Client's business, systems and process;

"Client Site"	means premises of the Client within the Territory specified in an Order Acknowledgement;
"Confidential Information"	means any information disclosed by a party by any means (including orally, in writing or as code) that relates to its business, assets, affairs, customers, clients, suppliers, plans, intentions, market opportunities or the subject matter of this Agreement, including the existence and content of any such Agreement, (in respect of the Client only) the Client Data, or which is otherwise reasonably expected to be treated in a confidential manner given the circumstances of disclosure, whether or not the same is marked to indicate its confidential or proprietary nature but excluding any information that: (a) was in the public domain prior to the time of disclosure by the Disclosing Party; (b) enters the public domain after disclosure by the Disclosing Party through no act or omission of the Receiving Party in breach of clause 19; (c) was already in the possession of the Receiving Party on a non-confidential basis at the time of disclosure; (d) is obtained by the Receiving Party on a non-confidential basis from a third party 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; (e) is independently developed by the Receiving Party without use of or reference to other Confidential Information; or (f) the parties agree in writing is not confidential; or (g) is in the Company's possession that relates to a breach or suspected breach of an End User Licence Agreement;
"Contract Year"	means the period of 12 (twelve) calendar months from the commencement of an Order Acknowledgement and each subsequent 12 (twelve) month period thereafter;
"Controller"	has the meaning given in UK GDPR;
"Currency Fluctuation"	if the value of the Client Currency against the United States Dollar varies by 5% or more when compared to the value of the Client Currency against the United States Dollar on the date stated on an Order Acknowledgement, the rate of exchange for these purposes shall be the daily spot exchange rate published by the Bank of England;
"Data Processing Services"	means the services set out in Schedule 1;
"Data Protection Directive"	means Directive 95/46/EC on the protection of individuals with regard to the processing of Personal Data and on the free movement of such data;
"Data Protection Laws"	means the Data Protection Act 2018, UK GDPR, GDPR and any relevant law implemented as a result of GDPR;
"Data Subject"	has the meaning given in the UK GDPR;
"Documentation"	means in respect of the Subscription Services or any item of Software or Hardware, all supporting documents intended for provision to an end user supplied as standard by the relevant software publisher or manufacturer respectively;
"End User Licence Agreement"	means in respect of any Software, the relevant end user software licence agreement for such software or other end user terms and conditions, as applicable;
"Force Majeure Event"	means any event affecting the performance of any provision of an Agreement arising from or attributable to acts, events, omissions or accidents which are beyond the reasonable control of a party, including, without limitation, abnormally inclement weather, flood, lightning, storm, fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, failure or shortage of power supplies, failure or shortage of communication links, internet or web-server errors or unavailability, war, military operations, riot, crowd disorder, terrorist action, civil commotion and any legislation, regulation, ruling or omissions (including failure to grant any necessary permissions) of any relevant government, court or any competent national authority and similar events (but excluding strikes, lock-outs, and industrial action/disputes) suffered by a party;
"General Data Protection Regulation" or "GDPR"	means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
"Hardware"	means the information technology hardware and equipment specified in an Order Acknowledgement (if any), together with its associated packaging and all supporting documents intended for supply to an end user as standard by the relevant manufacturer;
"Intellectual Property Rights"	means (including, without limitation), any patents, designs, trade marks, service marks, (whether registrable or otherwise), applications for any of the foregoing, trade or business names, copyright, database rights, domain names, moral rights, inventions whether or not capable of protection by patent or registration, rights in commercial information and technical information, including know-how, research and development data specifications and drawings and other intellectual property rights, whether registrable or not in any country and all rights or forms of protection having equivalent or similar effect anywhere in the world;
"Losses"	means all losses, liabilities, costs, expenses, damages and claims including fines levied by any relevant regulator whether arising in contract, tort (including negligence) or otherwise;
"Minimum Architecture Specification"	means in respect of an item of Software or Hardware, the standard minimum specification of information technology architecture necessary for the same to run and function effectively, as published by the relevant software publisher or manufacturer respectively;
"Non-adequate Country"	means a country or territory which is outside the European Economic Area and in respect of which there has not been an Adequacy Decision. For the purposes of this Agreement, "Non-adequate Country" includes the United States of America
"Order Acknowledgment"	means an order acknowledgement supplied by the Company to the Client setting out the Software and Hardware to be supplied by the Company on these terms and conditions;
"Personal Data"	has the meaning given in the UK GDPR;

"Personal Data Breach"	has the meaning given in the UK GDPR;
"Privacy Notice"	the information notice required to be supplied to Data Subjects under Data Protection Laws detailing the relevant Processing and provided at a time, in a form and at all times containing content, which is compliant with the requirements of Data Protection Law and relevant guidance issued by the Article 29 Working Party/European Data Protection Board and/or the Information Commissioner's Office;
"Processing"	has the meaning given in the UK GDPR and "Process" and "Processed" have corresponding meanings;
"Processor"	has the meaning given in the UK GDPR;
"Price"	means the price set out in an Order Acknowledgement;
"Related Agreement"	means any other agreement the Company has with the Client from time to time;
"Software"	means the proprietary software of the Company and other third party software publishers, including any Subscription Services, specified in an Order Acknowledgement (if any);
"Software Media"	means the media on which Software is loaded, together with its associated packaging and all supporting documents intended for supply to an end user as standard by the relevant software publisher;
"Subscription Services"	means the provision of services by the Company and other third party software publishers, including access to online software applications, set out in an Order Acknowledgement (if any);
"Subscription Term"	means the duration of the Subscription Services (subject to earlier termination in accordance with the End User Licence Agreement and/or these clauses), as set out in an Order Acknowledgement;
"Supervisory Authority"	has the meaning given in the UK GDPR;
"Territory"	means as the territory specified in an Order Acknowledgement;
"UK GDPR"	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
"Value Added Tax"	means the value added tax or any similar taxes which are chargeable from time to time.

24.2 In these terms and conditions, save where the context requires otherwise:

- (a) clause headings are inserted for ease of reference and shall not affect its interpretation;
- (b) any reference to a clause or sub-clause shall mean a clause or sub-clause terms and conditions;
- (c) words suggesting any gender include any other gender;
- (d) words denoting a singular number only shall include the plural and vice versa; references to either party shall be deemed to include its employees, officers, authorised agents, duly appointed sub-contractors, and such successors and assignees as are permitted by the terms of these terms and conditions;
- (e) any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, industrial and provident societies, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);
- (f) references to any statute or statutory instrument or government regulation shall be deemed to include any modification, amendment, extension or re-enactment thereof from time to time;
- (g) all usage of "include" or "including" or derivations thereof shall not be construed as words of limitation;
- (h) any reference to a party to these terms and conditions, shall include that party's permitted agents, sub-contractors, successors and assignees; and
- (i) in the event of any conflict between (a) the Order Acknowledgement and these terms and conditions, the Order Acknowledgement shall prevail, or (b) any applicable End User Licence Agreement and these terms and conditions, the relevant End User Licence Agreement shall prevail.

Schedule 1

The Data Processing Services

1. The subject-matter and duration of the processing;
The Company provides the software and hardware services to the Client as set out in the Order Acknowledgement. Processing of Personal Data shall only be carried out to the extent necessary to fulfil the Order Acknowledgement.
Except as set out under clause 15 of this Agreement, the Company shall cease processing of the Personal Data on termination of the Agreement.
2. The nature and purpose of the processing;
The Company shall only Process Personal Data to the extent necessary to provide the software and hardware services to the Client as set out in the Order Acknowledgement.
3. The type of personal data; and
Name and contact details. Name, job title, phone number, email address and post address.
4. The categories of Data Subjects;
Employees, consultants, contractors of the Client who are involved in ordering and receiving delivery of the software and hardware services.