

Your Computer Department' is a trading name of Regent Systems Ltd

Company Number: 7993625

Registered Office: 15 Foster Avenue, Beeston, Nottingham. NG9 1AE

TERMS & CONDITIONS OF SUPPLY

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Active Device: means electronic devices comprised in the Products;

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

Client: means the person or firm who purchases the Goods and/or Services from Your Computer Department;

Client Request: means a request from the Client for the supply of Services as defined in The Service Specification

Commencement Date: means the date set out overleaf;

Conditions: means these terms and conditions as amended from time to time in accordance with clause 19.8;

Contract: means the contract between Your Computer Department and the Client for the supply of Goods and/or Services in accordance with these Conditions;

Deliverables: means the deliverables set out in the Order;

Delivery Location: has the meaning set out in clause 4.1;

Fault: means any defect, error, failure or other problem in the Software or Hardware which causes the System not to function in accordance with its specifications in any material way, but expressly excluding compatibility and interface issues with any Hardware to the extent that such compatibility and interface issues are due to an error or defect in such Hardware where such are not covered by this Contract;

Force Majeure Event: has the meaning given to it in clause 19.1(a);

Goods: means the goods (or any part of them and including any Software) set out in the Order;

Goods Specification: means any specification for the Goods, including any relevant plans or drawings, that are agreed in writing by the Client and Your Computer Department or as otherwise stated overleaf;

Hardware: means the hardware items owned or otherwise used by the Client as listed in the Order;

Initial Contract Period: means the initial period of time the Contract shall run;

Intellectual Property Rights: means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Know-how: means information which the Client owns or possesses, which Your Computer Department requires for the provision of the Services;

Order: means the Client's order for the supply of Goods and/or Services referred to overleaf, or as set out in the Client's purchase order form (excluding any purported incorporation of the terms and conditions of the Client or any third party) that has been accepted in writing by Your Computer Department, or the Client's other written acceptance of Your Computer Department's quote (on the latter's terms), as the case may be;

Products: means the Hardware and/or Software items to which the Services will apply according to this Contract;

Response Time: means the response time set out in The Service Specification. The Response Time will run from the time the Client Request is made until the end of Working Hours on the Business Day the Client Request is made. The Response Time will then re-commence at the beginning of the next consecutive Business Day. If a Client Request is made outside Working Hours, The Response Time will not begin until the beginning of Working Hours on the next Business Day.

Services: means the services, including the Deliverables, Hardware and System maintenance and/or Software support services, supplied by Your Computer Department to the Client as set out in the Service Specification;

Service Specification: means the description or specification for the Services provided in writing by Your Computer Department to the Client or as otherwise stated overleaf and including advice regarding the System, the installation of the System or parts of the System, whether such parts are supplied by the Company or not, repair, maintenance, reconfiguration or development of the System on behalf of the Client. The support service delivery methods offered being:

- Site visit
- remote control software
- telephone support
- e-mail support
- liaising with Third Party Support Services or a Supplier on the Client's behalf;

Site: means the relevant agreed location stipulated when Services are requested;

Software: means the third party software and firmware incorporated in the Hardware or otherwise used by the Client within the System as listed in the Order;

Supplier: means any third party supplier or sub-contractor who supplies goods or services to Your Computer Department or directly to the Client;

Supplier Materials: has the meaning set out in clause 10.1(g);

System: means the Hardware, Software and associated operating system software used by the Client which may comprise one or more computer systems and including the servers, pc's, laptops, data, media and licensing information, email, internet broadband access, smart phones, telephony and mobile data services, projecting devices, interactive devices, network infrastructure and associated Active Devices;

Third Party Support Services: means any third party which supplies Hardware or Software to the Client which is covered by a warranty, guarantee or software assurance agreement or other support contract between the Client and a third party;

Working Hours: means 09:00 hrs to 17:00 hrs GMT, Monday to Friday, excluding public and bank holidays in England.

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

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) A reference to a clause is to a clause in these Conditions and one to a schedule or paragraph is to such a schedule in this Contract and a paragraph in such a schedule;
- (d) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (e) 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
- (f) a reference to **writing** or **written** includes faxes and e-mails unless otherwise stated.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Client to purchase Goods and/or Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when Your Computer Department issues written acceptance of the Order or countersigns this Contract and the Contract shall be deemed to come into existence on the Commencement Date. For subsequent agreed Orders, the relevant commencement date for such shall be as agreed or if not stated then from the time the Order is agreed.
- 2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Your Computer Department other than the express provisions of this Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by or on behalf of Your Computer Department and any descriptions of the Goods or illustrations or descriptions of the Services contained in Your Computer Department's catalogues or brochures or website are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 Any quotation given by Your Computer Department shall not constitute an offer, and is only valid for the period stated in it or if none then 5 Business Days from its date of issue. It is also subject to any credit checks which Your Computer Department may undertake.
- 2.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.8 Your Computer Department reserves the right to amend the Services Specification and/or the Goods Specification provided that any variations in quality do not materially affect the general commercial use of the Goods and further as required by any applicable statutory or regulatory requirements from time to time.
- 2.9 If the Client instructs Your Computer Department to vary the Goods Specification and / or Services Specification the Client will be responsible for any reasonable increase in charges due to such alteration and also all losses and costs of Your Computer Department and its Suppliers arising.

3. GOODS

- 3.1 The Goods are described in the Goods Specification.

4. DELIVERY AND INSTALLATION OF GOODS

- 4.1 Your Computer Department shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**).
- 4.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods or supply of the Services are approximate only, and the time of delivery/supply is not of the essence. Your Computer Department shall not be liable for any delay in delivery of the Goods or supply of the Services that is caused by a Force Majeure Event or the Client's failure to provide Your Computer Department with adequate delivery instructions or any other instructions or information that are relevant to the supply of the Goods or Services or the Client's failure to provide access for Your Computer Department to its premises.
- 4.4 If Your Computer Department fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Your Computer Department shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Client's failure to provide Your Computer Department with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 4.5 If the Client fails to accept or take delivery of the Goods within 5 Business Days of Your Computer Department notifying the Client that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by Your Computer Department's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the 6th Business Day following the day on which Your Computer Department notified the Client that the Goods were ready; and
 - (b) Your Computer Department shall store the Goods until delivery takes place, and charge the Client for all related costs and expenses (including insurance); and
 - (c) any dates specified by Your Computer Department for delivery and installation are intended to be an estimate. Failure to accept delivery shall not excuse non or late payment of any charges under this Contract. The Client shall indemnify Your Computer Department against all losses, costs and expenses arising from such non delivery.
- 4.6 If 10 Business Days after Your Computer Department has tried to deliver the Goods the Client has not accepted or taken delivery of them, Your Computer Department may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Client for any excess over the price of the Goods or charge the Client for any shortfall below the price of the Goods.
- 4.7 Your Computer Department may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment.
- 4.8 The Goods may be delivered by Your Computer Department in advance of the quoted delivery date on giving reasonable notice to the Client.
- 4.9 Delivery shall be made during Working Hours. Your Computer Department may levy additional charges for any deliveries made outside such hours at the Client's request.
- 4.10 The Client shall be responsible (at the Client's cost) for preparing the Delivery Location for the delivery of the Goods and for the provision of all necessary access and facilities reasonably required to deliver and install the Goods. If Your Computer Department is prevented from carrying out delivery or installation on the specified date because no or insufficient such preparation has been carried out, Your Computer Department may levy additional charges to recover its loss and cost arising from this event.
- 4.11 On the delivery of Goods, the Client shall be required to sign to confirm safe receipt of all the items listed in the accompanying delivery note and also that there is no evident damage to packaging or seals ("**Proof of Delivery**"). If security seals have been broken then the Client must note that on the Proof of Delivery and reject the Goods. If the Client does not reject them, then Your Computer Department has no responsibility for any damage, loss or failure to conform to specification and the Client receives the Goods at its own risk and shall pay in full for them. Without prejudice to the above, Your Computer Department shall not be liable for discrepancies or damage evident on delivery where no note of such is placed on the Proof of Delivery and delivery is accepted by the Client.
- 4.12 If the Goods are delivered damaged or items are missing or the wrong Goods have been provided but this was not evident on delivery, then the Client must notify Your Computer Department (and its carrier / Supplier if applicable) within 24 hours of delivery (or such shorter period as Your Computer Department has notified the Client in advance in line with its carrier's or Supplier's requirements) and follow any relevant returns policy as needed but Your Computer Department shall not be responsible for any damage, shortage or loss in transit, if the Goods have not been handled in accordance with Your Computer Department's stipulations. Any remedy under this condition 4.12 shall, without prejudice to clauses 5.1(e) and (f), be limited, at the option of Your Computer Department, to the replacement or repair of any Goods which are proven to Your Computer Department's satisfaction to have been lost, damaged in transit or not despatched.
- 4.13 The returns policy of Your Computer Department, or if more stringent or limited than those of any carrier used or any Supplier supplying direct to the Client as indicated in advance of delivery, shall apply and all communication of returns must be notified to Your Computer Department in sufficient time for it to claim under the third party delivery arrangements. If such have not been notified in time then Your Computer Department shall have no liability under this Contract for such Goods and payment must be made for them in full.
- 4.14 The Goods shall remain as chattels and severable from any land, buildings or other Goods of the Client to which they may become attached.
- 4.15 The installation of the Goods shall not be complete until such time as Your Computer Department has notified to the Client in writing.
- 4.16 The Client shall indemnify Your Computer Department against any liability suffered for breach by the Client of any duty imposed upon it under any relevant health and safety and environmental legislation in respect of any of Your Computer Department employees or agents or Suppliers.

5. QUALITY OF GOODS

5.1 Subject to clause 14, Your Computer Department warrants that for a period of 12 months from the date of delivery but only 90 days if Software and only 30 days if the Goods are pre-used or refurbished (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with the Goods Specification;
- (b) be free from material defects in design, material and workmanship;
- (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- (d) be fit for any purpose held out by Your Computer Department;

provided that:

- (e) where the Goods have not been manufactured by Your Computer Department then the only warranty given is that Your Computer Department shall pass on, so far as their terms allow, the benefit of the warranties given to it by the manufacturer or their Supplier and if sourced by Your Computer Department then in the terms also of 5.1(d) above; and
- (f) without prejudice to (e) above, where the Goods comprise or include software then no warranty is given that they are or will remain bug-free and where the Goods require the software to be updated in accordance with releases made available by the Supplier then any liability is subject to the Client having had such installed within a reasonable period of time from release of the update.

5.2 Subject to clause 5.3, if:

- (a) the Client gives notice in writing during the Warranty Period within 10 Business Days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1 and clause 5.1(e) does not in fact apply;
- (b) Your Computer Department is given a reasonable opportunity of examining such Goods; and
- (c) the Client (if asked to do so by Your Computer Department) returns such Goods to Your Computer Department's place of business at the Client's cost unless Your Computer Department determines that the Goods are defective or should otherwise be replaced under this Contract in which case the reasonable costs of return of the Client shall be credited back,

Your Computer Department shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full (save in each case as to any consumables).

5.3 Your Computer Department shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

- (a) the Client makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Client failed to follow Your Computer Department's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of Your Computer Department following any drawing, design or Goods Specification or request supplied by the Client;
- (d) the Client alters or repairs or has altered or repaired such Goods without the written consent of Your Computer Department;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards;
- (g) the total charge for the Goods has not been paid.

- 5.4 The above warranty does not include the cost of labour, collection or delivery of the Goods to or from the Client for which Your Computer Department shall be entitled to charge.
- 5.5 Except as provided in this clause 5, Your Computer Department shall have no liability to the Client in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by Your Computer Department under clause 5.2.

6. INSPECTION AND TESTING OF GOODS

- 6.1 Where stated in the Order Your Computer Department shall:
- (a) test and inspect the Goods on delivery to verify that they comply with the requirements of the Contract; and
 - (b) if so requested by the Client, give the Client reasonable advance notice of such tests (which the Client shall be entitled to attend).

7. SOFTWARE LICENCE

- 7.1 If Your Computer Department refers to a Software licence in its quote, the price of the Goods excludes the licence fee for the Client's right to use the Software unless stated otherwise.
- 7.2 If the Client is provided with any Software licence in respect of the Software, the Client shall sign and return it to Your Computer Department within seven days of installation of the software, unless the licence has been supplied on a "shrink-wrap" or "click-wrap" basis or has been registered or activated with the software vendor.
- 7.3 If no Software licence has been provided to the Client, the Client hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:
- (a) the Client shall not copy (except to the extent permissible under applicable law or for normal operation of the Goods), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without Supplier's prior written consent;
 - (b) the Client shall not use the Software on any equipment other than the Goods and relevant Hardware to the extent allowed under the terms of the licence, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
 - (c) such licence shall be terminable by either party on 28 days' written notice, provided that Your Computer Department may only terminate if the continued use or possession of the Software by the Client infringes the developer's or a third party's rights, or Your Computer Department is compelled to do so by law, or if the Client has failed to comply with any term of the Contract; and
 - (d) on or before the expiry of this licence, the Client shall return to Your Computer Department all copies of the Software in its possession.
- 7.4 In relation to the Software:
- (a) the Client acknowledges that it is buying only the media on which the Software is recorded and the accompanying user manuals;
 - (b) nothing contained in these Conditions shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals; and
 - (c) the Client shall be subject to the rights and restrictions imposed by the owner of the Intellectual Property Rights in the Software and user manuals, and shall comply with all licence agreements, terms of use and registration requirements relating to them.

8. TITLE AND RISK

- 8.1 The risk in the Goods shall pass to the Client on completion of delivery.
- 8.2 Title to the Goods shall not pass to the Client until Your Computer Department has received payment in full (in cash or cleared funds) for:
- (a) the Goods; and

- (b) any other goods and services that Your Computer Department has supplied to the Client in respect of which payment has become or later becomes due under this Contract.

8.3 Until title to the Goods has passed to the Client, the Client shall:

- (a) hold the Goods on a fiduciary basis as Your Computer Department's bailee;
- (b) store the Goods separately from all other trading goods held by the Client so that they remain readily identifiable as Your Computer Department's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Your Computer Department's behalf from the date of delivery;
- (e) notify Your Computer Department immediately if it becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(l); and
- (f) give Your Computer Department such information relating to the Goods as Your Computer Department may require from time to time,

but the Client may use the Goods in the ordinary course of its business.

8.4 If before title to the Goods passes to the Client the Client becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(l), or Your Computer Department reasonably believes that any such event is about to happen and notifies the Client accordingly, then, provided the Goods have not been irrevocably incorporated into another product, and without limiting any other right or remedy Your Computer Department may have, Your Computer Department may at any time require the Client to deliver up the Goods and, if the Client fails to do so promptly, enter any premises of the Client or of any third party where the Goods are stored in order to recover them.

9. SUPPLY OF SERVICES

- 9.1 Your Computer Department shall provide the Services to the Client in accordance with the Service Specification in all material respects.
- 9.2 Your Computer Department shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order or schedule to this Contract, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 9.3 Your Computer Department shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Your Computer Department shall notify the Client in any such event.
- 9.4 Your Computer Department warrants to the Client that the Services will be provided using reasonable care and skill.
- 9.5 When the Services include the provision of System support then the additional provisions in the schedule shall apply unless stated otherwise in the agreed Order.

10. CLIENT'S OBLIGATIONS

- 10.1 The Client shall:
 - (a) ensure that the terms of the Order and (if submitted by the Client) the Goods Specification are complete and accurate;
 - (b) co-operate with Your Computer Department in all matters relating to the Services;
 - (c) provide Your Computer Department, its employees, agents and Suppliers, with access to the Client's premises, office accommodation and other facilities as reasonably required by Your Computer Department to provide the Services;
 - (d) provide Your Computer Department with such information and materials as Your Computer Department may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - (e) prepare the Client's premises for the supply of the Services;

- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and
 - (g) keep and maintain all materials, equipment, documents and other property of Your Computer Department (**Supplier Materials**) at the Client's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to Your Computer Department, and not dispose of or use the Supplier Materials other than in accordance with Your Computer Department's written instructions or authorisation.
- 10.2 If Your Computer Department's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):
- (a) Your Computer Department shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays Your Computer Department's performance of any of its obligations;
 - (b) Your Computer Department shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from Your Computer Department's failure or delay to perform any of its obligations as referred to in this clause 10.2; and
 - (c) The Client shall reimburse Your Computer Department on written demand for any costs or losses sustained or incurred by Your Computer Department arising directly or indirectly from the Client Default.

11. CHARGES AND PAYMENT

- 11.1 The price for Goods shall be the price set out in the relevant Order or, if no price is quoted, the price set out in Your Computer Department's published price list as at the date of delivery or performance. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Client when it pays for the Goods.
- 11.2 Where the price for the Goods and/or for installation Services (**Price**) exceeds £100 (inclusive of VAT), unless otherwise agreed in writing the whole of the Price for the Goods shall be payable with the Order. The payment for Installation Services becomes due upon completion of the installation.
- 11.3 The charges for Services shall be on a time and materials basis and:
- (a) the charges shall be calculated in accordance with Your Computer Department's standard time-based fee rates or as set out in the Order or if not stated for support then as stated in the Service Specification;
 - (b) where Your Computer Department's standard daily fee rates for each individual person apply, these are calculated on the basis of Working Hours worked on Business Days other than weekends;
 - (c) Your Computer Department shall be entitled to charge an overtime rate of 150 per cent of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 11.3(b) after emailed or verbal approval from the Client; and
 - (d) Your Computer Department shall be entitled to charge the Client for any expenses reasonably incurred by the individuals whom Your Computer Department 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 Suppliers and required by Your Computer Department for the performance of the Services, and for the cost of any materials.
- 11.4 Your Computer Department reserves the right to:
- (a) Increase its standard fee rates for the charges for the Services, provided that such charges cannot be increased more than once in any 12 month period. Your Computer Department will give the Client written notice of any such increase at least 1 month before the proposed date of the increase. If such increase is not acceptable to the Client, it shall notify Your Computer Department in writing within 2 weeks of the date of Your Computer Department's notice and Your Computer Department shall have the right without limiting its other rights or remedies to terminate the Contract by giving at least 1 weeks' written notice to the Client; and
 - (b) increase the price of the Goods and related Services, by giving notice to the Client at any time before delivery, to reflect any increase in the cost of the Goods to Your Computer Department that is due to:

- (i) any factor beyond the control of Your Computer Department (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, overheads, materials and other manufacturing costs);
 - (ii) any request by the Client to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Client in respect of the Goods or failure of the Client to give Your Computer Department adequate or accurate information or instructions in respect of the Goods.
- 11.5 In respect of Goods, Your Computer Department shall invoice the Client on or at any time after completion of delivery. In respect of Services, Your Computer Department shall invoice the Client on a monthly basis in advance unless a different frequency is stated in the Order.
- 11.6 The Client shall pay each invoice submitted by Your Computer Department:
- (a) within 30 days of the date of the invoice; and
 - (b) in full and in cleared funds to a bank account nominated in writing by Your Computer Department or by cheque, and
- time for payment shall be of the essence of the Contract.
- 11.7 All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax or other sales tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Your Computer Department to the Client, the Client shall, on receipt of a valid VAT invoice from Your Computer Department, pay to Your Computer Department such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods. This does not affect any payments on account required under this Contract.
- 11.8 Each party shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and neither shall be entitled to assert any credit, set-off or counterclaim against the other in order to justify withholding payment of any such amount in whole or in part.
- 11.9 If the Client fails to make payment in full on the due date (**Due Date**), the whole of the balance of the price then outstanding under this Contract shall become immediately due and payable and, without prejudice to any other right or remedy available to Your Computer Department, Your Computer Department shall be entitled, without limiting any other right or remedy, to:
- (a) charge interest on the overdue amount at the rate of 8 per cent per annum above the then current Barclays Bank plc.'s (or if none then that of the bankers of Your Computer Department) base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly;
 - (b) terminate the Contract or suspend any further deliveries of Goods and/or performance of Services (whether ordered under the same contract or not) to the Client;
 - (c) appropriate any payment made by the Client to such of the Goods and/or Services (or the Goods and/or Services supplied under any other contract between the Client and Your Computer Department) as it thinks fit (despite any purported appropriation by the Client);
 - (d) suspend all further manufacture, delivery, installation or warranty service until payment has been made in full and the Client shall indemnify Your Computer Department against any losses or expenditure suffered by Your Computer Department as a result of such suspension (including storage charges);
 - (e) stop any Goods in transit; and
 - (f) a general lien on all Goods and property belonging to the Client, exercisable in respect of all sums lawfully due from the Client to Your Computer Department. Your Computer Department shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such Goods or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.
- 11.10 Any discount included in the Order is subject to payment in full within these payment terms and in default, Your Computer Department reserves the right to dis-apply the discount and raise an invoice for such payable by return.

12. INTELLECTUAL PROPERTY RIGHTS

- 12.1 Subject to Clause 12.2, all Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Your Computer Department and such shall be licensed to the Client for use internally within its business but not for resale other than to the successor of its business.
- 12.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Client's use of any such Intellectual Property Rights is conditional on Your Computer Department obtaining a licence from the relevant licensor on such terms as will entitle Your Computer Department to license such rights to the Client or a direct licence.
- 12.3 All Supplier Materials are the exclusive property of Your Computer Department.
- 12.4 The Client shall not take any action to jeopardise, limit or interfere in any manner with the title, interests or rights of Your Computer Department (or of any Supplier) with respect to Services and/or Goods including, its or their Intellectual Property Rights.
- 12.5 The Client shall indemnify Your Computer Department against all direct and indirect liabilities, costs, expenses, damages and losses (including all legal and other reasonable professional costs and expenses) suffered or incurred by Your Computer Department in connection with any claim made against Your Computer Department for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Your Computer Department performing this Contract. This clause 12.5 shall survive termination of the Contract.

13. CONFIDENTIALITY

- 13.1 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 suppliers, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or suppliers as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or suppliers are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 13 shall survive termination of the Contract.
- 13.2 The provisions of clause 13.1 shall not apply to:
 - (a) information that has come into the public domain other than by breach of this clause or any other duty of confidence;
 - (b) information that is obtained from a third party without breach of this clause or any other duty of confidence;
 - (c) information that is known by either party, in connection with the other party, and which has been disclosed to either party by a third party, other than by you or us or a contractor of either of them and not in breach of any duty of confidentiality;
 - (d) information that is trivial or obvious;
 - (e) information disclosed to the professional advisers and funders of either party, provided that such persons are under an obligation of confidentiality no less onerous than that contained in this clause 13; and/or
 - (f) information that is required to be disclosed by a government body or court of competent jurisdiction or by operation of law or in order to comply with the rules of a recognised stock exchange.

14. LIMITATION OF LIABILITY:

- 14.1 Nothing in these Conditions shall limit or exclude Your Computer Department's liability for:
 - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or

- (e) defective products under the Consumer Protection Act 1987.

14.2 Subject to clause 14.1:

- (a) Your Computer Department shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty (howsoever arising), misrepresentation (innocent or negligent), restitution or otherwise, for any:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of goods; or
 - (vi) loss of contract; or
 - (vii) loss of use; or
 - (viii) loss of turnover; or
 - (ix) loss of sales; or
 - (x) loss of revenue; or
 - (xi) loss or corruption of data or information or software; or
 - (xii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; arising under or in connection with the Contract; and
- (b) Your Computer Department's total liability to the Client (whether in the form of refund, the additional cost of remedial Services and/or replacement Goods or otherwise) in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty (howsoever arising), misrepresentation (innocent or negligent), restitution or otherwise, shall in no circumstances exceed:
 - (i) Where the event is covered by Your Computer Department insurance, the amount that it actually recovers from its insurers; and
 - (ii) Where the event is not covered by insurance as stated in clause 14.2(b)(i) above, the total in aggregate paid in the previous 12 calendar months under this Contract by the Client for the particular Goods and / or relevant performance of the Services to which the claim relates.

14.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

14.4 This clause 14 shall survive termination of the Contract.

15. TERMINATION

- 15.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice (other than by email) to the other party if:
- (a) 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 28 days after receipt of notice in writing (other than by email) of the breach;
 - (b) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being 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;

- (c) 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;
 - (d) 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;
 - (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
 - (f) 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 21 days;
 - (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 (being a company);
 - (h) a floating charge holder over the assets of the other party (being a company) 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) 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 15.1(b) to clause 15.1(i) (inclusive);
 - (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
 - (l) 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.
- 15.2 Without limiting its other rights or remedies, Your Computer Department may terminate the Contract:
- (a) If for Services by giving the Client not less than 1 months' written notice.
 - (b) with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.
- 15.3 The Client may terminate the Contract for Services at any time after the initial contract period has expired by giving Your Computer Department not less than 1 months' written notice but otherwise no Order which has been accepted by Your Computer Department may be cancelled by the Client, except with the agreement in writing of Your Computer Department and provided that the Client indemnifies Your Computer Department in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Your Computer Department as a result of cancellation.
- 15.4 Without limiting its other rights or remedies, Your Computer Department shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Client and Your Computer Department if:
- (a) the Client fails to pay any amount due under this Contract on the due date for payment; or
 - (b) the Client becomes subject to any of the events listed in clause 15.1(b) to clause 15.1(l), or Your Computer Department reasonably believes that the Client is about to become subject to any of them.

16. CONSEQUENCES OF TERMINATION

- 16.1 On termination of the Contract for any reason:
- (a) the Client shall immediately pay to Your Computer Department all of Your Computer Department's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied and/or committed but for which no invoice has yet been submitted, Your Computer Department shall submit an invoice, which shall be payable by the Client immediately on receipt;

- (b) the Client shall return all of the Supplier Materials, Goods and any Deliverables which have not been fully paid for. If the Client fails to do so, then Your Computer Department may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) 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;
- (d) all payments payable to Your Computer Department under this Contract shall become due immediately despite any other provision;
- (e) Your Computer Department will at a mutually convenient time arrange a visit to the Site and under the Client's direct supervision (or its appointed representatives direct supervision) remove any remote control software or enable the Client to change such remote control account passwords and passwords for other methods of remote system access that may be present, to those known to the Client only;
- (f) Your Computer Department shall provide, within a reasonable time of receipt of payment as under (d) above, a System handover document detailing the settings of the System. This System handover document will not be an exhaustive list of the System settings but will be comprehensive enough to allow immediate interim support by another IT support company. This document will need to be amended immediately to reflect the changes made as under (e) above;
- (g) A Services termination form will be signed by both Parties to this Contract signifying the satisfactory completion of matters under (e) and (f) and
- (h) clauses and paragraphs which expressly or by implication have effect after termination shall continue in full force and effect.

17. DATA PROTECTION / PERSONAL DETAILS

- 17.1 Your Computer Department warrants that in so far as applicable to Software and Services:
- (a) Your Computer Department will take reasonable commercial efforts in accordance with appropriate security practice to maintain sufficient technical and organisational measures to ensure the security and integrity of its computer and other information systems to prevent the unauthorised disclosure, copying or use of confidential information or personal data and Your Computer Department warrants that it will comply with the seventh principle of the Data Protection Act 1998; and
- 17.2 Your Computer Department will act only on the instructions of the Client in respect of any personal data that it processes on behalf of the Client.
- 17.3 Both parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of the Contract. Where applicable the expressions used in this clause shall have the meanings given to them in the Data Protection Act 1998.
- 17.4 Your Computer Department may retain personal data supplied by the Client, and are hereby authorised to use such, for the following purposes:
- (a) provision of the Services to the Client;
 - (b) keeping of a record for a reasonable period after termination of your Services;
 - (c) operation and enforcement of this Contract;
 - (d) technical maintenance;
 - (e) providing information about other services offered by Your Computer Department;
 - (f) transferring it to another company in the event of a sale of Your Computer Department or its business; and
 - (g) legal compliance including disclosing it to any third party who Your Computer Department reasonably consider has a legitimate interest in any such investigation or its outcome.
- 17.5 It is the Client's responsibility to keep the personal data that is provided to Your Computer Department up to date. Your Computer Department may send notices or other information to the Client at the address given. The Client must notify Your Computer Department immediately of any change to relevant personal data.

18. OWNERSHIP OF SOFTWARE, DATA AND KNOW-HOW

SOFTWARE

- 18.1 The Client owns or is authorised to sub-license all copyright and other intellectual property rights in the Software.
- 18.2 The Client grants a non-transferable, non-assignable (except to Your Computer Department's successor), non-exclusive licence to Your Computer Department to use the Software during this Contract on the terms and conditions set out in this paragraph (the '**Licence**') for the purposes of providing the Services.
- 18.3 Subject to paragraph 18.4 Your Computer Department and Client agree that:
 - (a) the Software and all copies of it will remain at all times the property of the Client and that Your Computer Department is not entitled to any rights or interests in the Software other than those expressly granted in this Contract;
 - (b) the Software is confidential information of the Client and Your Computer Department will not disclose any of the Software or supply any copies of any of it to any person other than in the performance of the Services under the terms of this Contract, including appropriate obligations of confidentiality;
 - (c) Your Computer Department will not use any Software directly or indirectly otherwise than in connection with providing the Services;
 - (d) Your Computer Department will not permit any copy of the Software to be made except for reasons of providing the Services.
- 18.4 Copyright and all other intellectual property rights made by Your Computer Department in any modifications or enhancements to the Software will vest absolutely in Your Computer Department and Your Computer Department reserves the right to grant licences to use such modifications and enhancements to the Client and any third parties.
- 18.5 The Client will indemnify Your Computer Department against any expense, loss or damage incurred by Your Computer Department as a result of any claim or allegation that Your Computer Department's licensed use of the Software infringes the intellectual property rights of a third party.
- 18.6 Upon termination of this Contract, the Licence will terminate, and Your Computer Department will return Software in its possession (if any) to the Client.

DATA AND KNOW-HOW

- 18.7 The Client grants Your Computer Department a non-exclusive, royalty-free licence to use Know-how for the purposes of fulfilling Your Computer Department's obligations to provide the Services. Your Computer Department undertakes not to use or otherwise deal with the Know-how for any other purpose, save as allowed under clause 13.
- 18.8 For the avoidance of doubt, the parties agree that all data passed to Your Computer Department by the Client or generated in the course of the Services will remain at all times the property of the Client. The Client grants to Your Computer Department a non-exclusive, royalty-free licence to use the Client's data as necessary for the purpose of fulfilling Your Computer Department's obligations under this Contract.
- 18.9 Your Computer Department will not acquire any right in the Client's data. Your Computer Department will take all necessary steps to ensure that it will not use nor reproduce any such data which comes into its possession or control except as required to provide the Services under this Contract or as allowed under clause 13.
- 18.10 The Client will be responsible for maintaining secure copies and backups of all data and Know-how irrespective of any Services, Goods or Deliverables under this Contract.

19. GENERAL

- 19.1 Force majeure:
 - (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of Your Computer Department including but not limited to strikes, lock-outs or other industrial disputes

(whether involving the workforce of the party or any other party), failure of a utility service or transport or fuel or communications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, injury, illness, breakdown of plant or machinery, fire, flood, storm, exceptionally severe weather or default of suppliers or subcontractors.

- (b) Your Computer Department shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- (c) If the Force Majeure Event prevents Your Computer Department from providing any of the Services and/or Goods for more than 8 weeks, Your Computer Department shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Client. The Client shall thereupon be liable to pay for the proportion of work completed and committed and for Goods delivered and those committed.

19.2 Assignment and subcontracting:

- (a) Your Computer Department may at any time assign, transfer, 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.
- (b) The Client shall not, without the prior written consent of Your Computer Department, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

19.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number or by email to the email address of the main contact at the relevant party or such other as is notified from time to time.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or 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, on the next Business Day after transmission. In proving service or delivery of a notice by email, it shall be sufficient to prove that the party receiving the notice has acknowledged receipt but otherwise if not acknowledged within 24 hours then a hard copy of the notice shall be sent by another means referred to in this clause instead.
- (c) This clause 19.3 shall not apply to the service of any proceedings or other documents in any legal action.

19.4 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing (not by email) 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 preclude or restrict its further exercise. 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.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

19.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- (c) The Client agrees that:
 - (i) it has accepted these terms and conditions in the knowledge that Your Computer Department's liability is limited and that the prices and charges payable have been calculated accordingly. The Client is advised to make its own insurance arrangements if it desires to limit further its exposure to risk or if it requires further or different cover. Your Computer Department will be willing to provide

reasonable assistance to the Client if the Client requests Your Computer Department to make enquiries about increasing cover on the Client's behalf provided that the Client recognises that this will result in increased charges being passed on to the Client; and

- (ii) it is technically impracticable to provide Services free of faults at all times and it is accepted that the Services will be provided on this basis.

- 19.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 19.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 19.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing (not email) and signed by Your Computer Department but additional Orders can be agreed to be included by email on the basis that these Conditions always apply.
- 19.9 Governing law and jurisdiction: This Contract, 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.