

# General Terms and Conditions



## 1 Introduction

1.1 These Standard General Terms and Conditions set out the terms on which the Company will supply products and services to the Customer under a Master Agreement.

1.2 When a Customer requests products and services from the Company and the Company is able to provide them, the Company will summarise the offering in a Proposal document (an offer). By accepting the Proposal and placing an order the Customer enters in to a separate service contract in accordance with a Master Agreement

1.3 This Master Agreement comprises the following documents and any reference to the Master Agreement shall include each of these documents:

1.3.1 This Proposal

1.3.2 These Standard Terms and Conditions (T&C)

1.3.3 The Service Catalogue (SC)

1.4 The T&C and SC documents will be updated from time to time. The updates may be obtained either directly from the Company or will be published on the website <https://www.solaceglobal.com>.

## 2 Interpretation

2.1 In these General Terms the following definitions and rules of interpretation apply:

“Acceptance”

Has the meaning specified in clause 7.4;

“Additional Services”

Any additional services that the Company agrees to provide to the Customer in accordance with the Change Control Procedure;

“Business Day”

A day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

“Change Control Procedure”

The change control procedure set out in clause 16;

“Company”

Solace Global Technologies Limited;

“Company Materials”

All Documents, information and materials provided by the Company relating to the Services which existed prior to the commencement of the Master Agreement and any Service Contract and/or were generated independently of the Master Agreement and any Service Contract including computer programs, data, reports and specifications;

“Company’s System”

The information and communications technology system to be used by the Company in performing the Services;

“Company's Manager”

The Company's manager for the Services appointed under clause 10.3;

“Confidential Information”

All confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives or advisers (together its Representatives) to the other party and that party's Representatives in connection with the Master Agreement and each Service Contract, concerning:

- the existence and terms of the Master Agreement and each Service Contract;
- any information that would be regarded as confidential by a reasonable business person relating to:
  - the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
  - the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs).
- any information developed by the parties in the course of carrying out the Master Agreement and each Service Contract; and

Provided That the term "Confidential Information" does not include any information that:

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

“CSIRT”

Cyber Security Incident Response Team;

“Customer Data”

The information that is provided by the Customer to the Company as part of the Customer's use of the Services, including any information derived from such information;

**“Customer Information”**

The information that the Customer should provide to the Company in relation to the Services (including all relevant details which relate to the Customer’s requirement for the provision of the Services and information more particularly described in the PID);

**“Customer Materials”**

All Documents, Customer Information and other information and materials provided by the Customer to the Company relating to the Services which existed prior to the commencement of the Service Contract and/or was generated independently of the Service Contract including computer programs, data, reports and specifications;

**“Customer’s Operating Environment”**

The Customer’s computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Services and which interfaces with the Company’s System in order for the Customer to receive the Services;

**“Customer's Manager”**

The Customer's manager for the Services, appointed in accordance with clause 11.1.1;

**“Cyber Error”**

An unintentional human error in entering, processing or amending electronic data within any computer systems or in the upgrading, maintenance or configuration of any computer systems; or an application bug, internal network failure, external network failure or hardware failure directly impacting any computer systems which renders them incapable of supporting their normal business function but not a Cyber Event;

**“Cyber Event”**

Any actual or suspected unauthorized access to or electronic attack designed to damage, destroy, corrupt, overload, circumvent or otherwise impair the functionality of any computer systems, including a denial of service attack, cyber terrorism, hacking attack, Trojan horse, phishing attack, man-in-the-middle attack, application-layer attack, compromised key attack, malware infection (including spyware or ransomware), computer virus or any other event resulting from a Cyber Risk;

**“Cyber Risk”**

Any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, ransomware, viruses and other similar things or devices;

“Deliverables”

All Documents, products and materials to be provided by the Company to the Customer in relation to the Service Contract in any form, including computer programs, data, reports and specifications (including drafts) and any Deliverables specified as such in the PID;

“Document”

Includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form;

“Effective Date”

The date specified as such in the Proposal or if not specified the date the Service Contract is formed in accordance with clause 5.7;

“Exit Plan”

Has the meaning given in clause 29.1.2;

“Exit Services”

The services to be provided by the Company in implementation of the Exit Plan;

“Fixed Term”

The fixed term (if any) relating to the Services specified in the Proposal;

“Go Live Date”

The date of Acceptance of the Services or if no Initiation is provided, the date when the Company notifies the Customer by telephone, email or fax that the Service is ready for use by the Customer;

“Group”

In relation to a company, that company, any company of which it is a Subsidiary (its holding company) and any other Subsidiary of such holding company; and each company in a group is a member of the group. Unless the context requires otherwise, the application of the definition of Group to any company at any time shall apply to the company as it is at that time;

“Half Day”

A period of three and a half hours;

“Hardware”

Any computers, servers, cabling and other equipment to be supplied by the Company as set out in the PID;

“Initial Term”

The initial term (if any) relating to the Services specified in the Proposal;

“Initiation”

The installation, configuration and related work referred to in clause 7, to be performed by the Company to install, configure and/or prepare its software and other IT systems for the performance of the Services and the delivery of the Deliverables;

“Intellectual Property Rights”

Patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, trade names and domain names, rights in get-up, rights to goodwill or to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Normal Business Hours”

8.30 am to 5.30 pm during a Working Day;

“Operating Manuals”

The operating manuals, user instructions and all other related materials in human-readable and/or machine-readable forms supplied by the Company to the Customer;

“Products”

Any Hardware or Third Party Software;

“Prohibited Materials”

Any material which:

- is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- facilitates illegal activity;
- depicts sexually explicit images;
- promotes unlawful violence;
- is discriminatory based on race, gender, age, colour, religious belief, sexual orientation, disability, gender reassignment; or

is otherwise illegal, hazardous, a risk to health and safety or causes damage or injury to any person or property;

“PID” or “Project Initiation Document”

The detailed plan describing the Services based on the Proposal and setting out estimated timetable, quality, logistical and financial constraints and responsibilities for the provision of the Services agreed in accordance with clause 6.2;

“Proposal”

The document setting out the Products and/or Services and provided by the Company pursuant to clause 5.4;

“Renewal Period”

The renewal period (if any) specified in the Proposal;

“Replacement Supplier”

A replacement supplier of service of the nature of the Services nominated by the Customer pursuant to clause 29.1;

“Retail Prices Index”

The Retail Prices Index (All Items, excluding mortgages) as published by the Office for National Statistics from time to time, or failing such publication, such other index as the parties may agree most closely resembles the Retail Prices Index;

“Service Catalogue”

The service catalogue published by the Company from time to time at [www.solaceglobal.com](http://www.solaceglobal.com) or at such other website as may be identified from time to time, and as such service catalogue is amended from time to time.

“Service Contract”

Any agreement between the parties formed in accordance with clause 5.7 and incorporating the Proposal;

“Service Credit”

The credit (if any) offered by the Company for any failure by the Company to perform the Services in accordance with the Service Levels relating to such Services as more particularly specified in the Service Catalogue;

“Service Levels”

The service levels in respect of the Services specified in the Service Catalogue;

“Services”

The services to be provided by the Company as specified in the Proposal and as such services are more particularly described in the Service Catalogue and including any Services which the Company agrees to provide to the Customer;

“Specification”

The detailed technical specification of the Services based on the Proposal and agreed in accordance with Clause 6;

“Subsidiary”

Has the meaning given in section 736 of the Companies Act 1985. Unless the context requires otherwise:

(a) the application of the definition of Subsidiary to any company at any time shall apply to the company as it is at that time; and

(b) references to Subsidiary are references to a Subsidiary of the company;

“Term”

The period from the Effective Date until termination of the Service Contract;

“Termination Notice Period”

90 days or such other termination notice period specified in the Proposal;

“Third Party Software”

Software programs proprietary to third parties;

“VAT”

Value Added Tax chargeable under English law for the time being and any similar additional tax;

“Virus” or “Cyber Risk”

See or “Cyber Risk” and “Cyber Event”

“Working Day”

Monday to Friday excluding any public holiday in England and Wales.

2.2 Clause, schedule and paragraph headings shall not affect the interpretation of these General Terms and the Master Agreement.

2.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

2.4 The schedules form part of the Master Agreement and shall have effect as if set out in full in the body of the Master Agreement and any reference to the Master Agreement includes the Schedules.

2.5 Words in the singular shall include the plural and vice versa.

2.6 A reference to one gender shall include a reference to the other genders.

2.7 Any reference to an “hour” means an hour in a day and any reference to a “day” means a period of 24 hours running from midnight to midnight.

2.8 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts; provided that, as between the parties, no such amendment or re-enactment shall apply for the purposes of the Master Agreement or any Service Contract to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.

2.9 A reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.

2.10 A reference to “writing” or “written” includes faxes and e-mail.

2.11 Where the words “include(s)”, “including” or “in particular” are used in these General Terms, they are deemed to have the words without limitation following them and where the context permits, the words “other” and “otherwise” are illustrative and shall not limit the sense of the words preceding them.

2.12 Any obligation in these General Terms on a person not to do something includes an obligation not to agree, allow, permit or acquiesce to that thing being done.

2.13 References to clauses are to the clauses in these General Terms.



2.14 In the event of an inconsistency between the documents comprising the Master Agreement, they shall be given the order of precedence set out below:

2.14.1 The main body of the Master Agreement to which these General Terms are attached;

2.14.2 General Terms and

2.14.3 Service Catalogue.

2.15 In the event of an inconsistency between the documents comprising the Service Contract, they shall be given the order of precedence set out below:

2.15.1 Proposal;

2.15.2 General Terms and;

2.15.3 Service Catalogue.

### 3 Duration

3.1 The Master Agreement shall come into force on the date it is executed by the parties or such later date as is specified in the Master Agreement and shall continue unless terminated earlier in accordance with these General Terms until either party gives to the other party written notice to terminate of not less than the Termination Notice Period such notice to expire on or after the expiry of the latest Initial Term specified in a Service Contract formed pursuant to the Master Agreement.

3.2 Each Service Contract shall come into force on the date it is executed by the parties or such later date as is specified in the Service Contract and shall continue unless terminated earlier in accordance with these General Terms for the Initial Term (if any) specified in the Proposal.

3.3 Where no Initial Term is specified in the Proposal, the Service Contract shall continue until terminated by either party giving to the other written notice to terminate of not less than the Termination Notice Period.

3.4 Where a Renewal Period is specified in the Proposal the terms of this clause 3.4 apply. After the Initial Term the Service Contract shall automatically extend for the Renewal Period at the end of the Initial Term and at the end of each Renewal Period. Either party may give written notice to the other party of not less than the Termination Notice Period before the end of the Initial Term or the relevant Renewal Period, to terminate the Service Contract at the end of the Initial Term or the relevant Renewal Period, as the case may be.

3.5 Where no Renewal Period is specified in the Proposal, the terms of this clause 3.5 apply. After the Initial Term the Service Contract shall continue until terminated by either party giving to the other written notice to terminate of not less than the Termination Notice Period such notice to expire on or after the expiry of the Initial Term.

3.6 Where a Fixed Term is specified in the Proposal the terms of this clause 3.6 apply. The Service Contract shall continue for the Fixed Term and thereafter shall continue unless or until terminated by either party giving to the other not less than the Termination Notice Period to terminate the Service Contract. Notice of termination may be given at any time but shall not expire any earlier than the expiry of the Initial Term (if any) specified in the Proposal.

### 4 Application of General Terms

4.1 These General Terms shall:

4.1.1 apply to and be incorporated into each Service Contract; and

4.1.2 prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.

4.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Master Agreement or any Service Contract shall be binding on the Company unless in writing and signed by a duly authorised representative of the Company.

## 5 Service Contract Process

5.1 The Master Agreement is structured so that individual Service Contracts will be entered into by the parties and such Service Contracts are governed by and subject to the Master Agreement. In the event of inconsistency or conflict between the Master Agreement and any Service Contract, the terms of the Service Contract shall take precedence to the extent of the conflict or inconsistency.

5.2 The Master Agreement does not commit the Customer to purchase any Products and/or Services and, likewise, does not commit the Company to provide any Products and/or Services. The Customer only becomes committed to purchasing and the Company only becomes committed to providing any Products and/or Services upon formation of a Service Contract in respect of such Products and/or Services.

5.3 From time to time the Customer may submit a request for Products and Services from the Company.

5.4 Following a request from the Customer pursuant to clause 5.3 the Company may send the Customer a Proposal on the basis of any Customer Information.

5.5 If the Customer wishes to proceed with the provision of the Products and the Services by the Company in accordance with the Proposal the Customer must return the Proposal or its purchase order to the Company, signed by an authorised party on behalf of the Customer prior to the commencement of work by the Company, as confirmation that the Proposal accurately sets out the Customer's requirements.

5.6 Each Proposal signed by the Customer, or order for Products and/or request for Services from the Customer to the Company shall be deemed to be an offer by the Customer to purchase Products and/or Services subject to these General Terms to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

5.7 No order for Products and/or request for Services placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company commences work to fulfil the order at which point a Service Contract for the provision of Services and/or Products under these General Terms will come into effect.

5.8 Unless otherwise agreed by the parties each Service Contract shall constitute a separate contract between the parties and shall incorporate these General Terms.

5.9 Any amendment to the Master Agreement agreed by the Company and the Customer in accordance with clause 18 (change control) of these General Terms shall be deemed to apply to all future Service Contracts entered into after the date of such amendment.

5.10 Any Proposal given is valid only for the period stated in the Proposal or if no period is stated a period of 30 days from its date, provided that the Company has not previously withdrawn it.

## 6 Project Implementation Process

6.1 The Company shall agree with the Customer whether or not a PID or a Specification or both are required in respect of the Products and Services and if no PID and/or Specification is required

then references in these General Terms to the PID and/or Specification shall be deemed to mean the Proposal and the provisions of clause 6.2 shall not apply.

6.2 Where the Company agrees that a PID or a Specification or both is required in respect of the Services, the PID and Specification shall be agreed in the following manner:

6.2.1 the Company shall prepare a draft PID and/or Specification based on the Proposal setting out the detailed requirements and specifications of the Services;

6.2.2 the Customer shall provide such information as the Company may request to allow the Company to prepare a draft PID and/or Specification including a detailed description of Deliverables and Customer Materials;

6.2.3 The Company shall, as soon as reasonably practicable, provide the Customer with a draft PID and/or Specification;

6.2.4 The Company and the Customer shall discuss and use reasonable endeavours to agree the draft PID and/or Specification;

6.2.5 The PID and/or Specification must be signed by an authorised party on behalf of the Customer and returned to the Company prior to the commencement of such Services by the Company as confirmation that it accurately sets out the Customer's requirements;

6.2.6 If, at the Customer's request, work commences prior to the signing of the PID and/or Specification then the Customer is deemed to have accepted that the PID and/or Specification accurately sets out the Customer's requirements and the Customer accepts the terms of the last version of the PID and/or Specification sent to the Customer by the Company; and

6.2.7 when the PID and/or Specification has been agreed, both parties shall sign a copy of it and it shall become a Schedule to and subject to the Service Contract.

6.3 On execution of the PID and/or Specification by both parties:

6.3.1 the Company will perform the Services and deliver the Products in conformance in all material respects to the PID and/or Specification; and

6.3.2 the Customer will comply with any obligations on it set out in the PID.

6.4 Once the PID and/or Specification has been agreed and signed in accordance with clause 6.2.7 or the Customer is deemed to have accepted the PID and/or Specification pursuant to clause 6.2.6 no amendment shall be made to it except in accordance with the Change Control Procedure.

6.5 If the parties cannot agree the PID and/or Specification either party may terminate the relevant Service Contract by giving written notice to the other party Provided That the Customer shall pay the Company's charges for the preparation of the PID and/or Specification on a time and materials basis or as otherwise specified in the Proposal.

## 7 Initiation

7.1 The Company shall agree with the Customer whether or not Initiation is required in respect of the Services and if Initiation is not required in respect of any part of the Services, then the remainder of this clause 7 shall not apply to such Services.

7.2 The Company shall perform Initiation in accordance with the timetable set out in the PID. The Company shall use reasonable endeavours to meet the performance dates set out in the PID, but any such dates shall be estimates only.

7.3 When the Company considers that the Services are ready for activation it shall notify the Customer. Within five days of such notification (or such longer period as the Company may agree in

writing) the Customer shall review the operation of the Services to confirm that they function in material conformance with the Specification. If the Services fail in any material respect to conform with the Specification, the Customer shall give the Company a detailed description of any such non-conformance (Error) in writing, within the five-day review period.

7.3.1 The Company shall use reasonable endeavours to correct any Error within a reasonable time and, on completion, re-submit the Services to the Customer. If the Company is unable to correct the Error within a period of three months from the start of the acceptance tests, either party may terminate the Service Contract without further liability to the other by giving written notice to the other.

7.4 If the Customer does not provide any written comments in the notification period described in clause 7.3 above, or if the Services are found to conform with the Specification, then the Services shall be deemed accepted as from the date of the notification (Acceptance).

## 8 Services

8.1 The Customer shall remain responsible for the use of the Services under its control, including any use by third parties (whether fraudulent or invited by the Customer).

8.2 The Customer must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure. This includes informing the Company immediately it becomes aware of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Company will work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Services).

8.3 Unless expressly agreed in writing by the Company, the Customer shall not provide the Services to third parties.

8.4 The Company reserves the right to:

8.4.1 modify the Company's System, its network, system configurations or routing configuration; or

8.4.2 modify or replace any hardware or software in its network or in equipment used to deliver any Service over its network, provided that this has no adverse effect on the Company's obligations under the Service Contract and its provision of the Services or the Service Levels. If such changes will have an adverse effect, the Company shall notify the Customer and the parties shall follow the Change Control Procedure.

8.5 The Customer understands and agrees that if there is a change to the Customer's Operating Environment and/or the Customer's premises between any inspection carried out on the Customer's Operating Environment and/or the Customer's premises and commencement of the Services the Company will be entitled to alter its terms for the provision of the Services (including increasing the Company's charges for the Services).

## 9 Supply of Third Party Software

9.1 If the Company supplies or provides any Third Party Software to the Customer then such software shall be supplied or provided subject to the standard terms and conditions of the proprietor of such software at the time of supply or provision. The Customer undertakes to use such software strictly in accordance with such terms and conditions.

9.2 If the Customer acquires any Third Party Software for use on or with the Products and/or Services (otherwise than in the circumstances referred to in clause 11.1), the Customer acknowledges that it is the Customer's responsibility to obtain and maintain all necessary licences and consents in relation to such Third Party Software.

## 10 Company's Obligations

10.1 The Company shall provide the Services, and deliver the Products and Deliverables to the Customer, in accordance in all material respects with the PID, the Specification and the Service Contract.

10.2 Any dates specified by the Company for performance of the Services and/or delivery of the Deliverables and the Products are intended to be an estimate and time shall not be of the essence for delivery and any other obligations under the Service Contract and shall not be made of the

essence by notice. If no dates are so specified, delivery and/or performance will be within a reasonable time.

10.3 The Company shall appoint the Company's Manager who shall have authority contractually to bind the Company on all matters relating to the Services. The Company may replace him from time to time where reasonably necessary in the interests of the Company's business.

10.4 The Company shall use reasonable efforts to ensure that, while on the Customer's premises, the Company's Manager and all other persons who enter such premises with the authority of the Company for the purpose of, or in connection with, the Service Contract or the provision of the Services adhere to the Customer's reasonable security procedures and health and safety regulations, as from time to time are notified to the Company or otherwise brought to the notice of the Company or such persons. The Customer shall be entitled to remove or to refuse admission to any person who is, or has been, in material breach of such procedures and regulations. However, the Company shall incur no liability for any delay in performing or failure to perform its obligations under the Service Contract as a result of compliance with the terms of this clause 10.4.

10.5 The Company shall have no obligation to provide the Services and/or the Products or liable for any breach of the Service Contract to the extent that such breach arises due to any act or omission of the Customer (or the Customer's employees, agents or sub-contractors) in breach of the Service Contract.

## 11 Customer's Obligations

11.1 The Customer shall:

11.1.1 co-operate with the Company in all matters relating to the Services and appoint the Customer's Manager in relation to the Services who shall have the authority contractually to bind the Customer on matters relating to the Services;

11.1.2 provide, for the Company, its agents, sub-contractors and employees, without charge, safe and timely access to the Customer's premises, office accommodation, data and other facilities as requested by the Company;

11.1.3 provide, in a timely manner, such Customer Materials and other information as the Company may request and ensure that it is complete and accurate in all respects;

11.1.4 inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;

11.1.5 ensure that all Customer's Operating Environment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant UK standards or requirements;

11.1.6 obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the use of Company Materials insofar as such licences, consents and legislation relate to the Customer's business, premises and staff in all cases before the Go-Live Date;

11.1.7 comply with such reasonable instructions as the Company may issue from time to time in connection with the Services and the Products so that the Company can provide the Services, the Deliverables and the Products to the Customer; and

11.1.8 not, unless expressly agreed in writing by the Company, use any of the Services and/or Deliverables to provide services to third parties. Should the Customer wish to use the Services and/or Deliverables to provide services to third parties the Customer shall notify the Company in writing and the Customer's request shall be treated as a request for a variation to the Service Contract and dealt in accordance with the Change Control Procedure.

11.2 The Customer acknowledges that it is solely responsible for providing the Customer Information and that the Company shall rely on the Customer Information in determining and selecting the appropriate Services and Products.

11.3 The Customer acknowledges that, unless otherwise agreed in writing by the Company pursuant to this Contract or any other Contract, it is solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Company's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

11.4 The Customer undertakes to the Company throughout the Term to take all reasonable precautions to protect the health and safety of the Company's employees agents and sub-contractors while on the Customer's premises.

11.5 The Customer shall at all reasonable times provide the Company, its employees, contractors and agents, with such access to the Customer's premises, adequate and safe working space, and any lighting, power and telecommunications facilities as are reasonably required to enable the Company to perform the Services.

11.6 The Company shall be entitled to rely upon the specification and any advice given by the Customer (its employees, directors, agents and sub-contractors) (in relation to the suitability of the Services and Products for meeting the Customer's requirements) such that to the extent that the Services comply with such specification and or such advice then the Company shall be deemed to have supplied the same in accordance with the Service Contract, without limitation, notwithstanding the Customer Information.

11.7 If the Customer wishes to amend the Customer Information or any specification given by it or in the event that the Customer Information or any specification given by it is subsequently found to be inaccurate and/or not complete for any reason other than the Company's negligence, the Company (at its absolute discretion) may require that the request be treated as a request for a variation to the Service Contract and dealt in accordance with the Change Control Procedure.

11.8 If the Company's performance of its obligations under the Service Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Company shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

11.9 If the Company's performance of its obligations under the Service Contract is prevented or delayed by any act or omission of the Customer, or the Customer's agents, sub-contractors or employees, the Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including any direct, indirect or consequential losses, labour costs (including the de-mobilisation and re-mobilisation costs of the Company's sub-contractors and agents) loss of profit and loss of reputation, loss or damage to property and loss of opportunity to deploy resources elsewhere and any network disconnection and

reconnection charges) that arise directly or indirectly from the Customer's act or omission, subject to the Company confirming such costs, charges and losses to the Customer in writing.

11.10 The Customer understands and agrees that where the Company purchases goods and/or services for the Customer from a third party the Company shall purchase such goods and/or services as agent for the Customer and it shall be the Customer's responsibility to ensure that such goods and/or services are suitable for its requirements and the Company shall have no responsibility or liability for such goods and/or services (whether for their suitability, performance or otherwise).

11.11 The Customer understands and accepts that notwithstanding that the Company may use industry accepted anti-virus or other Cyber risk mitigation software in connection with the Services to check for and delete Viruses or other Cyber risks on the Company's System, there is an inherent risk that such software will not detect all Viruses or Cyber risks.

11.12 In relation to a CSIRT:

11.12.1 the Customer acknowledges that the Company are working on behalf of the Customer and the Customer holds all relationships with their insurance company.

11.12.2 the Customer accepts that Services are provided "as is" and are deemed to be accepted at the time of their performance.

11.12.3 Without prejudice to clause 11.12.2 the Customer acknowledges that the Company cannot guarantee that it will be able to identify the root cause of any security incident or Cyber Event;

11.12.4 The Customer accepts that the Company will make every effort to contain a reported security incident or Cyber Event;

11.12.5 The Customer accepts that a security incident or Cyber Event may impact the Customer's service to their customers and that the Customer is responsible for communications regarding the security incident or Cyber Event;

11.12.6 The Customer acknowledges that the Company does not guarantee a complete resolution of any security incident or Cyber Event or that future security incidents or Cyber Risks will be prevented from arising and that the Company makes no representation or warranty in this respect.

## 12 Warranties

12.1 Each party warrants to the other it has full power and authority to enter into and perform its obligations under the Master Agreement and each Service Contract.

12.2 The Customer warrants that:

12.2.1 it has the authority to grant any rights to be granted to the Company under each Service Contract, including in respect of any hardware or software supplied by the Customer to the Company for use in the provision of the Services, the right to provide such software and hardware to the Company as indicated in the Service Contract and for the same to be used in the provision of the Services and otherwise in connection with the Service Contract;

12.2.2 the Company's use in the provision of the Services or otherwise in connection with the Service Contract of any third-party materials, including any hardware or software supplied by the Customer to the Company for use in the provision of the Services or otherwise in connection with



the Service Contract, shall not cause the Company to infringe the rights, including any Intellectual Property Rights, of any third party; and

12.2.3 it is the owner or authorised licensee of the Customer Materials and that the Company's use of the Customer Materials in accordance with the Service Contract and any hardware or software supplied by the Customer to the Company for use in the provision of the Services will not infringe the Intellectual Property Rights or any other rights of any third party.

12.2.4 It is the owner of the relationship with its customers who may use the supported systems and that the Company is responsible for all communications with their customers.

12.3 The Company warrants that:

12.3.1 The Services will be performed with reasonable skill and care;

12.3.2 the Customer's use of the Services in accordance with the Service Contract will not infringe the Intellectual Property Rights of any third party;

12.3.3 Notwithstanding the foregoing, the Company:

12.3.3.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-and Cyber Error- free;

12.3.3.2 does not warrant that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and

12.3.3.3 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet.

12.3.4 on delivery the Products shall conform in all material respects with their description; and

12.3.5 so far as it is able the Company will pass onto the Customer the benefits of any manufacturer's warranties relating to the Products.

## 13 Title and Risk

13.1 Risk in all Products and Deliverables will pass to the Customer on delivery.

13.2 Ownership of the Products and Deliverables shall not pass to the Customer until the Company has received in cleared funds all sums due to it in respect of the Deliverables and/or Products Provided That, for the avoidance of doubt, ownership of any Intellectual Property Rights in the Deliverables shall not pass to the Customer.

13.3 Until ownership of the Products has passed to the Customer under clause 13.2, the Customer shall:

13.3.1 hold the Products on a fiduciary basis as the Company's bailee;

13.3.2 store the Products (at no cost to the Company) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as the Company's property;

13.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and

13.3.4 keep the Products insured on the Company's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of the Company, ensure that the Company's interest in the Products is noted on the policy, and hold the proceeds of such insurance on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

13.4 The Customer's right to possession of the Products before ownership has passed to it shall terminate immediately if the Customer is the subject of any of the circumstances set out in clause 29.1 or if the Customer encumbers or in any way charges the Products, or if the Customer fails to make any payment to the Company on the due date.

13.5 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or where the Customer's right to possession has terminated, to remove them. All costs incurred by the Company in repossessing the Products shall be borne by the Customer.

13.6 On termination of the Contract for any reason, the Company (but not the Customer's) rights in this clause 13 shall remain in effect.

13.7 The Company may appropriate payments by the Customer to such Products as it thinks fit, notwithstanding any purported appropriation by the Customer to the contrary, and may make such appropriation at any time.

## 14 Delivery of Products

14.1 The Company shall deliver the Products to the location set out in the Proposal or such other location as the parties may agree

14.2 If for any reason the Customer will not accept delivery of any of the Products when they are ready for delivery, or the Company is unable to deliver the Products on time because the Customer has not provided or obtained appropriate instructions, documents, licences, consents or authorisations:

14.2.1 risk in the Products will pass to the Customer;

14.2.2 the Products will be deemed to have been delivered;

14.2.3 the Company may store the Products until delivery whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance); and

14.2.4 the Customer shall pay to the Company any additional costs incurred by the Company as a result of the Customer's failure to accept delivery.

14.3 The Company reserves the right to make partial deliveries. The Customer shall not be entitled to object to or reject the delivery by reason of the surplus or shortfall.

14.4 The Company may deliver the Products by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

14.5 The Customer must give notice in writing of any damage to the Products to the Company within five (5) Working Days of delivery of the Products giving full particulars, including the condition of parcels received, failing which the Company is discharged from any liability in respect of such damage and the Products are deemed to be compliant.

14.6 The Customer must comply with the Company's returns policy regarding the return of any Products as made available on the Company's website and as amended from time to time.

14.7 The Company shall not be responsible for any damage to, or shortage or loss of the Products in transit where the Customer has agreed to arrange for carriage of the Products.

## 15 Service Levels

15.1 The Company shall use reasonable effort to provide the Services in accordance with the Service Levels which shall apply with effect from the Go Live Date.

15.2 Where a Customer believes any Services have failed to meet the relevant Service Levels the Customer must notify the Company in writing giving full details of such failure within 14 days of the date the Customer becomes aware of any failure of the Services to meet the Service Levels.

15.3 If the Company fails to provide the Services in accordance with the Service Levels then:

15.3.1 the Company shall at the Company's expense deploy within a reasonable period of time such additional resources as are reasonably necessary (in each case having regard to the steps that the Customer would have been likely to take if acting on its own account) to perform the Services in the future in a manner which is likely to meet the Service Levels; and

15.3.2 for the avoidance of doubt any failure of the Company to provide the Services in accordance with the Service Levels shall not be a material breach unless such breach continues to a material extent and the Customer has first served written notice on the Company giving reasonable particulars of the relevant breach or breaches and afforded the Company a period of three (3) months to remedy the deficiency and the Company shall have failed to comply with clause 15.3.1

## 16 Change Control

16.1 If either party wishes to change the scope of the Services, it shall submit details of the requested change to the other in writing.

16.2 If either party requests a change to the scope or execution of the Services (including any Additional Services), the Company shall, within a reasonable time, provide a written estimate to the Customer of:

16.2.1 the likely time required to implement the change;

16.2.2 any variations to the Company's charges arising from the change;

16.2.3 the likely effect of the change on the PID; and

16.2.4 the likely effect of the change on the Specification; and

16.2.5 any other impact of the change on the terms of the Service Contract.

16.3 If the Company requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.

16.4 If the Customer requests a change to the scope of the Services, the Company shall not unreasonably withhold consent to it Provided That the Customer agrees any variation to the Company's charges to take account of the change.

16.5 If the Customer wishes the Company to proceed with the change, the Company has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the PID, the Specification and any other relevant terms of the Service Contract to take account of the change.

## 17 Charges and Payment

17.1 The Customer will pay the charges for Products and Services set out in the Proposal or, if no charges are specified, the charges shall be the Company's standard charges as at the date the relevant Product or Service is provided.

17.2 Except as otherwise specified in the Service Contract any charges contained in the Proposal shall exclude:

17.2.1 expenses reasonably incurred by the Company in connection with the Services which will be charged (at cost) to the Customer in accordance with the Company's expenses policy (as amended from time to time);

17.2.2 VAT, and/or any relevant local sales tax which the Company shall add to its invoices at the appropriate rate; and

17.2.3 Rescheduling or cancellation charges for the Services work.

17.3 Where the Company provides individuals to perform Services at the Customer's site, or any other site specified by the Customer (other than the Company's premises):

17.3.1 the charges payable for the Services shall be calculated in accordance with the Company's daily or hourly fee rates set out in the Proposal and as amended from time to time;

17.3.2 unless otherwise agreed between the parties the Company's standard daily fee rates for each individual person are calculated on the basis of a 7 [seven-hour] day.

17.3.3 the Company shall be entitled to charge a minimum of a Half Day for each Half Day or less worked by such individuals during Normal Business Hours rounded up to the nearest Half Day;

17.3.4 the Company shall be entitled to charge a rate of 150% of the Company's fee rates set out in the Proposal for each Half Day or less worked by such individuals outside Normal Business Hours rounded up to the nearest Half Day.

17.3.5 if for any reason the Customer cancels or reschedules Services once they have been scheduled the Company shall be entitled to charge a cancellation fee as follows:

- 7 Working Days notice or less 10% of the total Services fees
- 3 Working Days notice or less 25% of the total Services fees
- 1 Working Days notice or less 50% of the total Services fees

17.4 The Customer shall pay each invoice submitted to it by the Company, in full and in cleared funds, within thirty (30) days of the date of each invoice.

17.4.1 In the case of a CSIRT PID or Change the Customer shall pay:

17.4.1.1 33% of the agreed work on approval of the PID or Change

17.5 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Company on the due date, the Company may charge interest on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of Barclays Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment.

17.5.1 In the case of a CSIRT PID or change

17.5.1.1 if the Customer fails to pay any Charges on their due date for payment and any such Charges remain unpaid (whether in whole or in part) seven days thereafter, without prejudice to its other rights and remedies the Company may suspend access to the CSIRT or terminate any customer Contract immediately and it shall have no obligation to provide any further Services.

17.5.1.2 The Customer is liable for the agreed amount in full regardless of the level of claim or payment to the Customer from their insurance company for the CSIRT and regardless of any delays in payment to the Customer from their insurance company.

17.6 Time for payment shall be of the essence of the Service Contract.

17.7 All sums payable to the Company under the Service Contract shall become due immediately on its termination, despite any other provision. This clause 17 is without prejudice to any right to claim for interest under the law, or any such right under the Service Contract.

17.8 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.

17.9 Subject to clause 17.10, the Company may, increase the charges payable under the Service Contract on an annual basis with effect from the anniversary of the Effective Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period. The first such increase shall take effect on the first anniversary of the Effective Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index at the beginning of the last month of the previous year.

17.10 Notwithstanding clause 17.9, at any time during the Term, the Company may, by giving not less than 30 days written notice to the Customer increase the price of the Services to reflect any increase in the cost of the Services that is due to any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, increase in the cost of fuel and increases in labour, materials and other manufacturing costs) and the price increase shall take effect on the expiry of the 30 days notice period referred to in this clause 17.10.

## 18 Intellectual Property Rights

18.1 The Company acknowledges that the Intellectual Property Rights in Customer Materials and Customer Data are proprietary to the Customer.

18.2 Except for Customer Materials and Customer Data, the Customer acknowledges that any and all Intellectual Property Rights created, subsisting or used in or in connection with the Services and the Deliverables including all Operating Manuals relating thereto are legally and/or beneficially owned by the Company or (as the Company may direct) the Company's supplier.

18.3 For the avoidance of doubt other than as expressly agreed in writing nothing shall be interpreted as granting the Customer any rights in the Company's or any third party's Intellectual Property Rights (including any software or any development or enhancement of any software by a third party).

18.4 In the event that new inventions, designs or processes evolve or are otherwise generated in the performance of or as a result of the Service Contract the Customer acknowledges that all rights in the same shall vest in the Company or (as the Company may direct) the Company's supplier.

18.5 Where the Services involve the use of any Customer Materials and/or Customer Data, the Customer hereby grants to the Company a non-transferable, non-exclusive right and license for the

duration of the Service Contract to use, copy, modify and prepare derivative works of any such Intellectual Property Rights to the extent necessary to enable the Company to perform the Services in accordance with the Service Contract.

## 19 Indemnity

19.1 The Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct or indirect losses and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Company arising out of or in connection with:

19.1.1 any claim made against the Company for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the Customer Data and/or Customer Materials;

19.1.2 any claim made against the Company by a third party arising out of, or in connection with, the Products, Services and Deliverables, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Service Contract by the Customer, its employees or sub-contractors; and

19.1.3 any claim made against the Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Products, Services or Deliverables, to the extent that the defect in the Products, Services or Deliverables is attributable to the acts or omissions of the Customer, its employees or sub-contractors.

## 20 Confidentiality

20.1 Each party (recipient party) in receipt of the other party's (disclosing party) Confidential Information shall keep the disclosing party's Confidential Information confidential and shall not:

20.1.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under the Master Agreement and each Service Contract (Permitted Purpose); or

20.1.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.

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

20.2.1 it informs such Representatives of the confidential nature of the Confidential Information prior to disclosure; and

20.2.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.

20.3 A recipient party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the disclosing party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 20.3, it takes into account the reasonable requests of the disclosing party in relation to the content of such disclosure.

20.4 Each disclosing party reserves all rights in its Confidential Information. No rights or obligations in respect of a disclosing party's Confidential Information other than those expressly stated in the Agreement are granted to the recipient party, or to be implied from the Agreement.

20.5 On termination of the Master Agreement and/or the Service Contract each recipient party shall:

20.5.1 subject to clause 20.6, return to the disclosing party all documents and materials (and any copies) containing, reflecting, incorporating or based on the disclosing party's Confidential Information; and

20.5.2 erase all the disclosing party's Confidential Information from its computer systems (to the extent possible) provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority.

20.6 The Company shall be under no obligation to comply with clause 20.5.1 and 20.5.2 unless or until the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) including the Company's costs and charges in returning or disposing of the Customer's Confidential Information.

20.7 The provisions of this Clause 20 shall continue to apply to any such documents and materials retained by a recipient party.

20.8 Except as expressly stated in the Master Agreement or any Service Contract, no disclosing party makes any express or implied warranty or representation concerning its Confidential Information.

20.9 The provisions of this Clause 20 shall survive termination of the Master Agreement or any Service Contract howsoever arising.

## 21 Solicitation of Employees

21.1 Neither party shall, without the prior written consent of the other party, at any time from the date of the Master Agreement and any Service Contract to the expiry of twelve months after termination of the Master Agreement or any Service Contract (whichever is later) solicit or entice away from the other party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or sub-contractor of the other party.

21.2 Any consent given by a party (the "consenting party") in accordance with clause 20.1 shall be subject to the party (the "recruiting party") wishing to solicit or entice away from the consenting party or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or sub-contractor of the consenting party paying to the consenting party a sum equivalent to 20% of the then current annual remuneration of the consenting party's employee, consultant or sub-contractor or, if higher, 20% of the annual remuneration to be paid by the recruiting party to such employee, consultant or sub-contractor.



## 22 Export

22.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under the Service Contract (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (Export Control Laws), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

22.2 Each party undertakes:

22.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

22.2.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

## 23 Limitation of Liability

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF THIS CLAUSE

23.1 In this Clause 23.1 the following shall mean an "Event of Default":

23.1.1 any breach by the Company or the Customer of its contractual obligations arising under the Master Agreement or Service Contract (other than a breach arising from wilful default or recklessness);

23.1.2 any misrepresentation by the Company or the Customer in connection with (whether or not contained in the Master Agreement or Service Contract) the Company or the Customer or the Products or Deliverables (other than a fraudulent misrepresentation);

23.1.3 any tortious, act or omission, including negligence, arising in connection with the Company's or the Customer's performance under the Master Agreement or Service Contract (other than any act or omission which is fraudulent or dishonest); and/or

23.1.4 any other act giving rise to a liability in respect of the Master Agreement or Service Contract.

23.2 Subject to Clause 23.4, neither party shall have any liability to the other party in respect of any Event of Default unless the party shall have served notice in writing of such claim (specifying in reasonable detail with supporting evidence the event, matter or default which gives rise to the claim and an estimate of the amount claimed) has been given to the other party within twelve months of the party becoming aware of the circumstances which gave rise to such claim Provided That without prejudice to their rights, the parties agree that if they have reason to believe that they may have a cause of action hereunder, they shall liaise with the other in an open and co operative way with a view to rectifying the reason for such cause of action whenever practicable.

23.3 The Company shall not be liable for any delay or failure to provide the Services, the Products and the Deliverables caused by:

23.3.1 any act or omission of the Customer which is relative to its obligations under the Master Agreement and any Service Contract;

23.3.2 any failures of any third parties to provide equipment, software, materials or information required to provide the Services, the Products and the Deliverables; and/or

23.3.3 down time of the computer systems caused by suppliers of third party computer services provided that (and to the extent that) the same is not due to any default of the Company, its employees, agents or sub-contractors.

23.3.4 down time of the computer systems caused by a Cyber Event

23.3.5 Data breach of the company data caused by a Cyber Event

23.4 Notwithstanding any other provision under the Master Agreement, Service Contract or otherwise each Party's liability to the other for:

23.4.1 death or personal injury resulting from its own or its employees', agents' or sub-contractors' negligence; and/or

23.4.2 any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; and/or

23.4.3 in relation to any fraudulent misrepresentation or fraudulent acts of its employees

shall not be limited or excluded.

23.5 Subject to Clause 23.4 above neither party shall be liable to the other party in respect of any Event of Default for:

23.5.1 loss of profits; or

23.5.2 loss of business; or

23.5.3 depletion of goodwill and/or similar losses; or

23.5.4 loss of anticipated savings; or

23.5.5 loss of goods; or

23.5.6 loss of agreement; or

23.5.7 loss of use; or

23.5.8 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses (including loss or damage suffered by the party as a result of an action brought by a third party) even if such loss was reasonably foreseeable or the party has been advised of the other party incurring the same.

23.6 Subject to the provisions of clauses 23.4 , 23.7 and 23.8 the Company's aggregate liability in respect of all Events of Default arising under or in connection with the Master Agreement shall be limited to £10,000.

23.7 Subject to the provisions of clause 23.4 the Company's entire liability to the Customer in respect of any individual Event of Default arising under or in connection with the Service Contract shall be limited to a sum equal to the aggregate fee payable by the Customer for the Services in accordance with the Services Contract during the 6 months prior to the action giving rise to the Event of Default.

23.8 Subject to the provisions of clause 23.4 above, the Company's aggregate liability to the Customer in respect of all Events of Default arising under or in connection with the Service Contract shall be limited to a sum equal to the greater of £10,000 or one hundred per cent (100%) of the aggregate fee payable by the Customer for the Services under the Service Contract or (where the contract operates for more than 12 months) the fee shall be deemed to be the average sum payable to the Company for the Services in a 12 month period of the Contract.

23.9 The Company shall not be liable for loss or damage suffered by the Customer as a result of the Customer failing to test the Deliverables or the Products within thirty (30) days of delivery.

23.10 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under the Master Agreement or relevant Service Contract.

23.11 Nothing in this clause shall confer any right or remedy upon a party to which it would not otherwise be legally entitled.

23.12 Both parties agree that the terms set out in the Master Agreement and each Service Contract are in lieu of and exclude all other terms, conditions or warranties implied by statute, law or otherwise as to the satisfactory quality or fitness for any particular purpose of the Services to the fullest extent permitted by law.

23.13 In addition, neither party shall be liable for loss or damage suffered by the other party as a result of the other party failing to protect its own interests.

23.14 Both parties have entered into the Master Agreement and each Service Contract knowing that their liability is limited as set out in this Clause and that the charges payable under the Master Agreement and each Service Contract have been fixed on that basis.

## 24 Customer Data

24.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

24.2 The Company shall, in providing the Services, comply with its privacy and security policy relating to the privacy and security of the Customer Data which policy is available on request (after redaction) such document may be amended by the Company in its sole discretion from time to time.

24.3 In the event of any loss, damage or corruption of data or information (including Customer Data), the Customer's sole and exclusive remedy shall be for the Company to use reasonable commercial endeavours to restore the lost or damaged data or information from the latest back-up of such data or information maintained by the Company in accordance with the archiving procedure described in its IT security policy. The Company shall not be responsible for any loss, destruction, alteration or disclosure of data or information caused by any third party (except those third parties sub-contracted by the Company to perform services related to Customer Data maintenance and back-up).

## 25 Data Protection

25.1 For the purposes of this clause 25 references to "personal data", "data processor" and "data controller" shall have the meaning specified in all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), as it

forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended.

25.2 If the Company processes any personal data on the Customer's behalf when performing its obligations under the Service Contract, the parties record their intention that the Customer shall be the data controller and the Company shall be a data processor and in any such case:

25.2.1 unless otherwise agreed in writing by the Company, the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Company's other obligations under the Service Contract;

25.2.2 the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Company so that the Company may lawfully use, process and transfer the personal data in accordance with the Service Contract on the Customer's behalf;

25.2.3 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;

25.2.4 the Company shall process the personal data only in accordance with the terms of the Service Contract and any lawful instructions reasonably given by the Customer from time to time; and

25.2.5 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## 26 Suspension

26.1 Without limiting its other rights or remedies, the Company shall have the right to suspend the supply of Services and/or all further deliveries of Products under the Service Contract if:

26.1.1 the Customer fails to pay any amount due under the Service Contract on the due date for payment; or

26.1.2 the Customer becomes subject to any of the events listed in Clause 26.1.1 to clause 26.1.9, or the Company reasonably believes that the Customer is about to become subject to any of them.

26.2 The Customer acknowledges and accepts that, notwithstanding any suspension of the Services by the Company pursuant to clause 26.1, the Company may continue to incur expenses and/or charges of its sub-contractors (including network rental charges and disconnection and reconnection charges) which shall be payable by the Customer.

## 27 Termination

27.1 Either party may terminate the Master Agreement or any Service Agreement immediately (or following such notice period as it sees fit), by giving written notice to the other party if:

27.1.1 if the other party commits a fundamental breach of the Master Agreement or any Service Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of that party being notified in writing of the breach; or

27.1.2 the other party has made repeated breaches or a continuous breach of any of the terms of the Master Agreement or any Service Contract during three (3) or more consecutive months and (if such breaches are remediable) has failed to remedy such breaches within a period of thirty (30) days after being notified in writing to do so; or

27.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospects of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or

27.1.4 an order is made or a resolution is passed for the winding up of the other party; or

27.1.5 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

27.1.6 a receiver is appointed over all or a substantial part of any of the other party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party; or

27.1.7 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

27.1.8 the other party ceases, or threatens to cease, to trade; or

27.1.9 the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

27.2 The Company may terminate the Master Agreement or any Service Agreement immediately (or following such notice period as it sees fit), by giving written notice to the Customer if there is a change of control of the Customer.

27.3 If for any reason the Company is unable to obtain any software, hardware and/or services from the Company's suppliers such that the Company is prevented from providing the Products and/or Services to the Customer in a material respect the Company shall notify the Customer and the parties shall use reasonable endeavours to agree a variation to the Contract which may include a reduction in the charges for the Products and/or Services set out in the Proposal or if the parties are unable to reach agreement, either party may terminate the Service Contract by giving 5 Working Days' written notice to the other party. As the Customer's entire remedy for any termination pursuant to this clause the Company shall refund any charges paid by the Customer for the Products and/or Services for the period after the effective date of termination.

## 28 Consequence of Termination

28.1 Termination of the Master Agreement will automatically terminate all Service Contracts.

28.2 Termination of any Service Contract shall not affect any other Service Contracts or the Master Agreement.

28.3 On termination of the Master Agreement or any Service Contract for any reason:

28.3.1 all licences granted under the Master Agreement or Service Contract which is being terminated shall immediately terminate;

28.3.2 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;

28.3.3 the Customer shall promptly return all of the Company Materials, Products and Deliverables in respect of which ownership has not transferred to the Customer under clause 13. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping;

28.3.4 upon notice of termination the parties shall use reasonable endeavours to agree the format in which the Customer Data shall be returned to the Customer and/or the Customer may instruct the Company to erase some or all of the Customer Data. The Company shall be entitled to charge the Customer for exporting the Customer Data and its charges will be based on the Company's published charges in force at the date of termination. Unless otherwise agreed by the Company in writing, such charges (together with any other charges remaining unpaid by the Customer) must be paid in full by the Customer prior to export of the Customer Data; and

28.3.5 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

28.4 On termination of any Service Contract the provisions of clause 28.3 shall apply to the extent that they relate to the Service Contract that is the subject of termination.

## 29 Exit Assistance

29.1 Provided That:

29.1.1 the Customer is not in breach of the Master Agreement and the relevant Service Contract; and

29.1.2 the Customer has paid all fees and charges outstanding at that time of making a request to the Company for the transition of the Services under this clause;

the Company shall, on request from the Customer at any time prepare a plan for the orderly transition of the Services from the Company to the Customer or its nominated Replacement Supplier (Exit Plan). The Exit Plan shall include details of the Company's charges for such transition of the Services calculated at the Company published charges in force from time to time and the date from which and the period during which the Exit Services will be provided.

29.2 If the Customer wishes the Company to proceed with the provision of the Exit Services that are the subject of the Exit Plan the Exit Plan must be signed by an authorised party on behalf of the Customer and returned to the Company prior to the commencement of such Exit Services by the Company as confirmation that it accurately sets out the Customer's requirements.

29.3 If, at the Customer's request, work commences prior to the signing of the Exit Plan then the Customer is deemed to have accepted that the Exit Plan accurately sets out the Customer's

requirements and the Customer accepts the terms of the last version of the Exit Plan sent to the Customer by the Company.

29.4 The Company shall charge for the preparation of the Exit Plan on a time and materials basis in accordance with its standard hourly rates in force from time to time.

29.5 Once the Exit Plan has been agreed and signed by the Customer in accordance with clause 29.2 or the Customer is deemed to have accepted the Exit Plan pursuant to clause 29.3 both parties shall comply with their obligations in the Exit Plan and no amendment shall be made to it except in accordance with the Change Control Procedure Provided That the Company may terminate or suspend the performance of Exit Services immediately if the Customer fails to make payment of any sums due under the Agreement on the due date for payment.

## 30 General

30.1 Except for the Customer's obligation to make payment, neither party shall be liable for delay in performing or failure to perform obligations under the Master Agreement or any Service Contract if the delay or failure results from "force majeure". For the purposes of these General Terms "force majeure" shall mean any Act of God war, riot, act of terrorism, outbreak of hostilities, strike or other industrial action of any kind, malicious damage, default of suppliers or sub-contractors, accident, failure or breakdown of plant or machinery, fire, flood, explosion, any act of local or national government or authority and any cause or circumstance whatsoever outside the reasonable control of the parties.

30.2 If any delay or failure under the Master Agreement or any Service Contract resulting from "force majeure" continues for a period in excess of 90 consecutive days either party shall have the right to terminate the Master Agreement or any Service Contract with immediate effect by giving notice in writing to the other party.

30.3 No variation of the Master Agreement or any Service Contract or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of the Customer; and by a director on behalf of the Company.

30.4 A waiver of any right under the Master Agreement or any Service Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.

30.5 Unless specifically provided otherwise, rights arising under the Master Agreement or any Service Contract are cumulative and do not exclude rights provided by law.

30.6 If any provision (or part of a provision) of the Master Agreement or any Service Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions will remain in force.

30.7 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, that provision will apply with whatever modification is necessary to make it valid, enforceable and legal.

30.8 It is acknowledged and agreed that the Master Agreement or any Service Contract (including the documents and instruments referred to herein) (the Contract Documents) shall supersede all prior representations arrangements understandings and agreements between the parties relating to

the subject matter hereof and shall constitute the entire complete and exclusive agreement and understanding between the parties hereto.

30.9 The parties irrevocably and unconditionally waive any right they may have to claim damages for any misrepresentation arrangement understanding or agreement not contained in the Contract Documents or for any breach of any representation not contained in the Contract Documents (unless such misrepresentation or representation was made fraudulently).

30.10 It is further acknowledged and agreed that no representations arrangements understandings or agreements (whether written or oral) made by or on behalf of any of the other parties have been relied upon other than those expressly set out or referred to in the Contract Documents.

30.11 The Customer shall not without the prior written consent of the Company assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with the Master Agreement or any Service Contract or any of its rights and obligations under or arising out of the Master Agreement, Service Contract (or any document referred to in it), or purport to do any of the same.

30.12 The Company may assign, novate, sub-contract or delegate in any manner any or all of its obligations under the Master Agreement or any Service Contract to any third party or agent. To the extent that the Customer's consent is required to novate the Master Agreement or any Service Contract the Customer shall not unreasonably withhold its consent.

30.13 Each party that has rights under the Master Agreement or any Service Contract is acting on its own behalf and not for the benefit of another person.

30.14 Nothing in the Master Agreement or any Service Contract is intended to create a partnership or joint venture of any kind between any of the parties, nor constitute the Customer an agent of the Company for any purpose. The Customer has no authority to act in the name or on behalf of or otherwise to bind the Company in any way.

30.15 A person who is not a party to the Master Agreement or any Service Contract shall not have any rights under or in connection with it.

30.16 Notice given under the Master Agreement or any Service Contract shall be properly served only if it is in writing, sent by fax, email, first class pre-paid post to the receiving party, at the address, email address or fax number, given in the Master Agreement or any Service Contract or otherwise notified to the other party.

30.17 If a dispute arises under the Master Agreement or any Service Contract (Dispute), excluding any Dispute arising out of any amount due to the Company under a Service Contract, then before bringing any suit, action or proceeding in connection with such Dispute, a party must first give written notice of the Dispute to the other party describing the Dispute and requesting that it is resolved under this dispute resolution process (Dispute Notice).

30.18 If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, then each party will promptly (but no later than five Business Days thereafter):

30.18.1 appoint a designated representative who has sufficient authority to settle the Dispute and who is at a higher management level than the person with direct responsibility for the administration of any Service Contract (Designated Representative); and

30.18.2 notify the other party in writing of the name and contact information of such Designated Representative.



30.19 The Designated Representatives will then meet as often as they deem necessary in their reasonable judgment to discuss the Dispute and negotiate in good faith to resolve the Dispute. The Designated Representatives will mutually determine the format for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party will be honoured.

30.20 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, then either party may proceed with any other available remedy.

30.21 Notwithstanding the foregoing clauses 30.17 to 30.20, either party may seek interim or other equitable relief necessary (including an injunction) to prevent irreparable harm.

30.22 The Master Agreement and each Service Contract and any dispute or claim arising out of or in connection with them or their subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales.

30.23 The parties to the Master Agreement and any Service Contract irrevocably agree, for the sole benefit of the Company that, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with the Master Agreement or any Service Contract or their subject matter or formation (including non-contractual claims) Provided That nothing in this clause shall limit the right of the Company to take proceedings against the Customer in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

## 31 Document Control

Issue	Date	Changed by	Reason for change
0.1	14 February 2022	Paul Cashmore	Initial Draft
1.0	19 October 2021	Paul Cashmore	Initial Release