

Direct Sales Terms and Conditions

GENERAL TERMS AND CONDITIONS FOR THE PROVISION OF GOODS, LEASED EQUIPMENT, SERVICES AND/OR SOFTWARE

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 17.

1 INTERPRETATION

1.1 **Definitions.** In these General Conditions and in any Additional Conditions, the following definitions apply:

Additional Conditions: the additional terms and conditions which shall apply to the supply by the Supplier of particular Supplier Products as referred to in clause 2.5

Affiliate: in relation to a party, a person who is, from time to time, a subsidiary or holding company of that party, or is a subsidiary of that party's holding company.

Ancillary Services: means those additional services to be provided by the Supplier from time to time in connection with the Services including consultancy services, customisation, installation and/or set up services and any other support, repair or engineering Services.

Business Day: a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

Contract: the contract between the Supplier and the Customer for the supply of Goods, Software and/or Services and/or the granting of Licences in accordance with these General Conditions.

Customer: the person or firm who purchases the Goods, Software, Services and/or the Licence from the Supplier as specified in the applicable Order.

Data Controller: shall be construed in accordance with the Data Protection Legislation.

Data Processor; shall be construed in accordance with the Data Protection Legislation.

Data Protection Legislation; the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

Date of the Order: the date of the Order as set out in the Order or if no date is specified in the Order, the date when the Order is deemed to have been accepted by the Supplier as determined in accordance with the General Conditions.

Deliverables: the deliverables set out in the Order (if any) to be produced by the Supplier for the Customer.

Delivery Location: the location for the delivery of the Goods and/or Software as set out in the Order or such other location as the parties may agree in writing.

End User: an end user of the Software or the Services provided by the Supplier to the Customer under a Contract.

Force Majeure Event: has the meaning given to it in clause 19.1.

General Conditions: these terms and conditions as amended from time to time in accordance with clause 20.7.

Goods: the goods set out in the Order or any part of them to be purchased by the Customer and for the avoidance of any doubt, 'Goods' does not include Software or any Leased Equipment.

Goods Description: the description of the Goods set out in the Order or otherwise agreed in writing between the Supplier and the Customer.

holding company and subsidiary: a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006.

Leased Equipment: means equipment to be leased by the Supplier to the Customer in connection with the provision of Services as described in the Order or otherwise agreed between the parties in writing.

Lease Start Date: means the date for the commencement of a Supplier Lease which (unless otherwise specified on the applicable Order) shall be the Service

Start Date for the Service for which the applicable Leased Equipment is to be provided.

Initial Lease Term: means the initial period for the Supplier Lease as set out in the Order or if no initial period for the Supplier Lease is specified in the Order, the period of 36 months following the Lease Start Date.

Initial Service Term: means the initial period for the provision of a Service as set out in the Order, or:-

- if the Order is for more than one Service, then the 'Initial Service Term' for each Service shall be the initial period for the provision of that Service as set out in the Order; and
- if no initial period for the provision of Services (or for any particular Service) is specified in the Order, the period of 36 months following the Service Start Date.

Initial Supplier Licence Term: means the initial period for the Supplier Licence as set out in the Order or if no initial period for the Supplier Licence is specified in the Order, the period of 36 months following the Supplier Licence Start Date.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Licence:- a Supplier Licence or any licence for Third Party Software.

Master Supply Agreement or 'MSA': a framework supply agreement between the Customer (or an Affiliate of the Customer) and the Supplier identified (by reference to its Agreement number) on the applicable Order.

Order: means an order for Goods, Services and/or Software to be provided by the Supplier to the Customer in accordance with these Conditions and 'Ordered' shall be interpreted accordingly. **Personal Data;** shall be construed in accordance with Data Protection Legislation

RPI; the Retail Price Index as published by the Office of National Statistics or any replacement body on a monthly and/or annual basis.

Services: means:-

- the services (including any Deliverables) to be supplied by the Supplier to the Customer as set out in the Service Description including replacement and updated services;
- any Ancillary Services described in the Order; and in each case, shall include any Deliverables.

Service Charges: the Supplier's charges for the Services:-

- as set out or referred to in the Order or in any applicable MSA or (if applicable) calculated at the rates set out or referred to in the Order or in any applicable MSA, in each case, as reviewed, amended or updated from time to time in accordance with the Contract; or
- if no charges or rates are set out or referred to in the Order or any applicable MSA:-
 - the Supplier's standard charges for the Services are available on request.
 - the Supplier's charges for the Services calculated at the Supplier' standard rates are available on request
 - (if applicable) on a time and materials basis at the Supplier's standard man/day or man/hour rates are available on request.

Service Level Agreements or SLAs: a document setting out performance parameters or standards (if any).which may apply in respect of a particular Service.

Service Description: the description of the Services set out in the Order or otherwise agreed in writing between the Supplier and the Customer.

Service Start Date: in respect of each Service to be provided by the Supplier under a Contract, means the date upon which the Service is first made available

by the Supplier to the Customer under the Contract (other than for the purposes of configuration, set up, testing, or evaluation).

Software: the Supplier Software and the Third Party Software.

Special Order Conditions: means the special terms and conditions (if any) set out in the Order.

Subsequent Lease Term: means any single period of twelve consecutive months after the Initial Lease Term starting on an anniversary of the Lease Start Date during which the Supplier Lease is to continue in force.

Subsequent Supplier Licence Term: means any single period of twelve consecutive months after the Initial Supplier Licence Term starting on an anniversary of the Supplier Licence Start Date during which the Supplier Licence is to continue in force.

Subsequent Service Term: means any single period of twelve consecutive months for the provision for Services after the Initial Service Term starting on an anniversary of the Service Start Date.

Supplier: Atmoso Limited, registered in England and Wales under Company Number 07464676 whose registered office is at The Granary, Whiteley Lane, Fareham, Hampshire, PO15 6RQ.

Supplier Equipment: equipment to be provided (and if specified in the Order) installed by the Supplier for use by the Customer in connection with the Services including all goods, tools, equipment or materials (including any software) which the Supplier provides or makes available to the Customer without additional charge or on loan in the course of providing (or in preparation for the provision of) any Supplier Products.

Supplier Lease: the lease of the Leased Equipment granted by the Supplier to the Customer pursuant to the Contract;

Supplier Lease Charges: the Supplier's charges for Leased Equipment:-

- as set out in the Order or in any applicable MSA (in each case as amended from time to time in accordance with these General Conditions); or
- (if no rate is set out in the Order or any applicable MSA) this is available on request.

Supplier Licence: the licence granted by the Supplier to the Customer pursuant to clause 5.1.1 of these General Conditions in relation to the use by the Customer of the Supplier Software and the Supplier Software Documentation.

Supplier Licence Fees: the Supplier's fees for the Supplier Licence:-

- calculated at the rate set out in the Order or any applicable MSA (in each case as amended from time to time in accordance with these General Conditions); or
- (if no rate is set out in the Order or any applicable MSA) calculated at the Supplier's standard rates for the Supplier Licence available on request.
- **Supplier Licence Start Date:** the date stated in the Order upon which the Supplier Licence shall commence or if none is stated, the Date of the Order.

Supplier Licence Term: the Initial Supplier Licence Term any Subsequent Supplier Licence Term.

Supplier Products: means:-

- Goods;
- Services (including the use of any Supplier Equipment);
- Supplier Leases and Leased Equipment;
- Supplier Software, Supplier Software Documentation and Supplier Software Support Services; and
- Third Party Software.

Supplier Software: the Supplier's software listed in the Order.

Supplier Software Documentation: the operating manual and user instructions (as updated or amended by the Supplier from time to time) in eye-readable form, made available by the Supplier to facilitate the proper use of the Supplier Software.

Supplier Software Support Services: the support services described in the Order to be provided by the Supplier in connection with the Supplier Software.

Territory: the territory described in the Order.

Third Party Software: the third party software (including any supporting documentation) listed in the Order.

UK Data Protection Legislation; Any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

1.2 **Construction.** In these General Conditions, the following rules apply :

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a reference to a party includes its successors or permitted assigns;

1.2.3 **Personal Data** and **Data Controller** shall be construed in accordance with the Data Protection Act 1998.

1.2.4 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or reenacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.5 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

1.2.6 a reference to **writing** or **written** includes faxes and emails.

2 BASIS OF CONTRACT

2.1 The Supplier shall provide the Supplier Products described in the Order in accordance with the Contract.

2.2 An Order shall only be deemed to be accepted when it has been signed by the Supplier or otherwise expressly accepted by the Supplier in writing.

2.3 Each Order accepted by the Supplier shall constitute a separate Contract for the supply of Supplier Products.

2.4 Each Contract shall be comprised of:-

2.4.1 the applicable Order (including any Special Order Conditions);

2.4.2 any special conditions set out in any applicable MSA;

2.4.3 any SLAs applicable to any particular Supplier Products, included in the Order

2.4.4 any Additional Conditions applicable to any particular Supplier Products included in the Order; and

2.4.5 the General Conditions.

In the event of any conflict between any of the documents listed above, then to the extent of the conflict, those higher up the list will take precedence over those lower down the list.

2.5 If any Additional Conditions or SLAs apply to any particular Supplier Products, the applicable Additional Conditions or SLAs (as the case may be) which shall apply shall be those:-

2.5.1 identified on the Order or in any applicable MSA referred to in the Order; or

2.5.2 otherwise notified to the Customer in writing by the Supplier from time to time.

2.6 The Contract constitutes the entire agreement between the parties for the supply of the Supplier Products described in the applicable Order. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.7 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions or illustrations of the Supplier

Products contained on the Supplier's website or in the Supplier's catalogues, brochures or other marketing

materials are issued, posted or published for the sole purpose of giving an approximate idea of the Supplier Products described in them. They shall not form part of the Contract or have any contractual force.

2.8 The documents listed in clause 2.4 shall apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.9 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 20 Days from its date of issue.

3 GOODS

3.1 Any Goods to be purchased by the Customer from the Supplier are as described in the Goods Description.

3.2 The Supplier reserves the right to amend the Goods Description if required by any applicable legal or regulatory requirements.

3.3 The Supplier warrants that on delivery and for a period of 12 months from the date of delivery or such other warranty period as may be stated on the Order (in either case, the **warranty period**), the Goods shall:

3.3.1 conform with Goods Description;

3.3.2 be free from material defects in design, materials and workmanship.

3.4 Subject to clause 3.5, if:

3.4.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 3.3;

3.4.2 the Supplier is given a reasonable opportunity of examining such Goods; and

3.4.3 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.

3.5 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 3.3 if:

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

3.5.2 the defect arises as a result of the Supplier following any drawing, design or Goods Description supplied by the Customer;

3.5.3 the Customer alters or repairs such Goods without the written consent of the Supplier;

3.5.4 the defect arises as a result of fair wear and tear, or abnormal working conditions;

3.5.5 the defect arises as a result of wilful damage negligence other than wilful damage caused by or the negligence of, the Supplier or its subcontractors;

3.5.6 the Goods differ from the Goods Description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

3.6 Except as provided in this clause 3, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 3.3.

3.7 These General Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 3.4.

4 GOODS - TITLE AND RISK

4.1 Subject to Clause 4.3, the risk in the Goods purchased by the Customer shall pass to the Customer on completion of delivery.

4.2 Subject to Clause 4.3, title to the Goods shall not pass to the Customer until the Supplier has received payment for the Goods in full (in cash or cleared funds).

4.3 If in the course of providing the Services, the Supplier agrees to supply and fit any spare or replacement parts, risk and title to any such spare and/or replacement parts shall pass to the Customer upon installation.

4.4 Until title to the Goods has passed to the Customer, the Customer:

4.4.1 shall hold the Goods on a fiduciary basis as the Supplier's bailee;

4.4.2 shall store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

4.4.3 shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

4.4.4 shall maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

4.4.5 shall notify the Supplier immediately if it becomes subject to any of the events listed in clause 18.1.2 to clause 18.1.13;

4.4.6 may use the Goods in the ordinary course of its business (but may not resell the Goods); and

4.4.7 shall give the Supplier such information relating to the Goods as the Supplier may require from time to time.

4.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 18.1.2 to clause 18.1.13, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, 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.

5 SUPPLIER SOFTWARE

5.1 If the Order includes a Supplier Licence then the following shall apply:-

5.1.1 The Supplier grants to the Customer, a non-exclusive licence to use the Supplier Software and the Supplier Software Documentation in the Territory in the ordinary course of the Customer's business.

5.1.2 The Supplier Licence shall be granted for and shall remain in force (subject to the earlier termination of the Contract in accordance with these General Conditions) throughout the Initial Supplier Licence Term and any Subsequent Supplier Licence Term until either party serves at least three (3) months' written notice upon the other to terminate the Supplier Licence. Any such notice shall only be valid if it is given in accordance with the provisions of this Contract and if it expires at the end of the Initial Supplier Licence Term or any Subsequent Supplier Licence Term.

5.1.3 The Customer shall use the Supplier Software only in the manner described in (and otherwise in accordance with) the Supplier Software Documentation.

5.1.4 The use of the Supplier Software by the Customer shall be restricted to the use of the Supplier Software in object code form and shall be subject to such other restrictions or limitations as may be set out on the Order including (for example but without limitation) any restriction regarding the number of users or concurrent users of the Supplier Software..

5.1.5 Except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement or otherwise authorised by the Supplier in writing, attempt to copy, modify, duplicate, create derivative works

from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Supplier Software (as applicable) in any form or media or by any means or attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Supplier Software.

5.1.6 The Customer shall not sub-license, assign or novate the benefit or burden of the licence set out in this clause 5.1 in whole or in part or deal in any manner with all or any of its rights and obligations under this clause 5.1.

5.2 The Supplier does not warrant that the use of the Supplier Software will be uninterrupted or error-free.

5.3 In the event that the Customer notifies the Supplier that the Supplier Software contains any significant errors, and such significant errors do not result from the Customer, or anyone acting with the authority of the Customer, having amended the Supplier Software or used it outside the terms of the Supplier Licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, or it has not been loaded onto Supplier-specified or suitably configured equipment, the Supplier insofar as it is reasonably able to do so within the scope Supplier Software Support Services repair the Supplier Software or if it is not reasonably able to do so within the scope of the Supplier Software Support Services, the Supplier shall (at its option):

5.3.1 replace the Supplier Software; or

5.3.2 terminate the Supplier Licence immediately by notice in writing to the Customer and refund any Supplier Licence Fees paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Supplier Software to the date of termination) on return of the Supplier Software and all copies thereof; provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the error, including a documented example of the, or sufficient information to enable the Supplier to re-create the error. For the purposes of this clause a "significant" error is a failure of a key functional element(s) of the Supplier Software to perform as intended by the Supplier in accordance with the Documentation. Subject to clause 17.1, the repair or replacement of the Supplier Software by the Supplier or the termination of the Supplier Software Licence and the refund of Supplier Licence Fees by the Supplier in accordance with this clause 5.3 shall be the sole remedy of the Customer in respect of any significant errors in the Supplier Software.

6 THIRD PARTY SOFTWARE

If the Order includes Third Party Software then the following shall apply:-

6.1 The use of the Third Party Software by the Customer shall be subject to such licence terms as may be included or referred to in any packaging or documentation supplied with the Third Party Software or any other licence terms to which the use of the Third Party Software may be subject:-

6.1.1 which may be notified to the Customer by the Supplier at any time (and from time to time); or

6.1.2 which the Customer may accept on a 'shrink wrapped' or 'click though' basis.

6.2 The Third Party Software will be supplied by Supplier with the benefit of any warranty which the third party licensor provides.

7 DELIVERY (GENERAL)

7.1 Any dates quoted for delivery of Goods and/or Software (and any supporting documentation) are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions.

8 DELIVERY OF GOODS

8.1 If the Order includes Goods to be purchased by the Customer, the Supplier shall deliver the Goods to the Delivery Location. Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

8.2 Subject to clause 17.1, if the Supplier fails to deliver any Goods, its liability shall be limited to the refund of the price paid by the Customer to the Supplier for the Goods.

8.3 If the Customer fails to accept or take delivery of the Goods within 10 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

8.3.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the eleventh Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and

8.3.2 the Supplier shall store the Goods until actual delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

8.4 If 20 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Supplier may (without prejudice to any other rights the Supplier may have) resell or otherwise dispose of part or all of the Goods.

9 DELIVERY OF SOFTWARE

9.1 If the Order includes Software, the Supplier shall deliver the Software in object code form either:-

9.1.1 electronically to equipment run by the Customer specified in the Order or to any hosted platform upon which the Software is to be run on the Customer's behalf (as applicable); or

9.1.2 if required by the Customer and stated on the Order, on disk or such other physical media stated on the Order to the Delivery Location for the Software.

9.2 The Supplier shall ensure that:-

9.2.1 each delivery of Supplier Software is accompanied by the relevant Supplier Software Documentation; and

9.2.2 each delivery of Third Party Software is accompanied by the applicable supporting documentation issued by the relevant third party licensor.

10 LEASED EQUIPMENT

10.1 The Leased Equipment to be leased by the Supplier to the Customer under any Supplier Lease shall be as described on the applicable Order.

10.2 The Supplier reserves the right to amend the description of the Leased Equipment if required in order to comply with any legal or regulatory requirements

10.3 Risk of loss, theft, damage or destruction of the Leased Equipment shall pass to the Customer on completion of delivery and shall remain solely with the Customer throughout the Initial Lease Term and any Subsequent Lease Term.

11 SUPPLY OF SERVICES

11.1 Subject to the earlier termination of the Contract in accordance with its terms, the Supplier shall provide the Services to the Customer:-

11.1.1 for a one off Service, at the dates and times and at the locations specified in the Order; and

11.1.2 for ongoing Services, throughout the Initial Service Term and any Subsequent Service Term for the Service until either party serves at least three (3) months' written notice upon the other to terminate the Service. Any such notice shall only be valid if it is given in accordance with the provisions of

this Contract and it expires at the end of the Initial Service Term or any Subsequent Service Term.

11.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services and any delivery or installation, set up or commissioning dates for Supplier Equipment specified in the Order (or otherwise agreed between the parties in writing) but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

11.3 Where an SLA applies to any particular Service, the Supplier shall perform that Service in accordance with the SLA which applies to it provided that:-

11.3.1 the Customer performs its obligations under the Contract in a reasonable and timely manner;

11.3.2 the Customer acts in accordance with any and all reasonable instructions issued by or on behalf of the Supplier; and

11.3.3 if applicable, the Customer shall allow the Supplier and its subcontractors access either physically or using remote access tools at all reasonable times to the Customer's equipment for the purposes of providing the Service.

11.4 The Supplier shall have the right to make any changes to the Services which are necessary to comply with:-

11.4.1 any applicable legal, regulatory or safety requirement;

11.4.2 to reflect the withdrawal of or a significant change to the technology used to provide the Services;

11.4.3 (where the provision of the Services includes the use by the Customer or the Supplier of any software or any online or other services provided by a third party) any requirement of such third party;

or which do not materially affect the nature or quality of the Services. The Supplier shall notify the Customer of any such changes.

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

11.6 The Customer acknowledges that certain Services to be performed by the Supplier are dependent on the operation, performance and availability of network infrastructure run by third party providers of public communications services, which is outside of the Supplier's control. The Supplier does not warrant that such Services will be interruption or error free. The Customer also acknowledges that connection or processing speeds may be affected by the Customers own equipment used to access the Services and therefore the Supplier does not warrant connection or processing speeds.

12 CUSTOMER'S OBLIGATIONS 12.1 The

Customer shall:

12.1.1 ensure that the terms of the Order and (if submitted by the Customer) the Goods Description, the Services Description and/or any

description of the Leased Equipment set out in the Order are complete and accurate;

12.1.2 co-operate with the Supplier in all matters relating to the Leased Equipment, any Supplier Equipment and the Services;

12.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

12.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

12.1.5 prepare the Customer's premises and equipment for the delivery of the Goods, the Leased Equipment, the Software and/or the supply of the Services (as the case may be);

12.1.6 obtain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start and maintain them throughout the period during which the Services are to be provided;

12.1.7 use the Supplier Equipment and any Leased Equipment only for the purposes of accessing or using the Services;

12.1.8 use the Supplier Equipment and any Leased Equipment in accordance with the Supplier's instructions and any documentation or guidance provided by the Supplier relating to the use of the Supplier Equipment;

12.1.9 house, store, keep and maintain the Supplier Equipment, any Leased Equipment and all materials, documents and other property of the Supplier at the Customer's premises in safe custody at its own risk and not dispose of them other than in accordance with the Supplier's written instructions or authorisation;

12.1.10 without prejudice to clause 12.1.9 above, keep and maintain the Supplier Equipment and any Leased Equipment in good working order and in accordance with the Supplier's instructions and any documentation or guidance provided by the Supplier;

12.1.11 notify the Supplier in the event of:-

(a) the loss of or any damage to the Supplier Equipment and/or any Leased Equipment;

(b) the destruction of the Supplier Equipment and/or any Leased Equipment;

(c) (to the extent that it is reasonably apparent to the Customer) any failure of or fault arising in the Supplier Equipment and/or any Leased Equipment;

12.1.12 allow the Supplier access to the Supplier Equipment and/or any Leased Equipment upon written request from the Supplier; and

12.1.13 return the Supplier Equipment to the Supplier upon written request from the Supplier.

12.2 The Supplier Equipment and any Leased Equipment shall remain the exclusive property of the Supplier. The Customer shall not let, sell, charge, assign, dispose of, sub licence or allow a third party (other than an End User) to take possession or control of or to use the Supplier Equipment or any Leased Equipment in whole or in part and shall not, in any other way prejudice the rights of the Supplier in the Supplier Equipment and/or any Leased Equipment.

12.3 Unless otherwise agreed by the Supplier in writing, the Customer shall use the Services and any Supplier Equipment and/or Leased Equipment only for the purposes of conducting its business in the ordinary course and shall not resell or sub distribute the Services (whether alone or in conjunction with any other services) in any manner.

- 12.4 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 12.4.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- 12.4.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 12.1.7; and
- 12.4.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 12.5 The Customer warrants that the Contract is entered into by the Customer in the course of its business and not as a private individual.

13 CHARGES AND PAYMENT

- 13.1 The price for Goods to be purchased by the Customer under the Contract shall be the price set out in the Order or, if no price is quoted, the Supplier's standard price as at the date of delivery. Unless otherwise stated in the Order, the price of the Goods is exclusive of all costs and charges for the insurance and transport of the Goods which shall be paid by the Customer when it pays for the Goods.
- 13.2 The price for Third Party Software shall be the price set out in the Order or, if no price is quoted, the Supplier's standard price.
- 13.3 The Supplier reserves the right to:-
- 13.3.1 increase the price of the Third Party Software, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Third Party Software to the Supplier that is due to:-
- (a) any factor beyond the control of the Supplier; (b) any delay caused by any instructions of the Customer in respect of the Third Party Software or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Third Party Software.
- 13.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:-
- (a) any factor beyond the control of the Supplier; (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
- (c) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- 13.4 The charges to be paid by the Customer for the Services shall be the Service Charges. In addition, the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

- 13.5 The charges to be paid by the Customer for the Supplier Licence shall be the Supplier Licence Fees.
- 13.6 The charges to be paid by the Customer for the Leased Equipment shall be the Supplier Lease Charges.
- 13.7 On the 1st January each year, the Supplier reserves the right to increase the Service Charges, Supplier Lease Charges and/or Supplier Licence Fees by 2% plus the prevailing rate of RPI for September of the proceeding year. The Supplier shall use best endeavours to give the Customer at least 30 days' written notice of any such increase,
- 13.8 The Supplier additionally reserves the right to:
- 13.8.1 increase its Service Charges on any anniversary of the Service Start Date
- 13.8.2 increase the Supplier Lease Charges on any anniversary of the Service Start Date; and/or
- 13.8.3 increase the Supplier Licence Fees on any anniversary of the Licence Start Date; provided as set out in clause 13.9 below.
- 13.9 If the Supplier proposes to increase its Service Charges, Supplier Lease Charges and/or Supplier Licence Fees pursuant to clause 13.8 in excess of 2% plus the prevailing rate of RPI for September of the proceeding year, the following shall apply:-
- (a) the Supplier shall give the Customer at least 30 days' written notice of any such increase.
- (b) in respect of any such increase made, the Customer may within ten (10) Business Days following receipt of the written notice referred to in clause 13.9(a) above, serve written notice to the Supplier to terminate the Contract at midnight on the day before such increase comes into effect.
- 13.10 The Supplier may alter the amount of any or all of its fees or charges or the rates at which its fees or charges are calculated at any time during the Contract to take account of any increase in the costs of the Supplier incurred in connection with the provision of the supplier Products as a result of:-
- 13.10.1 any changes to any applicable legal or regulatory requirements;
- 13.10.2 any increase in any charges imposed by any telecommunications supplier; or
- 13.10.3 any increase in any other third party costs (including any increase in the charges of the Supplier's service providers) on which the provision of the Supplier Products depends.
- The Supplier shall notify the Customer in writing of any such alteration and shall if it reasonably able to, give the Customer at least 30 days' prior notice of any such alteration. The Customer acknowledges that such costs are beyond the Supplier's control.
- 13.11 In respect of Goods and the Third Party Software, the Supplier has the option to invoice the Customer 50% of the Order value at any point prior to delivery, with the balance (or the full value of the Order if the option has not been activated) invoiced to the Customer on or at any time after completion of delivery.
- 13.12 In respect of Supplier Licence, the Supplier shall (unless otherwise stated in the Order) invoice the Licence Fees annually in advance on or after the Supplier Licence Start Date and each anniversary of the Supplier Licence Start Date during the Supplier Licence Term.

- 13.13 In respect of Services, the Supplier shall (unless otherwise stated in the Order or any applicable MSA) invoice the Customer as follows:-
- 13.13.1 for Ancillary Services, following completion of the Ancillary Services;
- 13.13.2 for support services, annually in advance;
- 13.13.3 for training services in advance at the time (or at any time after) the Order for the training services is accepted by the Supplier;
- 13.13.4 for any other services, upon completion of the services unless otherwise stated in the Order; and
- 13.13.5 for Leased Equipment, monthly in advance.
- 13.14 The Customer shall pay each invoice submitted by the Supplier:
- 13.14.1 within 30 days of the date of the invoice or (if there is a Direct Debit instruction in place for the payment of such invoice) within 14 days of the date of the invoice; and
- 13.14.2 in full and in cleared funds to a bank account nominated in writing by the Supplier.
- 13.15 The time for the payment of invoices under the Contract shall be of the essence.
- 13.16 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) which shall be payable by the Customer in addition.
- 13.17 The Supplier reserves the right at any time to require the Customer:-
- 13.17.1 to establish and maintain a Direct Debit instruction in favour of the Supplier for the payment of the Supplier's invoices; or
- 13.17.2 to provide a monetary deposit as security for the payment by the Customer of future invoices.
- 13.17.3 Where the Customer fails to establish and maintain a Direct Debit instruction in accordance with clause 13.17.1, the Supplier shall add a non direct debit administration fee of £30 per invoice raised.
- Where the Supplier holds a monetary deposit provided by the Customer, the Supplier may at any time and without notice to the Customer apply all or part of such deposit in payment or part payment of any unpaid and overdue sums owed by the Customer to the Supplier.
- 13.18 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4 % per annum above the base rate of Barclays Bank PLC from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 13.19 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

14 INTELLECTUAL PROPERTY RIGHTS

- 14.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier or its licensors.

- 14.2 All Intellectual Property Rights in the Supplier Software and the Supplier Software Documentation shall remain the property of the Supplier or its licensors and (without prejudice to any Supplier Licence granted pursuant to the Contract) nothing in the Contract shall be construed as an assignment (in whole or in part) of any such Intellectual Property Rights.

- 14.3 The Supplier hereby grants to the Customer the revocable, non-exclusive, and non-transferable royalty free licence to use the Deliverables in connection with the use or enjoyment by the Customer of the Services.

15 CONFIDENTIALITY

A party (**receiving party**) 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 receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract or any applicable MSA, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 15 shall survive termination of the Contract.

16 DATA PRIVACY

If in the course of providing any of the Services, the Supplier processes any Personal Data on behalf of the customer, the Customer acknowledges and agrees that the Supplier shall do so in the capacity of a Data Processor. In such circumstances the Supplier shall:

- 16.1.1 only process Personal Data to the extent required and for the duration of the provision of the services;
- 16.1.2 only process such data solely in accordance with the Customer's lawful instructions from time to time;
- 16.1.3 ensure that its staff have been appropriately trained and are subject to obligations of confidentiality;
- 16.1.4 ensure that, to the extent any Personal Data is transferred outside of the EEA, appropriate safeguards are put in place in respect of that transfer in accordance with the Data Protection Legislation;
- 16.1.5 adopt and maintain appropriate security measures for processing Personal Data, both in terms of the technology used and how it is managed and otherwise take all security measures required of a Data Processor under the Data Protection Legislation;
- 16.1.6 unless the Customer agrees otherwise, only appoint subprocessors for such Personal Data from the general list of sub-processors maintained by the Supplier from time to time (a copy of which is available to the Customer upon written request);
- 16.1.7 upon written request by the Customer, provide reasonable assistance and information to the Customer (at the Customer's cost) to the extent required of the Supplier as a Data Processor under the Data Protection Legislation; and
- 16.1.8 delete or return to the Customer such Personal Data upon termination or expiry of the MSA (save to the extent the Customer is permitted or required to retain a copy for legal or regulatory reasons or the Personal Data is comprised in general business communications between the parties).
- 16.2 The customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of any Personal Data to the Supplier for the duration and purposes of the relevant services.

17 LIMITATION OF LIABILITY:

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 17.1 Nothing in any Contract shall limit or exclude the Supplier's liability for:
- 17.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 17.1.2 fraud or fraudulent misrepresentation;
 - 17.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 17.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 17.1.5 defective products under the Consumer Protection Act 1987.
- 17.2 Subject to clause 17.1:
- 17.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any of the following:-

(a) any indirect, consequential or special loss (even if the Supplier was aware of the circumstances in which such loss could arise); (b) loss of profits;

- (c) loss of contracts;
- (d) business interruption;
- (e) loss of anticipated savings;
- (f) loss of business opportunity;
- (g) loss of goodwill; (h) loss or corruption of data.

17.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed one million pounds (sterling) (£1,000,000).

- 17.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 17.4 This clause 17 shall survive termination of the Contract.

18 TERMINATION

18.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 18.1.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 30 days after receipt of notice in writing to do so;
- 18.1.2 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 or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect 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;

18.1.3 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 (where a company) 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;

18.1.4 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 the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;

18.1.5 the other party (being an individual) is the subject of a bankruptcy petition or order;

18.1.6 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 its assets and such attachment or process is not discharged within 14 days;

18.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);

18.1.8 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

18.1.9 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;

18.1.10 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 18.1.2 to clause 18.1.9 (inclusive);

18.1.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;

18.1.12 the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

18.1.13 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

18.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

18.3 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods or Software under the Contract or any other contract between the Customer and the Supplier, if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 18.1.2 to clause 18.1.13, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

18.4 On termination of the Contract for any reason:

18.4.1 the Services shall cease;

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

- 18.4.3 any Supplier Licence granted under this Contract shall terminate;
- 18.4.4 any Supplier Lease granted under this Contract shall terminate;
- 18.4.5 the Customer shall immediately cease using the Supplier Software and the Supplier Software Documentation and delete or destroy all copies of the Supplier Software and the Supplier Software Documentation in the possession or control of the Customer and shall provide to the Supplier written confirmation confirming such deletion and destruction;
- 18.4.6 the Customer shall return:-
- (a) any Deliverables which have not been fully paid for;
- (b) all the Supplier Equipment; and
- (c) all Leased Equipment; .
- If the Customer fails to do so, then the Supplier may enter the Customer's premises, disconnect them (if applicable), remove and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 18.4.7 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 18.4.8 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

19 FORCE MAJEURE

- 19.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service, telecommunications service or transport network, 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, pandemic, epidemic or default of suppliers or subcontractors.
- 19.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 19.3 If the Force Majeure Event prevents the Supplier from performing any of its material obligations under the Contract for more than 3 months, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

20 GENERAL

- 20.1 Assignment and other dealings:
- 20.1.1 the Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party; and
- 20.1.2 the Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 20.2 Notices:
- 20.2.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal

place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier or fax;

- 20.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 20.2.1 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission; and
- 20.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 20.3 Severance:
- 20.3.1 if any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract; and
- 20.3.2 if one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 20.4 **Waiver.** A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its 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.
- 20.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 20.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 20.7 **Variation.** Except as set out in the Contract, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.
- 20.8 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 20.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including noncontractual disputes or claims).