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DEFINITIONS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in these terms of service (**Conditions**).

Contract: the Customer's Order confirmation and the Supplier's acceptance of it, or the Customer's acceptance of a quotation for Services by the Supplier under condition 2.2.

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

In-put Material: all Documents, information and materials provided by the Customer relating to the Services, including computer programs, data, reports and specifications.

Intellectual Property Rights: copyright and related rights, rights in goodwill unfair competition rights, rights in computer software, database right, 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.

Pre-existing Materials: all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract including computer programs, data, reports and specifications.

Order Confirmation: being the document providing the Customer's details and specific Contract terms in relation to the Services provided for under the Contract.

Services: the services to be provided by the Supplier under the Contract as set out in the Order Confirmation.

Supplier's Manager: the Supplier's manager for the Services appointed under condition 4.2.

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





- 1.2 Condition and paragraph headings shall not affect the interpretation of these conditions.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 The Order Confirmation forms a part of the Contract and shall have effect as if set out in full in the body of these Conditions and any reference to the Contract includes the Order Confirmation.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.7 A reference to **writing** or **written** includes faxes and e-mail.
- 1.8 Where the words **include(s)**, **including** or **in particular** are used in these terms and conditions, they are deemed to have the words **without limitation** following them and where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.
- 1.9 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.10 References to **conditions** are to the conditions of the Contract.

2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall:
- (a) apply to and be incorporated into the Contract; and
 - (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's Order Confirmation, confirmation of order, acceptance of a quotation or specification, or implied by law, trade custom, practice or course of dealing.





- 2.2 The Customer's Order confirmation, or the Customer's acceptance of a quotation for Services by the Supplier, constitutes an offer by the Customer to purchase the Services specified in it on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:
- (a) by a written acknowledgement issued and executed by the Supplier; or
 - (b) (if earlier) by the Supplier starting to provide the Services,

when a contract for the supply and purchase of those Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any Order Confirmation or other Document shall not govern the Contract.

- 2.3 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

3. COMMENCEMENT AND DURATION

- 3.1 The Services supplied under the Contract shall be provided by the Supplier to the Customer from the date of acceptance by the Supplier of the Customer's offer in accordance with condition 2.2.
- 3.2 The Services supplied under the Contract shall continue to be supplied for a period of three months from the date of this Agreement and, after that, shall continue to be supplied for successive single month periods unless the Contract is terminated in accordance with condition 12.

4. SUPPLIER'S OBLIGATIONS

- 4.1 The Supplier shall use reasonable endeavours to manage the Services in accordance in all material respects, with the Order Confirmation Form.
- 4.2 The Supplier shall appoint the Supplier's Manager who shall have authority contractually to bind the Supplier on all matters relating to the Services. The Supplier shall use reasonable endeavours to ensure that the same person acts as the Supplier's Manager throughout the term of the Contract, but may replace him from time to time where reasonably necessary in the interests of the Supplier's business.





5. CUSTOMER'S OBLIGATIONS

5.1 The Customer shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide, for the Supplier, its agents, sub-contractors and employees, in a timely manner and at no charge, access to the Customer's data as requested by the Supplier;
- (c) provide, in a timely manner, such In-put Material and other information as the Supplier may request and ensure that it is accurate in all material respects; and
- (d) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, and the use of In-put Material insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment in all cases before the date on which the Services are to start.

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

5.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

5.4 The Customer shall not, without the prior written consent of the Supplier, at any time from the date of the Contract to the expiry of twenty (20) months after the last date of supply of the Services, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee of the Supplier in the provision of the Services.





5.5 Any consent given by the Supplier in accordance with condition 5.4 shall be subject to the Customer paying to the Supplier a sum equivalent to 60% of the then current annual remuneration of the Supplier's employee or, if higher, 60% of the annual remuneration to be paid by the Customer to that employee.

6. CHANGE CONTROL

6.1 If the Customer wishes to change the scope or execution of the Services, it shall submit details of the requested change to the Supplier in writing.

6.2 If either party requests a change to the scope or execution of the Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:

- (a) the likely time required to implement the change;
- (b) any variations to the Supplier's charges arising from the change; and
- (c) any other impact of the change on the terms of the Contract.

6.3 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. The Supplier may, from time to time, change the Services, and where practicable, will give the Customer at least six weeks notice of any change.

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

6.5 The Supplier may charge for its time spent in assessing a request for change from the Customer on a time and materials basis in accordance with condition 7.

7. CHARGES AND PAYMENT

7.1 The Services are provided in accordance with the rates set out in the Order Confirmation.

7.2 All charges quoted to the Customer shall be exclusive of VAT which the Supplier





shall add to its invoices at the appropriate rate.

- 7.3 The Supplier can invoice the Customer monthly for its charges for time, expenses, related disbursements and materials (together with VAT where appropriate).
- 7.4 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt.
- 7.5 Without prejudice to any other right or remedy that it 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 8% 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 the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (b) suspend all Services until payment has been made in full.
- 7.6 Time for payment shall be of the essence of the Contract.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1 As between the Customer and the Supplier, subject to condition 8.2, the Customer licenses all such rights to the Supplier on a royalty-free, non-exclusive and non-transferable basis to such extent as is necessary to enable the Supplier to make reasonable provision of the Services. If the Supplier terminates the Contract under condition 12.2, this licence will automatically terminate.
- 8.2 The Customer acknowledges that, where the Supplier does not own any Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

9. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY

- 9.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, processes or initiatives which are of a confidential nature and have





been disclosed to the Customer by the Supplier, its employees, agents or sub-contractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.

9.2 This condition 9 shall survive termination of the Contract, however arising.

10. LIMITATION OF LIABILITY

10.1 This condition 10 sets out the entire financial liability of the Supplier to the Customer solely in respect of any breach of the Contract.

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

10.3 Nothing in these Conditions limits or excludes the liability of the Supplier for death or personal injury resulting from negligence.

10.4 Subject to condition 10.2 and condition 10.3:

- (a) the Supplier shall not be liable, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for:
 - (i) loss of profits; or
 - (ii) loss of business; or
 - (iii) depletion of goodwill and/or similar losses; or
 - (iv) loss of anticipated savings; or
 - (v) loss of contract; or
 - (vi) failure of performance, error, omission, interruption or delay in operation or transmission, computer virus, communications line failure, corruption of data or information; or
 - (vii) theft or destruction or unauthorised access to/alteration of/unlawful use of records, whether for breach of contract/tortious





behaviour/negligence; or

(viii) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

(b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.

11. DATA PROTECTION

11.1 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.

11.2 The parties shall not at any time during the term of the Contract, and for twelve months following termination of the Contract, disclose to any other person, firm or company, or use for any purpose except as provided under the terms of the Contract, any information relating to the Supplier's provision of the Services as provided for in the Order Confirmation to any other party, its clients or customers that has been disclosed to or obtained by the parties to the Contract provided that this will not apply to information which is or becomes public knowledge other than as a result of any wilful act or default of the party receiving such information.

12. TERMINATION

12.1 Subject to condition 12.3 the Contract shall terminate automatically on completion of the Services as set out in the Order Confirmation.

12.2 Without prejudice to any other rights or remedies which the parties may have, either party may only terminate the Contract without liability to the other after the expiry of the initial term of the months (the "Initial Term"), on giving the other no less than 30 days written notice or immediately on giving notice to the other if:

- (a) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (b) an order is made or a resolution is passed for the winding up of either party, or circumstances arise which entitle a court of competent jurisdiction to





make a winding-up order of either party; or

- (c) an order is made for the appointment of an administrator to manage the affairs, business and property of either party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of either party, or notice of intention to appoint an administrator is given by either party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (d) a receiver is appointed of any of either party's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of either party, or if any other person takes possession of or sells either party's assets; or
- (e) either party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
- (f) either party ceases, or threatens to cease, to trade; or
- (g) there is a change of control of either party (as defined in section 574 of the Capital Allowances Act 2001); or
- (h) either party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

12.3 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; and
- (b) the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

13. FORCEMAJEURE

The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving





the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

14. VARIATION

Subject to condition 6, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

15. WAIVER

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

15.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

16. SEVERANCE

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

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

16.3 The parties agree, in the circumstances referred to in condition 16.1 and if condition 16.2 does not apply, to attempt to substitute for any invalid, unenforceable or illegal provision a valid, enforceable and legal provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.





17. STATUS OF PRE-CONTRACTUAL STATEMENTS

Each of the parties acknowledges and agrees that, in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to these terms and conditions or not) relating to the subject matter of the Contract, other than as expressly set out in the Contract.

18. ASSIGNMENT

The Customer and Supplier shall not, without the prior written consent of either party, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

19. NO PARTNERSHIP

Nothing in the Contract is intended to, or shall operate to, create a partnership between the parties.

20. RIGHTS OF THIRD PARTIES

The Contract is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

21. NOTICES

Notice given under the Contract shall be in writing, sent for the attention of the person, and to the address or fax number, given in the Contract (or such other address, fax number or person as the relevant party may notify to the other party) and shall be delivered personally, sent by fax or sent by pre-paid, first-class post or recorded delivery. A notice is deemed to have been received, if delivered personally, at the time of delivery, in the case of fax, at the time of transmission, in the case of pre-paid first class post or recorded delivery, 48 hours from the date of posting and, if deemed receipt under this condition 21 is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is a business day), at 9.00 am on the first business day following delivery. To prove service, it is sufficient to prove that the notice was transmitted by fax, to the fax number of the party or, in the case of post, that the envelope containing the notice was properly addressed and posted.





22. GOVERNING LAW AND JURISDICTION

- 22.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the law of England and Wales.
- 22.2 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 the Contract or its subject matter.

