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1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

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

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 17.8.

Contract: the contract between the Supplier and the Customer for the supply of Equipment and/or Services in accordance with the following:

(a) the Conditions; and
(b) any Managed Services Agreement; and
(c) any applicable Specific Terms and Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer: the person or firm who purchases the Equipment and/or Services from the Supplier.

DPA: means the Data Protection Act 2018 (2018 c.12).

Controller, **Processor**, **Data Subject** and **Personal Data**, **Sensitive Data**, **processing** and **appropriate technical and organisational measures** shall have the meanings given to them in the DPA**.**

Data Protection Laws: means: (a) the GDPR; (b) the DPA; and (c) any laws that implement, replace, extend, re-enact, consolidate or amend the GDPR or DPA.

Data Security Breach: a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Protected Data.

Deliverables: the deliverables set out in the Order produced by the Supplier for the Customer.

Delivery Location: has the meaning given in clause 4.2.

EEA: the European Economic Area.

Equipment: the Equipment (or any part of it) set out in the Order.

Equipment Specification: any specification for the Equipment, including any relevant plans or drawings, that is agreed in writing by the Customer and the Supplier.

Force Majeure Event: has the meaning given to it in clause 0.

GDPR: means the General Data Protection Regulation (EU) 2016/679.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks 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, rights in computer software, 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.

Managed Services Agreement: a agreement for the provision of managed services provided in writing by the Supplier to the Customer.

Minimum Cancellation Notice Period: the minimum period of notice that the Customer must give to the Supplier to terminate the Services or any part of them or this Contract.

Order: the Customer's order for the supply of Equipment and/or Services.

Protected Data: means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract.

Representatives: means in relation to the Supplier its officers, employees, professional advisers, consultants and contractors that need to know the Confidential Information to enable the Supplier to comply with the terms of the Contract.

Restricted Person: means any person employed or engaged by the Supplier during the term of the Contract who has been engaged in the provision of the Services or the management of the Contract either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

Service Fee: the fee payable by the Customer to the Supplier for the Services, which is made up of the Subscription Fee and any applicable Usage Fee.

Services: the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

Specific Terms and Conditions: the Supplier's specific terms and conditions (if any) applicable to the Services (or any part of them) referred to in the Order.

Subscription Fee: that regular part of the Service Fee.

Supervisory Authority: means any regulator, authority or body responsible for administering Data Protection Laws.

Supplier: Marlow International, Parkway, Marlow, SL7 1YL, registration number **16193100**

Usage Fee: that variable part of the Service Fee based on actual Usage for a period.

1.2 Interpretation:

(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 and permitted assigns.
(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
(d) 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.
(e) A reference to writing or written includes fax and email.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Equipment and/or Services in accordance with the Contract.
2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence **(Commencement Date).**
2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Equipment or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Equipment described in them. They shall not form part of the Contract or have any contractual force unless stated otherwise in the Contract.
2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
2.5 All of these Conditions shall apply to the supply of both Equipment and Services except where application to one or the other is specified.

3. EQUIPMENT

3.1 The Equipment is described in the Equipment Specification.
3.2 To the extent that the Equipment (or part of it) is to be manufactured in accordance with an Equipment Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any

claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Equipment Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Equipment Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

4. DELIVERY OF EQUIPMENT

4.1 The Supplier shall ensure that:

(a) each delivery of the Equipment is accompanied by a delivery note which shows all relevant Customer and Supplier reference numbers, the type and quantity of the Equipment (including the code number of the Equipment, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Equipment remaining to be delivered; and

(b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 The parties may agree either that:

(a) the Supplier shall deliver the Equipment to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Equipment are ready; or

(b) the Customer shall collect the Equipment from the Delivery Location within three Business Days of the Supplier notifying the Customer that the Equipment are ready.

4.3 Delivery of the Equipment shall be completed on the completion of unloading or loading (as may be appropriate) of the Equipment at the Delivery Location.

4.4 Any dates quoted for delivery of the Equipment are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment.

4.5 If the Supplier fails to deliver the Equipment, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement Equipment of similar description and quality in the cheapest market available, less the price of the Equipment. The Supplier shall have no liability for any failure to deliver the Equipment to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide

the Supplier with adequate delivery instructions for the Equipment or any relevant instruction related to the supply of the Equipment.

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

(a) delivery of the Equipment shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Equipment was ready; and
(b) the Supplier shall store the Equipment until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

4.7 If ten Business Days after the Supplier notified the Customer that the Equipment was ready for delivery the Customer has not taken or accepted delivery of it, the Supplier may resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.

4.8 The Supplier may deliver the Equipment 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 Customer to cancel any other instalment.

5. QUALITY OF EQUIPMENT

5.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Equipment shall:

(a) conform in all material respects with the Equipment Specification; and
(b) be free from material defects in design, material, and workmanship.

5.2 Subject to clause 5.3, the Supplier shall, at its option, repair or replace the defective Equipment, or refund the price of the defective Equipment in full if:

(a) the Customer gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Equipment do not comply with the warranty set out in clause 5.1;
(b) the Supplier is given a reasonable opportunity of examining such Equipment; and
(c) the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Customer's cost.

5.3 The Supplier shall not be liable for the Equipment’s failure to comply with the warranty in clause 5.1 if:

(a) the Customer makes any further use of such Equipment after giving a notice in accordance with clause 5.2;
(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) best practice;
(c) the defect arises as a result of the Supplier following any drawing, design or Equipment Specification supplied by the Customer;
(d) the Customer alters or repairs such Equipment without the written consent of the Supplier;
(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
(f) the Equipment differs from the Equipment Specification as a result of changes made to ensure that it complies with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 0, the Supplier shall have no liability to the Customer in respect of the Equipment's failure to comply with the warranty set out in clause 5.1.

5.5 The terms of these Conditions shall apply to any repaired or replacement Equipment supplied by the Supplier.

6. TITLE AND RISK

6.1 The risk in the Equipment shall pass to the Customer on completion of delivery.

6.2 Title to the Equipment shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Equipment.

6.3 Until title to the Equipment has passed to the Customer, the Customer shall:

(a) store the Equipment separately from all other equipment held by the Customer so that they remain readily identifiable as the Supplier's property;
(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Equipment;
(c) maintain the Equipment in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
(d) notify the Supplier immediately if it becomes subject to any of the events listed in clause (b); and
(e) give the Supplier such information relating to the Equipment as the Supplier may require from time to time.

6.4 If before title to the Equipment passes to the Customer the Customer becomes subject to any of the events listed in clause (b) to clause 14.2(d) then, without limiting any other right or remedy the Supplier may have:

(a) the Customer's right to use the Equipment in the ordinary course of its business shall cease immediately; and

(b) the Supplier may at any time:

(i) require the Customer to deliver up the Equipment; and

(ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Equipment is stored in order to recover it.

7. SUPPLY OF SERVICES

7.1 The Supplier shall supply the Services to the Customer in accordance with the relevant Managed Services Agreement, and/or Specific Terms and Conditions as applicable. The Services may include applications or other services provided by third parties.

7.2 The Supplier shall assist the Customer in the set-up of the Services.

7.3 The Supplier shall provide technical assistance and training (which may incur a reasonable additional charge depending on requirements unless set out in any Managed Services Agreement or Specific Terms and Conditions) for the set-up and provision of the Services when reasonably requested to do so. The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified (including any project work that is time and materials charged) but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.4 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks that are allocated to them.

7.6 Unless stated in any Managed Services Agreement or Specific Terms and Conditions the Supplier does not warrant that the Services will be error-free or uninterrupted.

7.7 The supplier shall co-operate with the customer in all matters relating to the supply of services subject to the order it relates to.

7.8 The Supplier will maintain all necessary statutory and regulatory license and permits to provide the services within the Order.

7.9 Maintain necessary insurance in the sum of no less than £1,000,000 in respect of any breach of its obligations under the Order.

7.10 Third-Party Services

The Customer acknowledges that certain Services rely on third-party providers, including but not limited to software vendors, cloud platforms, telecommunications providers and security vendors.

The Supplier does not warrant or guarantee the availability, performance or security of any third-party services.

The Supplier shall not be liable for any failure, delay, interruption or security incident arising from or caused by any third-party provider.

Where third-party services are used, the Customer agrees to be bound by the relevant third-party terms and conditions.

8. CUSTOMER'S OBLIGATIONS

8.1 The Customer shall:

(a) ensure that the terms of the Order and any information it provides in the Service Specification and the Equipment Specification are complete and accurate;
(b) co-operate with the Supplier as far as reasonable in all matters relating to the Services;
(c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
(d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
(e) prepare the Customer's premises for the supply of the Services;
(f) comply with all applicable laws, including health and safety laws;
(g) comply with any policies issued by the Supplier including (but not limited to) acceptable use, security and disaster recovery;
(h) respond to Supplier enquiries in a professional and timely manner;
(i) provide the Supplier with remote and (if requested) physical access to any systems that the Supplier supports;
(j) comply with the terms of any licence(s) applicable to the Services;
(k) keep all contact information provided to the Supplier up to date and correct in order to enable account management and technical notifications about the Services;
(l) if the Services include VoIP services, to keep the Supplier of any phone location changes in order to ensure details are correct for the use of 999 emergency services;
(m) keep the Supplier up to date with any changes to the infrastructure or environment relating to the Services that might impact on the performance of the Services;

(n) maintain any Equipment and insure any rented or loaned Equipment against all risks for its full value on the Customer's behalf from the date of delivery;
(o) notify the Supplier as soon as reasonably practicable of any loss of or damage to rented or loaned Hardware (fair wear and tear excepted) and, on request, reimburse the Supplier for the price for any loss or damage to it;
(p) establish, maintain and monitor adequate internal security measures for the Customer's access and use of the Services including the confidentiality and safe storage of all login details, usernames and passwords and updating them regularly;
(q) use the Services for the Customer's business purposes only; and
(r) comply with any additional obligations as set out in the Service Specification and the Equipment Specification;
(s) return any loaned or rented Equipment to the Supplier well-packaged and in good condition (fair wear and tear excepted) within thirty (30) days of termination of Contract; and
(t) where the Services include applications or other services provided by third parties, to comply with any terms, conditions and instructions issued by those third parties.

8.2 The Customer shall not access or use the Services for any unlawful purpose including:

(a) in any way which is likely to infringe the Intellectual Property Rights of a third party;
(b) for the transmission, display, downloading or uploading of any material which is or is likely to be construed as defamatory, threatening, offensive, abusive, obscene or which will or is likely to cause unnecessary anxiety or inconvenience to a third party or which is otherwise unlawful;
(c) attempting to gain unauthorised access to the Services;
(d) attempting to modify, distribute, reverse engineer or otherwise attempting to decipher any code in connection with the Services and/or any other aspect of the Supplier's or the Supplier's licensor's technology;
(e) in any way that is likely to cause damage or adversely affect the operation of the Services or interfere with or disrupt the Customer's website, other websites, servers or networks; and
(f) in any way that will or is likely to interfere with the use and enjoyment of the Services for other users.

8.3 Unless the Supplier has appointed the Customer as a partner or reseller the Customer agrees that it will not market, offer to sell or resell the Services to any third party.

8.4 If the Services include any third-party services, the Customer agrees to be bound by the third-party terms and conditions applicable to such services.

8.5 If the Services include any project work that is time and material charged the Customer accepts that:

(a) any failure by the Customer to adhere to the terms of this Contract that leads to delays will result in target dates being extended so as to accommodate fully the effects of such delay; and
(b) any delay that is directly or indirectly caused by any act or omission by the Customer may result in the Supplier charging the Customer for the effects of such a delay on a time and materials basis at its standard published day billing rates.

8.6 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.6; and
(c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8.7 In order to protect the legitimate business interests of the Supplier, the Customer covenants with the Supplier that it shall not (except with the prior written consent of the Supplier):

(a) attempt to solicit or entice away; or
(b) solicit or entice away

from the employment or service of the Supplier the services of any Restricted Person other than by means of a national advertising campaign open to all-comers and not specifically targeted at such staff of the Supplier.

8.8 The Customer further covenants with the Supplier that it shall not (except with the prior written consent of the Supplier) employ or engage or otherwise facilitate the employment or engagement of any Restricted Person.

8.9 The Customer shall be bound by the covenants set out in clauses 8.7 and 8.8 during the term of the Contract, and for a period of 12 months after its termination or expiry.

8.10 If the Customer commits any breach of clause 8.7 or clause 8.8 the Customer shall, on demand, pay to the Supplier a sum equal to one year's basic salary or the annual fee that was payable by the Supplier to the Restricted Person plus the recruitment costs incurred

by the Supplier or relevant in replacing such person. The Customer acknowledges that it has had the opportunity to obtain independent legal advice on the implications of this clause and agrees to be bound by it.

9. CHARGES AND PAYMENT

9.1 The price for Equipment:

(a) shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the order; and
(b) unless otherwise stated, shall be exclusive of all costs and charges of packaging, insurance, transport of the Equipment.

9.2 The Supplier reserves the right to:

(a) increase the charges for the Services on written notice to the Customer:

(i) in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index or Average Earnings Index; and / or
(ii) in line with any price increase levied upon the Supplier by a third-party supplier.

(b) increase the price of the Equipment, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Equipment to the Supplier that is due to:
(i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
(ii) any request by the Customer to change the delivery date(s), quantities or types of Equipment ordered, or the Equipment Specification;
(iii) any delay caused by any instructions of the Customer in respect of the Equipment or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Equipment; or
(iv) any price increase levied upon the Supplier by a third-party supplier.

9.3 Unless the parties otherwise agree, the following shall apply:

(a) the Supplier shall invoice the Customer on or at any time after completion services; and
(b) where the Services include applications or other services provided by third parties, the Customer shall be liable for full payment in respect the entire term of each service even where the term of that service exceeds the term of the Contract;
(c) for the avoidance of doubt, the Customer acknowledges that termination of the Contract for any reason will not avoid its liability under clause 9.3(b) above.

9.4 The Customer shall pay each invoice submitted by the Supplier:

(a) within 7 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
(b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.

9.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Equipment at the same time as payment is due for the supply of the Services or Equipment.

9.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 0 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Unless stated otherwise, all Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier or a third-party licensor.

10.2 The Customer acknowledges that it has no right, title or interest in or to such Intellectual Property Rights other than as expressly set out in the Contract or as permitted by law.

10.3 The Customer shall indemnify and hold the Supplier harmless against any costs, liabilities, losses, and expenses including reasonable legal costs arising from any claim relating to the infringement of any third-party Intellectual Property Rights provided that:

(a) the Supplier gives notice of the claim;
(b) the Customer has sole control and defence of the claim; and
(c) the Supplier provides reasonable cooperation in the defence and settlement of the claim.

10.4 The supplier shall grant the customer royalty free license to use any documents provided as part of the service order

11. DATA PROTECTION

11.1 The Customer and the Supplier acknowledge that the Customer is the Controller and the Supplier is a Processor for the purposes of processing Protected Data pursuant to these Conditions. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure that all instructions that it gives to the Supplier in respect of Protected Data are in accordance with Data Protection Laws.

11.2 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and these Conditions.

11.3 The Supplier confirms that it has a valid registration with the Supervisory Authority. A copy of the Supplier's registration certificate is available for inspection on request.

11.4 The Supplier shall process Protected Data fairly and lawfully in accordance with clauses 11.5 and 11.6.

11.5 The Supplier shall ensure that it processes Protected Data on the basis of one or more of the following legal grounds:

(a) the Data Subject has unambiguously given his or her consent;
(b) processing is necessary for the performance of a contract to which the Data Subject is a party or in order to take steps at the request of the Data Subject prior to entering into a contract;
(c) processing is necessary for compliance with a legal obligation to which the parties are subject, other than an obligation imposed by contract;
(d) processing is necessary in order to protect the vital interests of the Data Subject;
(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the parties; and / or
(f) processing is necessary for the purposes of the legitimate interests pursued by the parties except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the Data Subject.

11.6 In addition to its obligations under clause 11.5 the Supplier shall ensure that it processes Sensitive Data on the basis of one or more of the following legal grounds:

(a) the Data Subject has given his or her explicit consent to the processing of the Sensitive Data;
(b) processing is necessary for the purposes of exercising or performing any right or obligation which is conferred or imposed by law on the Controller in connection with employment;

(c) processing is necessary to protect the vital interest of the Data Subject or of another person where the Data Subject is physically or legally incapable of giving his or her consent or the Controller cannot reasonably be expected to obtain the data subject's consent;
(d) processing relates to data which have been made public as a result of steps taken by the Data Subject;
(e) processing is for the purpose of or in connection with legal proceedings (including prospective legal proceedings), for the obtaining legal advice or is otherwise necessary for the purpose of establishing, exercising or defending legal rights;
(f) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the parties;
(g) processing is necessary for the purposes of preventing fraud; and / or
(h) processing relates to racial or ethnic origin and is necessary to review the existence or absence of equality of opportunity or treatment with a view to enabling such equality to be promoted or maintained.

11.7 The Customer shall, in respect of Protected Data, ensure that their privacy notices are clear and provide sufficient information to the Data Subjects for them to understand what of their Protected Data the Customer is sharing with the Supplier, the circumstances in which it will be shared, how such data will be processed and either the identity of the Supplier or a description of the type of organisation that will receive the Protected Data.

11.8 The Customer and the Supplier both acknowledge that Data Subjects have the right to obtain certain information about the processing of their Personal Data through a Subject Access Request. In circumstances where the processing of a Data Subject's Personal Data is not in compliance with Data Protection Laws, Data Subjects may also request rectification, erasure or blocking of their Personal Data. Where the Supplier receives a Subject Access Request as a result of its processing Protected Data, the Customer shall provide all reasonable assistance at its own cost to enable the Supplier to respond to the Subject Access Request.

11.9 The Supplier shall not retain or process Protected Data for longer than is necessary. Any Protected Data in the Supplier's possession on the termination or expiry of the Contract will be returned to the Customer unless the Supplier is required by law to retain such Protected Data for a specified period.

11.10 The Supplier shall take reasonable steps to ensure the reliability of all its employees who have access to the Protected Data.

11.11 Each party warrants to the other that it will process the Protected Data in compliance with the Data Protection Laws and all codes, recommendations and advices issued by the Supervisory Authority.

11.12 The Supplier warrants that, having regard to the state of technological development and the cost of implementing any measures, it will:

(a) take appropriate technical and organisational measures against the unauthorised or unlawful processing of Protected Data and against the accidental loss or destruction of, or damage to, Protected Data to ensure a level of security appropriate to:
    (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage; and
    (ii) the nature of the data to be protected; and
(b) take reasonable steps to ensure compliance with those measures.

11.13 Subject to clause 13 below, each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages or expenses incurred by the other party or for which the other party may become liable due to any failure by the first party or its employees or agents to comply with any of its obligations under this clause 11.

11.14 The Customer acknowledges that, subject to clauses 11.5 and 11.6 above, the Supplier is reliant on the Customer for direction as to the extent to which the Supplier is entitled to use and process the Protected Data. Consequently, the Supplier will not be liable for any claim brought by a Data Subject arising from any action or omission by the Supplier, to the extent that such action or omission resulted directly or indirectly from the Customer's instructions.

11.15 The Supplier may authorise with the Customer's prior written consent (but not otherwise) a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:

(a) is on terms which are substantially the same as those set out in these Conditions; and
(b) terminates automatically on termination of the Contract for any reason.

11.16 The Supplier will notify the Customer promptly of any Data Security Breach and use all reasonable endeavours to rectify it or mitigate against its effects. The Supplier will also report such Data Security Breach to the Supervisory Authority where required by Data Protection Laws. The Customer agrees to provide all necessary assistance at its own expense to the Supplier to facilitate the handling and resolution of the Data Security Breach in an expeditious and compliant manner.

11.17 In the event of a dispute or claim brought by a Data Subject or the Supervisory Authority concerning the processing of Protected Data against either or both parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

11.18 The parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Supervisory Authority. If they do participate in the proceedings, the parties may elect to do so remotely (such as by

telephone or other electronic means). The parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.

11.19 The Supplier may without the consent of but by written notice to the Customer unilaterally amend this clause 11 to comply with changes in Data Protection Laws.

11.20 The Customer agrees that the Supplier may provide the Customer's contact details to any company that it uses to provide the Services solely for the purpose of delivering the Services.

11.21 Use of Sub-processors

The Customer providers general authorisation for the Supplier to appoint sub-processors.

The Supplier shall:

(a) ensure that any sub-processor is subject to data protection obligations no less protective than those set out in this Agreement;

(b) remain fully liable for the acts and omissions of any sub-processor;

(c) inform the Customer of any intended changes concerning the addition or replacement of sub-processors upon reasonable request.

11.22 The parties acknowledge that for the purposes of UK data protection legislation, including the UK GDPR and Data Protection Act 2019, the Customer is the Controller and the Supplier is the Processor.

The Supplier Shall:

(a) only process Personal Data on documented instructions from the Customer (unless required to do so by law);
(b) ensure that persons authorised to process Personal Data are subject to appropriate confidentiality obligations;
(c) implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk;
(d) assist the Customer, at the Customer's cost, in responding to requests from Data Subjects exercising their rights;
(e) assist the Customer in ensuring compliance with obligations relating to security, breach notifications and data protection impact assessments;
(f) notify the Customer without undue delay and, where feasible, within 72 hours of becoming aware of a Personal Data Breach;
(g) at the choice of the Customer, delete or return all Personal Data upon termination of the Contract, unless required to retain it by law;

(h) make available to the Customer all information reasonably necessary to demonstrate compliance with this clause.

12. CONFIDENTIALITY

12.1 Confidential Information means all confidential information that the Customer discloses or makes available to the Supplier before, on or after the date of this agreement. This includes:

(a) the fact that discussions and negotiations are taking place and the status of those discussions and negotiations;
(b) the existence and terms of this agreement;
(c) all confidential or proprietary information relating to:
    (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Customer; and
    (ii) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Customer;
(d) any information, findings, data or analysis derived from Confidential Information; and
(e) any other information that is identified as being of a confidential nature; but excludes any information referred to in clause 12.2.

12.2 Information is not Confidential Information if:

(a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Supplier in breach of this agreement;
(b) it was available to the Supplier on a non-confidential basis prior to disclosure by the Customer;
(c) it was, is, or becomes available to the Supplier on a non-confidential basis from a person who, to the Supplier's knowledge, is not under any confidentiality obligation in respect of that information;
(d) it was lawfully in the possession of the Supplier before the information was disclosed by the Customer;
(e) it is developed by or for the Supplier independently of the information disclosed by the Customer; or
(f) the parties agree in writing that the information is not confidential.

12.3 In return for the Customer making Confidential Information available to the Supplier, the Supplier undertakes to the Customer that it shall:

(a) keep the Confidential Information secret and confidential;

(b) not use or exploit the Confidential Information in any way except for complying with its obligations under the Contract;
(c) not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with this agreement;

(d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for complying with its obligations under the Contract; and
(e) apply the same security measures and degree of care to the Confidential Information as the Supplier applies to its own confidential information, which the Supplier warrants as providing adequate protection from unauthorised disclosure, copying or use.

12.4 The Supplier shall establish and maintain adequate security measures to safeguard the Confidential Information from unauthorised access or use.

12.5 The Supplier may disclose the Confidential Information to its Representatives on the basis that it:

(a) informs those Representatives of the confidential nature of the Confidential Information before it is disclosed; and
(b) procures that those Representatives comply with the confidentiality obligations in clause 12.3 as if they were the Supplier.

12.6 The Supplier shall be liable for the actions or omissions of the Representatives in relation to the Confidential Information as if they were the actions or omissions of the Supplier.

12.7 If so requested by the Customer at any time by notice in writing to the Supplier, the Supplier shall promptly:

(a) destroy or return to the Customer all documents and materials (and any copies) containing, reflecting, incorporating or based on the Customer's Confidential Information;
(b) erase all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form;
(c) to the extent technically and legally practicable, erase all the Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
(d) certify in writing to the Customer that it has complied with the requirements of this clause 12.7.

12.8 Nothing in clause 12.7 shall require the Supplier to return or destroy any documents and materials containing or based on the Confidential Information that the Supplier is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock

exchange, to which it is subject. The provisions of this agreement shall continue to apply to any documents and materials retained by the Supplier pursuant to this clause 12.8.

12.9 The Customer reserves all rights in its Confidential Information. The disclosure of Confidential Information by the Customer to the Supplier does not give the Supplier or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this agreement.

12.10 Except as expressly stated in this agreement, the Customer makes no express or implied warranty or representation concerning its Confidential Information including, but not limited to, the accuracy or completeness of the Confidential Information.

12.11 Without prejudice to any other rights or remedies that the Customer may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement. Accordingly, the Customer shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this agreement by the Supplier.

13. LIMITATION OF LIABILITY

13.1 Nothing in these Conditions shall limit or exclude the Supplier'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.

13.2 Subject to clause 13.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

(a) pure economic loss;
(b) loss of profits;
(c) loss of sales or business;
(d) loss of agreements or contracts;
(e) loss of anticipated savings;
(f) loss of use or corruption of data;
(g) loss of or damage to goodwill;
(h) any indirect loss; or
(i) any consequential loss.

13.3 The Customer acknowledges that its use of the internet to access the Services (or part of the Services) is at its own risk and that the Supplier shall not be liable in respect of any goods, services, information, software or other material that the Customer may obtain from a third party when using the internet.

13.4 Subject to clause 13.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract (including any indemnity under it), shall be limited to:

(a) in any Minimum Cancellation Notice Period 150% of the charges paid in respect of such period; or
(b) in all other cases 150% of the total charges paid under the Contract.

13.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.6 The Customer acknowledges that it has read and understood this clause 13 and that it has adequate insurance or other financial means to cover for any losses beyond those set out in this clause.

13.7 This clause 0 shall survive termination of the Contract.

14. TERMINATION

14.1 The Customer shall give not less than three months' notice to terminate the Contract or any Service(s) supplied pursuant to it. The termination of the Contract will take place at the end of the calendar month three months after the date that the notice to terminate has been received by the Supplier. If no notice or less than three months' notice is given, the Contract and any Service(s) supplied pursuant to it shall continue for a further period of 12 months. This period may be reduced at the Supplier's sole and absolute discretion.

14.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

(a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within five days after receipt of notice in writing to do so;
(b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

(c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
(d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.3 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

(a) the Customer fails to pay any amount due under the Contract on the due date for payment; or
(b) there is a change of control of the Customer.

14.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Equipment under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause (b) to clause 14.2(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

15. CONSEQUENCES OF TERMINATION

15.1 On termination of the Contract:

(a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services and Equipment supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
(b) the Customer shall return any Deliverables or Equipment which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

15.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

16. FORCE MAJEURE

16.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its or, in the case of the Supplier, its own suppliers' reasonable control. These include: (a) natural disasters or "acts of God," such as lightening, tornadoes, hurricanes, tsunamis, floods and earthquakes; (b) manmade disasters, such as plant fires or floods; (c) war and civil issues, such as riots, civil unrest, acts of terrorism; (d) labour disputes or strikes; (e) government embargoes or other government actions affecting the supply chain; and (f) power outages or transportation issues.

16.2 Clause 16.1 above shall not apply in respect of any failure or delay by the Customer to make any payment to the Supplier that falls due under the Contract.

17. GENERAL

17.1 Assignment and other dealings

(a) The Supplier shall not 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 the Contract.

(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier which shall not be unreasonably withheld, conditioned or delayed.

17.2 Notices

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Order.

(b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

17.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make

it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

17.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

17.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

17.6 Entire agreement.

(a) The Contract 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.
(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
(c) Nothing in this clause shall limit or exclude any liability for fraud.

17.7 **Third parties' rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

17.8 **Variation.** Except as set out in these Conditions no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

17.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

17.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

17.11 **Execution.** Both parties agree that the signing of the Order electronically shall be as valid as if signed in manuscript.