



M3 NETWORKS LIMITED TERMS AND CONDITIONS

1. Interpretation

The definitions and rules of interpretation in this condition apply in these terms and conditions.

1.1 Definitions:

Communication Line: means a minimum 129KB of synchronous data bandwidth to the Interest and a minimum of one free static IP address through which to create an incoming connection.

Contract: the Customer's written acceptance of the Supplier's Quotation and the Supplier's acceptance of it under clause 3.

Customer: the person, firm or company who purchases Goods and/or Services from the Supplier.

Customer Data: means all data held on the Customer's computer systems and all data inputted by the Customer, the Customer's employees and authorised agents or the Supplier on behalf of the Customer for the purpose of using the Services and facilitating the Customer's use of the Services.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Goods: means the hardware, equipment and other goods set out in the Supplier's Quotation forming part of the Contract.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Normal Business Hours: 8am till 6pm Monday to Friday.

Project: the project as described in the Supplier's Quote.

Project Milestone: a date by which a part of the Project is estimated to be completed, as set out in the Supplier's Quote.

Project Plan: the detailed plan (if any is used) describing the Project and setting out the estimated timetable (including without limitation Project Milestones) and responsibilities of each of the parties for, or in connection with, the provision of the Services by the Supplier in accordance with the Contract.

Services: the services to be provided by the Supplier under the Contract (including any subscription services).

Subscription Services: the subscription services provided by the Supplier to the customer under the Contract and described in the Supplier's Quote.

Supplier: M3 NETWORKS LIMITED, a company incorporated in Scotland with Registered Number SC364161 whose Registered Office is at Inveralmond Business Centre, 6 Auld Bond Road, Perth PH1 3FX.

Supplier's Quotation: the price quotation and specification of the Goods and/or Services to be provided by the Supplier.

VAT: value added tax chargeable under Scottish law for the time being and any similar additional tax.

Virus: 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 rearranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Condition, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** includes faxes but not email.
- 1.9 References to conditions and Schedules are to the conditions and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

2. Application of Conditions

- 2.1 These conditions shall:
 - (a) apply to and be incorporated in the Contract; and
 - (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

3. Effect of Purchase Order

- 3.1 The Customer's acceptance of the Supplier's Quotation (whether in writing or electronically) constitutes an offer by the Customer to purchase the Goods and/or Services specified in it on these conditions; accordingly, the execution and return of the acknowledgement copy of the purchase order form by the Supplier, or the Supplier's commencement or execution of work pursuant to the purchase order, shall establish a contract for the supply and purchase of those Services on these conditions ("**the Effective Date**"). The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order or acceptance shall not govern the Contract.
- 3.2 The Customer is entering into the Contract solely for the purposes of its business.

4. Supplier's Obligations - Services

- 4.1 The Supplier shall use commercially reasonable endeavours to manage and complete the Project, and to deliver the Services to the Customer, in accordance in all material respects with the Supplier's Quotation and the Project Plan (if applicable).

- 4.2 The Supplier shall use reasonable endeavours to meet the performance dates specified in the Supplier's Quotation and the relevant Project Plan (if applicable), but any such dates shall be estimates only and time shall not be of the essence of the Contract.
- 4.3 The Supplier shall use commercially reasonable endeavours to make the Subscription Services available 24 hours a day, seven days a week, except for:
- (a) Planned maintenance carried out by the Supplier during the maintenance window of 8.00pm to 6.00am UK time; and
 - (b) Unscheduled maintenance performed by the Supplier outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 2 Normal Business Hours' notice in advance.
- 4.4 The Supplier will provide the Services using reasonable skill and care.
- 4.5 Notwithstanding the foregoing, the Supplier:
- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - (b) 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, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 4.6 The Supplier may terminate the Service if it becomes unlawful for the Supplier to continue to provide the Service or if the Supplier is required to cease the Service by any competent regulatory authority.
- 4.7 The Supplier will not be responsible for any unscheduled downtime or service outage which may occur as a result of the Customer's computers or system experiencing technical problems, or as a result of the need to carry out emergency maintenance work.
- 5. Supplier's Obligations - Goods**
- 5.1 The Goods are described in the Supplier's Quotation.
- 5.2 The Supplier reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.
- 5.3 The Supplier shall deliver the Goods to the location set out in the Supplier's Quotation or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

- 5.4 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 5.5 The Supplier may deliver the Goods 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.
- 5.6 The risk in the Goods shall pass to the Customer on completion of delivery.
- 5.7 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or in cleared funds) for the Goods.
- 5.8 If, before title to the Goods shall pass to the Customer, the Customer becomes subject to any of the events listed in Clause 13, the Supplier may at any time (a) require the Customer to deliver up all of the Goods in its possession; and (b) if the Customer fails to do so promptly, enter any premises of the Customer, or of any third party where the Goods are stored, in order to recover them.

6. Supplier's Obligations – Quality of Goods

- 6.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (Warranty Period), the Goods shall:
 - (a) Conform in all material respects with their description and any applicable specification set out in the Supplier's Quotation; and
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).;
- 6.2 Subject to Clause 6.3, if:
 - (a) The Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Clause 6.1;
 - (b) The Supplier is given a reasonable opportunity of examining such Goods; and
 - (c) The Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,

The Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

Any Goods returned by the Customer must be in substantially the same condition as they were delivered by the supplier.
- 6.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in Clause 6.1 in any of the following events:

- (a) The Customer makes any further use of such Goods after giving notice in accordance with Clause 6.2;
- (b) The defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage,
- (c) commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (d) The defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
- (e) The Customer alters or repairs such Goods without the written consent of the Supplier;
- (f) The defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (g) The Goods differ from their description as a result of changes made to ensure they comply with applicable statutory requirements.

6.4 Except as provided in this Clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 6.1.

6.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

7. Customer's Obligations

7.1 The Customer shall:

- (a) provide in a timely manner such access to the Customer's premises and data, and such office accommodation and other facilities, as is requested by the Supplier;
- (b) provide in a timely manner such information as the Supplier may request, and ensure that such information is accurate in all material respects;
- (c) be responsible (at its own cost) for preparing the relevant premises for the supply of the Services;
- (d) obtain any permissions, Licences, consents, or otherwise that the Supplier needs to be in place in order to deliver the Goods and/or the Services; and
- (e) pay all of the Supplier's fees and charges for the Goods and/or Services in accordance with Clause 9.

7.2 The Customer undertakes and agrees that:

- (a) the Customer must have at least one Communication Line at the Premises in order to review and/or use the Service. In the event that the customer changes or discontinues the Communications Line, the Supplier will not provide the Service and will not be liable to the Customer for failure to receive and/or use the Service;
- (b) that all computers to receive and/or the Service conform to the minimum computer specification advised by the Supplier and that the computers are prepared for the installation of the software;
- (c) that is shall comply fully with the terms of any agreement or licence that they have in place with any third party service providers and vendors that relate in any way to the Goods and/or the Services; and
- (c) the Customer shall use reasonable endeavours to establish and maintain reasonable safeguards against the destruction, loss or unauthorised alteration of the server data and shall institute security procedures to restrict unauthorised access to the server data and data files, including any back-up material.

7.3 If the Supplier's performance of its obligations under the 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 in all circumstances be liable to pay to the Supplier on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

7.4 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of six months after the completion of the Supplier's obligations under the Contract or the earlier termination of the Contract, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of the Supplier, except that the Customer shall not be in breach of this clause 7.3 if it hires an employee or sub-contractor of the Supplier as a result of a recruitment campaign not specifically targeted to any employees or sub-contractors of the Supplier.

8. Change Control

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

- 8.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- (a) the likely time required to implement the change;
 - (b) any variations to the Supplier's charges arising from the change;
 - (c) the likely effect of the change on the Project Plan; and
 - (d) any other impact of the change on the terms of the Contract.
- 8.3 If the Supplier requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.
- 8.4 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to its charges, the Project Plan and any other relevant terms of the Contract to take account of the change.
- 8.5 If the Supplier wishes to propose a change to the charges payable for the Subscription Services, it shall submit details of the proposed increase to the Customer in writing. The proposed price increase shall become enforceable against and binding on the Customer on the date that is 60 days after the date of the Supplier's notice.

9. Charges and Payment

- 9.1 Clause 9.2 shall apply if the Services are to be provided on a time-and-materials basis. clause 9.3 and clause 9.4 shall apply if the Goods and/or Services are to be provided for a fixed price. Clause 9.5 shall apply if the Services include Subscription Services. The remainder of this clause 9 shall apply in either case.
- 9.2 Where the Services are provided on a time-and-materials basis:
- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard hourly fee rates as amended from time to time;
 - (b) the Supplier's standard hourly fee rates as specified in the Supplier's Quotation or as otherwise intimated from time to time;
 - (c) the Supplier shall be entitled to charge at an overtime rate as specified in the Supplier's Quotation for part days and for time worked by members of the project team outside the hours referred to in clause 9.2(b) on a pro-rata basis;
 - (d) the Supplier shall ensure that all members of the project team complete time sheets recording time spent on the Project, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in clause 9.2(e); and

- (e) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 9.
- 9.3 Where the Services and/or the Goods are provided for a fixed price the total price for the Services shall be the amount set out in the Supplier's Quotation. The total price shall be paid to the Supplier in instalments as set out in the Project Plan on its achieving the corresponding Project Milestone. On achieving a Project Milestone, the Supplier shall invoice the Customer for the charges that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in clause 9.4. Where there are no relevant Project Milestones, the whole fixed price shall be due and payable in accordance with Clause 9.6.
- 9.4 Any fixed price contained in the Supplier's Quotation excludes:
 - (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the project team in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third-party services shall be invoiced by the Supplier at cost; and
 - (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 9.5 The Customer shall pay for the Subscription Services monthly in advance with the first payment being due on the date of commencement of the Subscription Services under the Contract. The cost of the Subscription Services shall be as set out in the Supplier's Quotation. Payment for the Subscription Services shall be collected by Direct Debit or by any other method approved by the Supplier.
- 9.6 The Customer shall pay each invoice submitted to it by the Supplier in full, and in cleared funds, within 30 days of receipt.
- 9.7 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier any sum of money that is payable to the Supplier (under any Contract) on the due date the Supplier may:
 - (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Bank of Scotland PLC, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - (b) subject to giving the Customer 30 days' notice of its intention to do so, suspend all or any of the Services without penalty or liability of on the part of the Supplier until payment has been made in full.
- 9.8 Time for payment shall be of the essence of the Contract.

- 9.9 All payments payable to the Supplier under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 9.10 All amounts due under this agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
- 9.11 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of Value Added Tax chargeable from time to time (VAT). On receipt of a valid VAT invoice, the Customer shall pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of those Goods and/or Services.

10. Intellectual Property Rights

- 10.1 The Customer acknowledges that the Customer's use of rights in the Services is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.
- 10.2 All proprietary rights in all patents, designs, copyrights, engineering details, schematics, drawings and other similar data relating to the Goods are and shall at all times remain vested in the manufacturer of the Goods. The sale of Goods to the Customer does not convey any ownership or licence to exploit any of the proprietary rights in the Goods.
- 10.3 The Supplier does not directly license the Customer for third party software. The Customer undertakes to comply with any third party software conditions notified to it in relation to any software, including entering into and complying with licence agreements and other agreements with the third party prior to the Customer using the software concerned, and to indemnify the Supplier at the suit of a third party software owner as a result of any breach by the Customer of such conditions. It is for the Customer to manage its relationships with any third-party vendors or suppliers.

11. Confidentiality

- 11.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier or its agents, and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material

to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

- 11.2 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 11.3 Subject to clause 11.5, each party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 11.4 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 11.6 Neither Party shall use the other Party's confidential information for any purpose other than to perform its obligations under the Contract.
- 11.7 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.

11.8 The above provision of this clause 11 shall survive termination of the Contract, however arising.

12. Limitation of Liability

WARNING: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 The following provisions set out the entire financial liability of the Supplier (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (a) any breach of the Contract howsoever arising;
- (b) any use made by the Customer of the Services, or any part of them; and
- (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

12.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

12.3 Nothing in these conditions excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

12.4 Subject to clause 12.2 and clause 12.3:

- (a) the Supplier shall not in any circumstances be liable, whether in delict (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill, reputation or similar losses; or
 - (iv) loss of anticipated savings or wasted expenditure; or
 - (v) any loss or liability under or in relation to any other contract; or
 - (vi) loss of contract; or
 - (vii) loss of use or business interruption; or
 - (viii) loss or corruption of data or information; or

- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
 - (b) the Supplier's total liability in contract, delict (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract in any contract year shall not exceed the cap..
 - (c) In clause 12.4 (b):
 - (i) the cap is the greater amount of FIVE HUNDRED POUNDS (£500) and a sum equal to the total charges in the contract year in which the breaches/liabilities in question occurred;
 - (ii) contract year means a 12-month period commencing with the Effective Date or anniversary of it; and(iii) total charges means all sums paid by the Customer under the Contract in respect of Goods and Services actually supplied by the Supplier.
- 12.5 The Customer agrees that it has accepted these terms and conditions in the knowledge that the Supplier's liability is limited and that the Supplier's fees and charges have been calculated accordingly. The customer is advised to make its own insurance arrangements if it desires to limit further its exposure to risk or if it requires further or different cover.
- 12.6 The Parties agree that the Customer is the best judge of the value and importance of the data held on the Customer's computer systems, and the Customer will be solely responsible for:
- (a) Instituting and operating all necessary back-up procedures, for its own benefit, to ensure that data integrity can be maintained in the event of loss of data for any reason;
 - (b) Taking out any insurance policy or other financial cover for loss or damage which may arise from loss of data for any reason.
 - (c) Choosing which services to buy from the Supplier and deciding whether those Services meet the Customer's needs and requirements.

13. Term and Termination

- 13.1 The Contract shall, unless otherwise terminated or provided for in this Clause 13, commencing on the Effective Date and shall continue unless:
- (a) the provision of the Services is cancelled by the customer providing not less than 30 days' prior notice in writing to that effect to the Supplier;
 - (b) the provision of the Services is cancelled by the Supplier at any time on providing not less than 30 days' prior notice in writing to that effect to the Customer.

13.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (g) an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party;
- (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (j) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.1(d) to clause 13.1(j) (inclusive).

- 13.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.
- 13.4 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.
- 13.5 In the event of termination of this Agreement, the Supplier retains the right to uninstall any (a) Goods that have not been paid for in full; and (b) third party software from the Customer's system that the Supplier owns the licence for, and/or that the Supplier has installed on behalf of a third party who own the software licence.
- 13.6 In the event of termination of this the Contract for any reason:
- (a) any of the Supplier's outstanding invoices shall become immediately payable;
 - (b) the Customer shall return any equipment, property, materials and other items belonging to the Supplier and which are supplied as part of this Contract; and
 - (c) the Supplier may destroy and otherwise dispose of all and any data collected from the supply of the Goods and of the Services.

14. Force Majeure

- 14.1 The Supplier shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, Internet Service Provider failure, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

15. Waiver

- 15.1 No failure or delay by the Supplier to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16. Rights and Remedies

16.1 Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

17. Severance

17.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.

17.2 If any provision or part-provision of this agreement is deemed deleted under clause 17, the parties shall negotiate in good faith to amend such provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. Entire Agreement/Variation

18.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.2 Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

18.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

18.4 No variation of the Contract shall be effective unless it is made in writing after the date of commencement of this Contract and it is signed by an authorised signatory of each party.

19. Assignment and Sub-contracting

19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

19.2 The Supplier may at any time assign, transfer, charge, sub-contract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

20. No Partnership or Agency

20.1 Nothing in the Contract is intended to or shall operate to create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. Third Party Rights

21.1 This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Scotland Act 2017 to enforce any term of this Agreement.

22. Notices

22.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and may be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office; or

22.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;
- (c) (iii) if sent by email, at the time of confirmation of receipt from the recipient, or if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 11.8(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

22.3 This condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this condition, "writing" shall not include email.

23. Dispute Resolution

23.1 Any dispute arising in connection with this Agreement shall in the first instance be referred to a Board level director of each party for discussion and potential resolution within 7 days of the date of referral. Neither party may initiate any legal action until this action has been carried out unless one party has reasonable cause to do so in order to avoid immediate damage to its business or to preserve any right of action it might have. This clause will not apply in respect of any application to a court having jurisdiction in respect of a preliminary interdict in order to protect its interests.

23.2 Subject to clause 23.1 any dispute between the parties about any matter relating to the performance of this Agreement (other than in relation to the payment of any money) which cannot be resolved by the parties within 20 days of the date of referral referred to above, will first be referred to mediation or other alternative dispute resolution procedure as agreed between the parties, each acting in good faith. If the parties are unable to agree a procedure, or any aspect of a procedure, they will seek assistance from the Centre for Effective Dispute Resolution (www.cedr.co.uk). Unless otherwise agreed, the parties will share equally the costs of mediation, and the use of mediation will be without prejudice to the rights of the parties in all respects if the mediation does not achieve an agreed resolution of the dispute.

24. Governing Law

24.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of Scotland.

25. Jurisdiction

25.1 Each party irrevocably agrees that the Scottish courts shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

26. Sole Appointment

26.1 The Customer shall not allow any person other than the Supplier or one of its representatives to carry out any work or to give any other support to the Customer's system that is substantially the same as the Services without the prior written consent of the Supplier, which consent will not be unreasonably withheld.

27. Data Security/Recovery

27.1 The Supplier shall not be held responsible for any data corruption or loss, howsoever caused. Should any such data loss occur, the Supplier will endeavour to recover the data. If third party specialist data recover services are required, then it is the customer's responsibility to cover the cost for this.

27.2 The Supplier cannot guarantee that any third-party software including, but not limited to, anti-virus, security and firewall software, whether or not recommended by the Supplier, will keep computers free from errors, viruses, worms, trojans, email spam, spyware, hacking or any other unauthorised access.

28. Data Protection

- 28.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data. In this clause 28, the expression “Customer Data” includes all data inputted by or on behalf of the Customer, or by the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
- 28.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with any archiving procedure that the Supplier operates from time to time.. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable under clause 28.9).
- 28.3 The Supplier shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data available from the Supplier on request or available from such website address as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.
- 28.4 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 28 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 28.5 The parties acknowledge that:
- (a) if the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the controller and the Supplier is the processor for the purposes of the Data Protection Legislation.
 - (b) 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 Supplier's other obligations under this agreement.
- 28.6 Without prejudice to the generality of clause 28.4, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the

personal data to the Supplier for the duration and purposes of this agreement so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.

28.7 Without prejudice to the generality of clause 28.4, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:

- (a) process that personal data only on the documented written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier and/or UK Data Protection Legislation to process personal data (**Applicable Laws**). Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- (b) not transfer any personal data outside of the European Economic Area and the United Kingdom unless the following conditions are fulfilled:
 - (i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the data subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- (c) assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (d) notify the Customer without undue delay on becoming aware of a personal data breach;
- (e) at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data (and for these purposes the term "delete" shall mean to put such data beyond use); and
- (f) maintain complete and accurate records and information to demonstrate its compliance with this clause 28 and immediately inform the Company if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

- 28.8 Each party shall ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 28.9 The Customer consents to the Supplier appointing any third-party processor of personal data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 28 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 28.
- 28.10 Either party may, at any time on not less than 30 days' notice, revise this clause 28 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).