



Everyday Communications LTD

Agreement for the supply of Telecommunications services and equipment

- (1) **Everyday Communications LTD** incorporated and registered in England and Wales with company number **11994673** whose registered office is at 330 High Holborn, London, England, WC1V 7QT (the **Supplier**).

AGREED TERMS

1. Interpretation

The definitions and rules of interpretation in this clause apply in this agreement.

1.1 Definitions:

Acceptance Date: the date on which the acceptance of the System by the Customer shall be deemed to have occurred, which shall be the earlier of:

- a) the expiry of five days after the completion of all the Acceptance Tests, unless the Customer has given any written notice under clause 10.3;
- b) the use of the System by the Customer in the normal course.

Acceptance Tests: the tests of the system after installation.

Commencement Date: the date of this agreement.

Completion Date: the estimated date specified in the Implementation Plan (which may be varied in accordance with clause 11) by which the Supplier is to provide the System Ready for Service.

Confidential Information: information of commercial value, in whatever form or medium, disclosed by the party (or any of its Affiliates) to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, and, for clarity, including (in the case of the Supplier's information), information pertaining to customers, pricing and marketing information relating to the System or any of its constituent parts.

Customer Cause: any of the following causes:

- a) any improper use, misuse or unauthorised alteration of the Supplier Software by the Customer;

- b) any use of the Supplier Software by the Customer in a manner inconsistent with the then-current Documentation;
- c) the use by the Customer of any hardware or software not provided by the Supplier or approved by the Supplier in the Technical Specification for use by the Customer in connection with the Supplier Software; or
- d) the use of a non-current version or release of the Supplier Software.

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.
Dispute Resolution Procedure:	the procedure for dealing with disputes under this agreement as set out in clause 39.
Documentation:	the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied by the Supplier.
Good Industry Practice:	the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.
Implementation Plan:	the time schedule and sequence of events for the performance of this agreement set out , which may be varied in accordance with clause 11.
Installation Date:	the estimated date by which the Supplier will complete installation of a specified item of Hardware or a Software Module as specified in the Implementation Plan.
Intellectual Property Rights:	patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), 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:	the licence granted under clause 14.
Manufacturers' Warranties:	the warranties given by any third-party manufacturer in relation to any item of the Supplier Hardware.
Normal Working Hours:	the hours 9am to 6pm GMT Monday to Friday, except Bank Holidays in England.
Permitted Purposes:	the meaning given in clause 18.1.
Personal Data:	data subject to protection under Data Protection Legislation in any jurisdiction.
Price:	the aggregate price for the Work (other than Training and any other Services) and the Licence.
Project Manager:	the Supplier employee appointed under clause 16.2 who has overall responsibility for the Work.
Ready for Service:	installed, tested and having passed or deemed to have passed on the Acceptance Date.
Services:	the services to be provided by the Supplier under this agreement including any data migration referred to in the Technical Specification.
Site(s):	the location(s) at which the System is to be installed
Software Module:	any one of the individual software programs in the Supplier Software.
Supplier Hardware:	all the equipment to be supplied by the Supplier.
Supplier Software:	the Third-Party Software and the Tools.
Support Staff:	those officers, employees, agents or subcontractors of the Supplier or any of its Affiliates connected with this agreement, including those individuals who perform the Supplier's obligations under this agreement.
System:	the system consisting of the Supplier Hardware, the Supplier Software and the Documentation.
Third-Party Licences:	licences for the use of any Third-Party Software.
Third-Party Software:	the software programs proprietary to third parties, listed in, which are to be provided to the Customer without modification.

Tools:	any tools and know-how developed, and methods invented by the Supplier in the course of, or as a result of, carrying out the Work, whether or not developed or invented specifically or used exclusively to carry out the Work.
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.
VAT:	value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.
Work:	all the works, duties and obligations to be carried out by the Supplier under this agreement.

- 1.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.6 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.7 Except where a contrary intention appears, a reference to a clause, schedule or annex is a reference to a clause of, or schedule or annex to, this agreement.
- 1.8 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.9 **Writing** or **written** includes faxes but neither e-mail nor any other form of electronic communication, except where expressly provided to the contrary.
- 1.10 The schedules to this agreement, together with any documents referred to in them, form an integral part of this agreement and any reference to this agreement means this agreement together with the schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the parties.
- 1.11 If any conflict arises between the terms and conditions of this agreement and any provision of any Schedule, the terms and conditions of the schedule shall prevail.
- 1.12 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

2. Scope

- 2.1 The Supplier grants the Licence and shall supply to the Customer, in accordance with this agreement:
- (a) the Supplier Hardware;
 - (b) the Supplier Software and the Documentation; and
 - (c) the Services.
- 2.2 The supply under clause 2.1 and Price are subject to the terms and conditions set out in this agreement.

3. Hardware products to be provided

- 3.1 The Supplier shall supply all items of Supplier Hardware, together with all related user guides and documentation.
- 3.2 The quantity and description of the Supplier Hardware shall be as set out in the Supplier's acknowledgement of order or (if there is no acknowledgment of order) quotation.
- 3.3 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for illustrative purposes only and they do not form part of this agreement.
- 3.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 3.5 The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Supplier Hardware which are required to conform with any applicable legislation or, where the Supplier Hardware is to be supplied to the Customer's specification, which do not materially affect their quality or performance.

4. Hardware testing

Before delivering any item of Supplier Hardware to the Site, the Supplier shall procure that the third party manufacturers carry out reasonable tests to ensure that such item is in operable condition and is capable of meeting the requirements of the Technical Specification once properly installed.

5. Hardware Warranties

- 5.1 The warranties given in this clause 5 are in addition to warranties given in other parts of this agreement.
- 5.2 The Supplier warrants that:

- (a) the Supplier Hardware will be new (except as otherwise specified in this agreement) and of satisfactory quality; and
- (b) as far as it is able, the Supplier will pass on to the Customer the benefits of any Manufacturers' Warranties.

6. Software and documentation

- 6.1 The Supplier shall carry out the Work with reasonable diligence and despatch, and with reasonable skill and expertise, to provide the Supplier Software in accordance with the Technical Specification by the Completion Date.
- 6.2 If Third Party Software is provided, the Supplier shall provide the Third-Party Software to the Customer under the standard licence terms provided by the relevant third parties, copies of which shall be provided to the Customer, and the Customer agrees to be bound to the relevant third parties by such licence.
- 6.3 The Supplier shall provide to the Customer copies of the Documentation containing sufficient up-to-date information for the proper use of the System. Such Documentation may be supplied in electronic form.
- 6.4 The Customer may make such further copies of the Documentation as are reasonably necessary for the use of the System and for training the Customer's personnel in use of the System. The Customer shall ensure that all Supplier's proprietary notices are reproduced in any such copy.
- 6.5 The Customer may provide copies of the Documentation to any third party referred to in clause 18.3 who needs to know the information contained in it, provided that such third party first enters into a confidentiality obligation in accordance with clause 18.3.

7. Services

- 7.1 On the terms and conditions set out in this agreement, the Supplier agrees to:
 - (a) deliver and install the Supplier Hardware and Supplier Software at the Site(s); and
 - (b) integrate the Supplier Hardware and Supplier Software to form the System as specified.

and for the avoidance of doubt, the Supplier may engage a sub-contractor to do or to assist with any of the above.

- 7.2 If requested to do so by the Customer, the Supplier shall enter into a software maintenance and support agreement in a form to be agreed between the parties.

8. Delivery, installation and delays

- 8.1 The Supplier shall supply to the Customer, within a reasonable time, such information and assistance as may be necessary to enable the Customer to prepare the Site(s) for the installation of the relevant item of Supplier Hardware or Supplier Software.

- 8.2 The Supplier shall complete installation of the Supplier Hardware and Software Module at the Site(s) by the Installation Date.
- 8.3 If any delivery is delayed at the request of, or because of the acts or omissions of, the Customer, the Implementation Plan shall be amended to take account of such delay in accordance with clause 11.5. If the Supplier can demonstrate by documentary evidence that the delay has resulted in an increase in cost to the Supplier of carrying out its obligations under this agreement, the Supplier may, at its sole discretion, notify the Customer that it wishes to increase the Price by an amount not exceeding any such demonstrable cost. For the avoidance of doubt, where the parties have agreed that the Supplier's staff will attend a Site at a given date and time, and such staff is unable to do so at the fault or default of the Customer, the Customer shall pay, upon request, the cost of re-booking such staff to attend the Site at a later date as notified to the Customer at the relevant time (of the re-booking). The Supplier may invoice the Customer for any additional monies that become payable in this way within 30 days of notifying the Customer of the increase in costs.
- 8.4 The Supplier shall provide the System Ready for Service on or before the Completion Date.

9. Title to Supplier Hardware

- 9.1 The Supplier Hardware shall be at the risk of the Supplier until delivery to the Customer at the Site(s).
- 9.2 Ownership of the Supplier Hardware shall pass to the Customer upon the Supplier receiving full payment of any fees due and payable to it under this agreement for the Supplier Hardware and Services pursuant to clause 28.9.
- 9.3 If before title to the Supplier Hardware passes to the Customer, the Customer becomes subject to any of the events listed in clause 28.1(d) to 28.1(k) inclusive, or the Customer does not pay the fees due under clause 9.2 within a reasonable time, then, without limiting any other right or remedy the Supplier may have, the Supplier may at any time:
- (a) require the Customer to deliver up all Supplier Hardware in its possession that have not been irrevocably incorporated into another product; and
 - (b) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the relevant Supplier Hardware are stored to recover them.

10. System acceptance tests

- 10.1 Within ten days of its Installation Date, the Acceptance Tests shall be carried out. The Acceptance Tests shall be started as soon as reasonably possible after installation and shall be run continuously during Normal Working Hours. The Supplier shall carry out the agreed Acceptance Tests for the System unless the Customer notifies the Supplier, not later than five days after the Installation Date, that it will carry out the Acceptance Tests. The party carrying out the Acceptance Tests shall give the other party at least 48 hours' notice of the start of the Acceptance Tests and permit the other party to observe all or any part of the testing.

- 10.2 If the System fails to pass the Acceptance Tests, the Customer shall, within 30 days from the completion of the Acceptance Tests, or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 10.3 If the System fails in some material respect to pass any repeated Acceptance Tests within four weeks from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion:
- (a) to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the System on the same terms and conditions. If the System fails, such further tests then the Customer may request a repeat test under this clause 9; or
 - (b) to accept the System subject to such change of acceptance criteria, amendment of the Technical Specification and/or reduction in the Price as, after considering all the relevant circumstances, is reasonable; or
 - (c) if the Supplier is unable to correct material defects within a period of three months from the commencement of Acceptance Tests under clause 10.1, to reject the System as not being in conformity with the agreement, in which event the Customer may terminate this agreement.

11. Implementation Plan and extension of time

- 11.1 Both parties shall perform their obligations under this agreement in accordance with the Implementation Plan.
- 11.2 The Supplier shall complete the Work in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to clause 11.3.
- 11.3 The Supplier shall be given an extension of time for completion of any one or more of the stages in the Implementation Plan if one of more of the following events occurs:
- (a) a force majeure event occurs as described in clause 37; or
 - (b) delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third-party contractors.
- 11.4 If the Supplier is entitled to an extension of time under clause 11.3, it shall give written notice to the Customer not later than seven days after the beginning of the event. Such notice shall specify the event relied on and, in the case of a force majeure event under clause 37, shall estimate the probable extent of the delay.
- 11.5 The Customer Representative and the Project Manager shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances. The Implementation Plan shall be deemed amended accordingly.

12. Payment

- 12.1 The Supplier shall submit invoices in accordance to clause 12. The Customer shall make payment of each invoice by the due date stated in that invoice or within 30 days of receipt of the invoice, whichever is later.

- 12.2 The Price and all other payments stated are net of tax. The Customer shall, in addition, pay to the Supplier the amount of any tax, duty or assessment, including any applicable VAT, which the Supplier is obliged to pay and/or collect from the Customer in respect of any supply under the agreement (other than tax on the Supplier's income).
- 12.3 Where any 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 daily fee rates as amended from time to time;
 - (b) the Supplier's standard daily fee rates are calculated on the basis of an eight-hour day worked between 8.00 am and 5.00 pm on weekdays (excluding weekends and public holidays);
 - (c) the Supplier shall be entitled to charge at an overtime rate of 40% of the normal rate for part days and for time worked by members of the project team outside the hours referred to in clause 12.3(b) on a pro-rata basis;
 - (d) the Supplier shall ensure that all members of the project team complete time sheets recording time spent, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 7.2(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 12. Any expenses, materials and third party services shall be invoiced by the Supplier at cost. Each invoice shall set out the time spent by each member of the project team and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.
- 12.4 Without prejudice to any other right or remedy that the Supplier may have, if the Customer fails to pay the Supplier on the due date the Supplier may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 30% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
 - (b) suspend all or any part of the Services until payment has been made in full.
- 12.5 Time for payment shall be of the essence of the Contract.
- 12.6 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.
- 12.7 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.

13. Intellectual Property Rights

- 13.1 Any Intellectual Property Rights in the System (other than the Third-Party Software) are, and shall remain, the property of the Supplier, and the Supplier reserves the right to grant a licence to use such System to any other party or parties.
- 13.2 The Documentation are proprietary to the Supplier (or the appropriate third-party rights owner(s)) and the Customer acquires no rights in or to the Documentation other than those expressly granted by this agreement.
- 13.3 The Customer shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing that the Supplier may consider necessary or desirable to perfect the right, title and interest of the Supplier in and to the Intellectual Property Rights in the Tools.

14. Licence and documentation

- 14.1 The Supplier grants, subject to the terms of this agreement, the Customer the non-exclusive, non-transferable right to use the Documentation for any purpose related to the Business (**Licensed Purposes**).
- 14.2 The Customer shall comply with the Third-Party Licences and shall indemnify and hold the Supplier harmless against any loss of damage which it may suffer or incur as a result of the Customer's breach of such terms howsoever arising.
- 14.3 The Supplier may treat the Customer's breach of any Third-Party Licence as a breach of this agreement.
- 14.4 The Supplier shall use reasonable efforts to ensure the accurate migration of any data but gives no warranties as to the completeness or accuracy of such migration. The Customer shall be responsible for checking the accuracy and completeness of the migrated data and shall promptly give sufficient details to the Supplier of any inaccuracies or omissions in order to permit the Supplier to correct them. If such data includes Personal Data, the Supplier shall return all copies of such Personal Data to the Customer on completion of the data migration process.

15. Supplier personnel: System and support services

- 15.1 The Supplier undertakes that its employees and contractors, while on the Site(s) or any other premises of the Customer, will comply with all relevant rules and regulations laid down by the Customer from time to time for the behaviour of its own employees and contractors, as notified to the Supplier in writing from time to time. The Supplier shall remove any employee or contractor whom the Customer can demonstrate has failed to comply with such rules, regulations and requirements.
- 15.2 The Supplier alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of the Support Manager and the Support Staff. Save where any acts or omissions are at the direction or under the supervision of the Customer, the Supplier assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Customer.
- 15.3 During the term of this agreement and for a period of six months after its termination neither party shall, without the prior written consent of the other, solicit, or permit any

Affiliate or Associate to solicit, the employment of any person who is employed by the other party in connection with this Agreement.

16. System: Project management

- 16.1 No later than 5 days after the Commencement Date, the Customer shall notify the Supplier of the name and qualifications of the person appointed as the Customer Representative.
- 16.2 The Supplier shall appoint the Project Manager, who shall have the responsibility and commensurate authority for the overall progress of the Work and to whom all questions regarding this agreement can be referred. The name and qualifications of the appointed individual shall be notified in writing to the Customer.
- 16.3 The provision of employees, subcontractors and agents of the Supplier to carry out the Work shall be at the discretion of the Supplier.
- 16.4 The Supplier may replace the Project Manager at any time with another individual with similar qualifications provided that the Supplier has given prior written notice to the Customer of the name and qualifications of the appointed individual.
- 16.5 The Supplier shall:
- (a) take all reasonable steps to maintain continuity in relation to the Support Staff team; and
 - (b) to the extent possible, give the Customer reasonable written notice of any proposed holiday or leave of absence to be taken by the Support Manager.

17. Support services: Customer's obligations

- 17.1 The Customer shall co-operate with the Supplier in any manner reasonably required by the Supplier in order to carry out the Work, including provision of information and data, making available suitably qualified employees and contractors of the Customer and, subject to the Supplier's compliance with the Customer's normal security requirements:
- (a) provide access to the Customer's systems for the purpose of carrying out diagnostics and correction of Defects, provided that such access shall be direct or remote, at the Customer's option, and that, in the latter case, it will be subject to the Supplier's compliance with any additional requirements for security and encryption techniques or software which may from time to time be specified by the Supplier;
 - (b) provide such further access for the Support Staff to the Site(s) as is necessary to carry out the Supplier's obligations under this agreement. The Customer shall obtain for the Supplier all permissions necessary to obtain such access;
 - (c) when the Support Staff are working on the Site(s), provide facilities and supplies reasonably required by the Supplier, such as power and computer consumables.
- 17.2 The Customer shall, at its own expense, provide the equipment necessary at the Site(s) to enable the access referred to in clause 17.1(a) in accordance with the

specifications set out in the Technical Specification. All other costs and expenses for such access incurred by the Seller shall be borne by the Supplier.

- 17.3 The Customer may restrict access to certain areas of its premises or systems on security grounds.
- 17.4 The Customer shall comply, as soon as reasonably practicable, with all the Supplier's reasonable requests for information or assistance.

18. Confidentiality and publicity

18.1 Each party undertakes not to use the other party's Confidential Information otherwise than in the exercise and performance of its rights and obligations under this Agreement (**Permitted Purposes**).

18.2 In relation to the Customer's Confidential Information:

- (a) the Supplier shall treat as confidential all Confidential Information of the Customer supplied under this agreement. The Supplier shall not divulge any such Confidential Information to any person except to its own employees, and then only to those employees who need to know it for the Permitted Purposes. The Supplier shall ensure that its employees are aware of, and comply with, this clause 18; and
- (b) the Supplier may provide any subcontractor authorised under clause 26 with such of the Customer's Confidential Information as it needs to know for the Permitted Purposes, provided that such sub-contractor has first entered into a written obligation of confidentiality owed to the Supplier in terms similar to clause 18.2(a) (which the Supplier shall ensure is adhered to).

18.3 In relation to the Supplier's Confidential Information:

- (a) the Customer shall treat as confidential all Confidential Information of the Supplier contained or embodied in the System or Documentation, or otherwise supplied to the Customer during the performance of this agreement;
- (b) the Customer shall not, without the prior written consent of the Supplier, divulge any part of the Supplier's Confidential Information to any person other than:
 - (i) the Customer's Representative; and
 - (ii) other employees of the Customer who need to know it for the Permitted Purposes; and
- (c) the Customer undertakes to ensure that the persons mentioned in clause 18.3(b) are made aware, before the disclosure of any part of the Supplier's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Customer in terms similar to clause 18.3(a) (which the Customer shall ensure is adhered to).

18.4 The restrictions imposed by clause 18.1, clause 18.2 and clause 18.3 shall not apply to the disclosure of any Confidential Information which:

- (a) is now in, or hereafter comes into, the public domain otherwise than as a result of a breach of this clause 18;
 - (b) before any negotiations or discussions leading to this agreement was already known by the receiving party (or, in the case of the Customer, any of its Affiliates) and was obtained or acquired in circumstances under which the receiving party was (or, in the case of the Customer, the Customer and its Affiliates were) not bound by any form of confidentiality obligation; or
 - (c) is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary).
- 18.5 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall offer reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.
- 18.6 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 18.7 This clause 18 shall remain in full force and effect in the event of any termination of the Licence or this agreement.
- 19. Data protection**
- 19.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 27 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 19.2 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 data controller and the Supplier is the data processor for the purposes of the Data Protection Legislation (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation).
 - (b) the personal data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and the Supplier's other obligations under this agreement.
- 19.3 Without prejudice to the generality of clause 19.1, 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 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 to process Personal Data (**Applicable Laws**);

- (b) ensure that it has in place appropriate technical and organisational measures 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).
 - (c) not transfer any Personal Data outside of the EEA 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;
 - (d) 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;
 - (e) notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - (f) 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
 - (g) maintain complete and accurate records and information to demonstrate its compliance with this clause 27.
- 19.4 Either party may, at any time on not less than 30 days' notice, revise this clause 27 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).

20. Export

- 20.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 20.2 Each party undertakes:
- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
 - (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

21. Warranties

- 21.1 The Supplier warrants that:
- (a) it has the right to license all UK Intellectual Property Rights in and to the Tools and Documentation to the Customer and to provide the Services to the Customer;
 - (b) the System at the Acceptance Date, and for six months after that date, will perform in accordance with the Technical Specification;
 - (c) it will perform the Services in a timely, reliable and professional manner, in conformity with Good Industry Practice by a sufficient number of competent Support Staff with appropriate skills, qualifications and experience, and has and will at all times have the ability and capacity to meet such requirements; and
 - (d) it is in compliance with, and will perform the Services in compliance with, all applicable law and regulations.
- 21.2 The sole remedy for breach of the warranty under clause 5.2 and clause 21.1(b) shall be correction of Defects by the Supplier within a reasonable time from notification by the Customer of the Defect that constitutes such breach.
- 21.3 The warranties set out in clause 21.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this agreement. Without limitation, the Supplier specifically denies any implied or express representation that the System will be fit:
- (a) to operate in conjunction with any hardware items or software products other than with those hardware items and software products that are identified in the Documentation as being compatible with the System; or

- (b) to operate uninterrupted or error free.
- 21.4 The Supplier does not warrant or guarantee that it will be able to rectify all Defects.
- 21.5 Any unauthorised modifications use or improper installation of the System by or on behalf of the Customer shall render all the Supplier's warranties and obligations under this agreement null and void. The Supplier shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of the Supplier.
- 21.6 The Customer acknowledges that the only warranties in relation to the Third-Party Software or the supply thereof are those contained in the licence from the third-party supplier(s) of the same, and that to the extent that any of such warranties are given to the Supplier, it will pass on the benefit of such warranties to the Customer.
- 21.7 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents, to enter into and perform this agreement, and that those signing this agreement are duly authorised to bind the party for whom they sign.

22. Technical Support and Warranty Exclusions

- 22.1 Notwithstanding anything to the contrary in this agreement, the Supplier's obligations do not include any diagnosis and rectification of any fault or defect in or damage to the System resulting from:
 - (a) the Customer's lack of care or neglect (including for the avoidance of doubt any accidental damage);
 - (b) the operation of the System by persons who have not been properly trained in the use of the System (where specified by the Supplier that such training is required) or the use of the System other than that specified or recommended to the Customer by the Supplier or the third party manufacturer of the relevant hardware or software;
 - (c) modification of the System, or any part of it, or the merger of it with any other software or hardware, unless expressly authorised by the Supplier in advance in writing;
 - (d) the use of the System for a purpose for which it was not designed;
 - (e) loss of any software, hardware or any media or documents supplied to the Customer by the Supplier under this agreement;
 - (f) the use of any application or tool to modify, delete or add data on the Supplier Software;
 - (g) any performance testing of the System carried out other than in accordance with this agreement;
 - (h) the failure of any network, cabling, peripheral or telecommunications equipment other than those supplied by the Supplier;

- (i) the use of any operating supplies which are not supplied by the Supplier and which do not conform with the Supplier's specifications;
- (j) failure of any hardware or software of the Customer (including existing hardware or software) not recommended or approved by the Supplier;
- (k) the effect of lighting or any electrical fault upon the System.

22.2 If the Supplier provides any services in respect of the matter stated in clause 22.1 above, it shall be entitled to charge for such services separately on its standard terms and shall quote the Customer accordingly wherever possible. For the avoidance of doubt, the Supplier shall have no obligation to provide any technical support or other services in respect of any hardware or software not supplied by it, including any third party hardware peripherals used by the Customer together or in connection with the System, and any services if so provided shall be at the sole discretion of the Supplier and charged separately.

22.3 Occasionally the Supplier may have to interrupt the Services (if applicable) or change the technical specification of the Services for operational reasons (such as maintenance or upgrades) or because of any emergency. In these circumstances, where possible the Supplier will endeavour to: (i) give the Customer 30 days prior notice of such interruption; and (ii) undertake the maintenance or upgrade out of the business operating hours of the Customer. However, the Customer shall have no claim against the Supplier for any such interruption.

23. Use of the System

23.1 The Customer must not use the System:

- (a) in a way that is in any way unlawful or fraudulent or has any unlawful or fraudulent purpose or effect;
- (b) to send, knowingly receive, upload, download, use or re-use any material which is abusive, indecent, defamatory, obscene or menacing, or in breach of any copyright, confidence, privacy or any other rights of a third party;
- (c) to send or procure the sending of any unsolicited advertising or promotional material other than to its own customers;
- (d) in a way that contravenes any reasonable instructions the Supplier has given to the Customer.

23.2 The Customer shall upon reasonable request from the Supplier provide information regarding the Customer's use of the System without delay.

23.3 The Supplier shall have the right to suspend its obligations under this agreement or terminate the agreement by giving 14 days' written notice to the Customer where it believes, in its absolute discretion, that the Customer is in breach of any provisions of clause 23.1.

24. Third Party Intellectual Property Rights

24.1 The Supplier shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:

- (a) caused or contributed to by the Customer's use of the Supplier Software in combination with software not supplied or approved in writing by the Supplier;
 - (b) based on use of any version of the Supplier Software other than the latest version supplied by the Supplier, if such claim could have been avoided by the use of such supplied version; or
 - (c) where the claim for infringement arises in respect of a feature of the System which was specified by the Customer in the Technical Specification.
- 24.2 If use of the System or receipt of the benefit of the Services becomes, or, in the reasonable opinion of the Supplier, is likely to become, the subject of any such claim, the Supplier may:
- (a) replace all or part of the System with functionally equivalent software or documentation without any charge to the Customer;
 - (b) modify the System as necessary to avoid such claim, provided that the System (as amended) functions in substantially the same way as the System before modification;
 - (c) procure for the Customer a licence from the relevant claimant to continue using the System.
- 25. Limitation of liability**
- 25.1 Except as expressly provided in this agreement and to the fullest extent permitted by applicable law:
- (a) the Supplier shall have no liability for any damage caused by errors or omissions in any information or instructions provided to the Supplier by the Customer in connection with the Services; and
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are excluded from this agreement.
- 25.2 Neither party excludes or limits liability to the other party for:
- (a) fraud or fraudulent misrepresentation;
 - (b) death or personal injury caused by negligence;
 - (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - (d) any matter for which it would be unlawful for the parties to exclude liability.
- 25.3 Subject to clause 25.2, the Supplier shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- (b) any loss or corruption (whether direct or indirect) of data or information;
- (c) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
- (d) any loss or liability (whether direct or indirect) under or in relation to any other contract.

25.4 Clause 25.3 shall not prevent claims, which fall within the scope of clause 25.5, for:

- (a) direct financial loss that are not excluded under any of the categories set out in clause 25.3(a) to clause 25.3(d); or
- (b) tangible property or physical damage.

25.5 Subject to clause 25.2, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall be limited to the Price.

25.6 The parties acknowledge and agree that any dates quoted for delivery of the Work or the Services are approximate only, and that the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Work or the Services that is caused by an event, circumstance or cause within the scope of clause 37 or the Customer's failure to provide the Supplier with adequate delivery instructions.

26. Assignment and subcontracting

26.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under this agreement.

26.2 The Customer shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

26.3 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

26.4 Notwithstanding clause 18, the Supplier may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the Customer which is reasonably necessary to disclose for the purposes of the proposed assignment.

27. Duration

27.1 This agreement shall commence on the Commencement Date and shall continue until the expiry of the Term unless terminated earlier in accordance with clause 28.

28. Termination

- 28.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement and/or the Services with immediate effect by giving written notice to the other party 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 14 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 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 if a notice of intention to appoint an administrator is given or if 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 its 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 28.1(d) to clause 28.1(j) (inclusive);

- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
 - (m) any warranty given in clause 21 is found to be untrue or misleading.
- 28.2 Either party may terminate this agreement in accordance with clause 37.
- 28.3 The Customer may terminate this agreement immediately by written notice to the Supplier under clause 10.3(c).
- 28.4 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination or expiry.
- 28.5 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement, including clause 1, clause 13, clause 18 to clause 23, and clause 28 shall remain in full force and effect.
- 28.6 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.
- 28.7 Notwithstanding its obligations in this clause 28, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 28.8 On termination or expiry of this agreement for any reason, each party shall as soon as reasonably practicable:
- (a) return, destroy or permanently erase (as directed in writing by the other party and, where relevant, in accordance with clause 27.4(f)) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. If required by the other party, it shall provide written evidence (in the form of a letter signed by a director no later than 30 days after termination of this agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 18), provided that the Customer may retain copies of any Supplier Confidential Information incorporated into the Supplier Software or to the extent necessary to allow it to make full use of the Services and any Supplier Software;
 - (b) permanently delete (where relevant, in accordance with clause 27.4(f)) any proprietary software belonging to the other party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party shall provide written confirmation (in the form of a letter signed by a director no later than 30 days after termination of this agreement that this software has been deleted;

- (c) subject to clause 28.8(b), return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them, provided, regarding the Customer's rights under this clause 28.8(c), that the Customer has (if appropriate) paid the Supplier in full for such equipment and materials. Until these are returned or repossessed, the party in possession shall be solely responsible for their safe keeping.

28.9 On termination or expiry of this agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt. For the avoidance of doubt, in the event of termination of this agreement before the expiry of the Term, the amounts which would have been properly due and payable by the Customer in respect of the Services and the Supplier Equipment until the end of the Term, shall become immediately due and the Supplier shall submit an invoice for a lump sum equal to such aggregate amounts, and the Customer shall pay such invoice immediately on receipt.

29. Waiver

No failure or delay by a party 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

30. Rights and remedies

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.

31. Entire agreement

31.1 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.

31.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

32. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

33. Severance

- 33.1 If any provision or part-provision of this agreement 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 this agreement.
- 33.2 If any provision or part-provision of this agreement 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.

34. Counterparts

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

35. Third-party rights

- 35.1 No person other than a party to this agreement shall have any rights to enforce any term of this agreement.
- 35.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement is not subject to the consent of any person that is not a party to this agreement.

36. No partnership or agency

- 36.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 36.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

37. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 2 months, the party not affected may terminate this agreement by giving 14 days' written notice to the affected party.

38. Notices

- 38.1 Any notice required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, at its registered office (if a company) or its principal place of business (in any other case) or as otherwise specified by the relevant party by notice in writing to each other party.
- 38.2 Any notice shall be deemed to have been duly received:
- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
 - (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
 - (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 38.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.
- 38.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

39. Dispute resolution

- 39.1 Any dispute which may arise between the parties concerning this agreement shall be determined as provided in this clause 39.
- 39.2 For the purpose of this clause 39, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.
- 39.3 Unless this agreement has already been terminated by the date of the notice of dispute, the Supplier shall, in every case, continue with the Work with all due diligence regardless of the nature of the dispute and the Customer shall continue to make payments in accordance.
- 39.4 After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this clause 39.4 shall be extendable by mutual agreement):
- (a) within two days, the Project Manager and the Customer Representative shall meet to negotiate in good faith to attempt to settle the dispute;
 - (b) if the Project Manager and the Customer Representative are unable to reach a settlement within seven days from the date of service of the notice, the managing directors of each of the parties shall meet within the following seven days to attempt to settle the dispute; and
 - (c) if no settlement results from the meeting specified in clause 39.4(b) for the following 28 days the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.

39.5 If no settlement is reached under clause 39.4, the matter shall be brought before the English High Court in the most expeditious manner possible, and the parties agree to co-operate in the speedy conduct of such legal proceedings.

40. 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.

41. Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Personal Data, Processing and Data Subjects

1. Processing by the Supplier

The Supplier shall only process Personal Data on the Customer's behalf for the purpose of and as part of providing the Services and performing any other obligations under this agreement. Any such processing shall cease on termination of such agreement save where the Supplier has a legal basis for further processing.

2. Types of personal data and categories of data subject

This may vary from time to time although the parties do not envisage any processing of children's data or special category data.