



TRANSACT

TRANSFORM

RUN

RECYCLE

# General Terms and Conditions of Purchase of Software Only

## Short Form

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## 1. BASIS OF CONTRACT

1.1. These terms and conditions below ("**Conditions**") apply to the agreement ("**Contract**") between Bell-TS Netherlands B.V. or its Group Company ("**Customer**") and the Supplier for the sale and licence of any standard software in the form generally offered to customers and being re-sold by the Supplier pursuant to an Order and that has not been customised to meet specific Customer or end user requirements ("**Software**"), set out in the Customer's order ("**Order**"). Once the Order is issued by the Customer the Contract is formed between the Customer and the Supplier. These Conditions shall apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate within a quotation issued by the Supplier in response to a request for quotation relating to the purchase and supply of the deliverables ("Quotation"), or which are implied by trade, custom, practice or course of dealing, other than those terms and conditions issued by the Supplier or its licensor ("Licensor") of Software for the use of that Software by an end user (as may be amended from time to time), in an end user licence agreement ("**EULA**") which is entered into between the Supplier and the Customer's client ("**End User**"). In the event of conflict, the terms of such EULA shall take precedence.

1.2. "**Group Company**" means any undertaking which from time to time is a parent undertaking of Bell-TS Netherlands B.V. or a subsidiary of Bell-TS Netherlands B.V. or of any such parent undertaking (the terms parent undertaking and subsidiary being interpreted in accordance with Article 2:24a sub 1 of the Dutch Civil Code (Burgerlijk Wetboek)).

## 2. WARRANTIES

2.1. The Supplier warrants, represents and undertakes to the Customer that:

- 2.1.1. the supply of the Software and its use shall not infringe the intellectual property rights of any third party;
- 2.1.2. it will comply with all relevant anti-bribery legislation ("Anti-Corruption Laws") and anti-slavery legislation ("Anti-slavery Laws");
- 2.1.3. it has taken reasonable precautions to ensure that at the time of delivery the Software does not introduce or contain any application, including any computer virus, spyware, malicious code, disabling program (including worms and Trojan horses) ("**Virus**") on into the Customer or End User (as defined within Condition 4) systems or networks;
- 2.1.4. neither the Supplier or the Supplier personnel will introduce or embed in the Software anything which is intended by any person to, is likely to, impair the operation of the Software or any other computer systems or programs in the possession of Customer or End Users.
- 2.1.5. the Software will:
  - 2.1.5.1. comply with all laws, legislation and government regulations applicable to a party's rights and obligations set out in this Contract from time to time ("**Applicable Laws**") relating to the Software at the time of delivery;
  - 2.1.5.2. conform to quantity, description, specification and standards (if any) clearly stated or referred to in the Order;

- 2.1.5.3. be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended);
- 2.1.5.4. if the purpose for which it is required is indicated in the Order, either expressly or by implication, be fit for that purpose; and
- 2.1.5.5. maintain currency and that no update, enhancement or new version of the Software provided, shall reduce performance or remove or reduce functionality.

2.2. **Third Party Warranties:** The Supplier shall assign to the Customer or any End Users, or procure for the benefit of such parties, the benefit of any warranties or guarantees, if any, that the Supplier has received for the Software from the licensor, where relevant.

## 3. BREACH OF WARRANTY

3.1. If, during the period of ninety (90) days from the date of performance (unless specified otherwise in the Order) ("**Warranty Period**") there is a breach of any of the warranties in Condition 2, then without limiting any of its other rights or remedies, and whether or not it has accepted the Software, the Customer may exercise any one or more of the following remedies at the Supplier's cost and expense: (i) require the Supplier to use reasonable endeavours to correct, or procure the correction of, all faults or defects in the Software so that the Software can be provided in accordance with the Contract; and, if the Supplier is unable to do so within a reasonable time; (ii) reject the Software and terminate the Contract on written notice with immediate effect, in which case the Supplier shall refund to the Customer the price paid in relation to the Contract subject to a pro rata reduction for the period of time for which the Software has been used.

## 4. LICENCE

4.1. In the absence of a EULA, the Supplier shall grant to the Customer a non-exclusive, a perpetual, non-terminable, sub-licensable, fully assignable, royalty-free licence for the End User to use the Software for the term defined in the Order, in object code form, for the normal business purposes (and any act which is reasonably incidental to such use), including: -

- 4.1.1. installation of and access to the Software on any site in any part of the world and on any compatible equipment and on any compatible environment in which the End Users operate from time to time; and
- 4.1.2. making copies of or adapting the Software solely to the extent necessary for the End Users own lawful use, including for the purpose of distribution, back up purposes and fixing errors.

4.2. **Restriction on modifications:** Except as permitted by law, the End Users will have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Software in whole or in part.

4.3. **Licence restrictions:** Where the Order indicates that the purchased licences are restricted by reference to a metric such as the number of copies installed or End Users who may use the Software, the End Users usage will comply with such restriction. If notwithstanding this it is identified at any time that the End User has exceeded the scope of its licences then the Customer may

- be liable for additional charges and may purchase additional licences in accordance with Condition 4.3, where the restriction within Condition 6.3 shall not apply.
- 4.4. **Additional Licences:** If at any time the Customer requires additional Licences for the Software it shall notify the Supplier accordingly and the Supplier shall provide a Quotation setting out the additional price payable for the requested licences.
- 4.5. **Reduction in Licence requirements:** If at any time the End User has a reduction in licence requirements (for example, it has fewer End Users requiring use of the Software) the Customer may, to the extent permitted by the Supplier, reduce the number of licences that it has on not less than 30 (thirty) days' notice to the Supplier, in which case the price shall be recalculated accordingly and the Supplier shall issue a pro rata refund (as a credit against the next invoice) of any part of the price paid in advance in respect of the surrendered licences.
- 4.6. **Use of open source licensed technology:** The Supplier may only supply open source software, which meets the Open Source Initiative's [Open Source definition at https://opensource.org/docs/definition.php](https://opensource.org/docs/definition.php) or any libraries or code licensed from time to time under the General Public Licence Open Source Software ("Open Source Software"), with the Customer's prior written consent.
- 4.7. **Licence with EULA:** Where the Supplier requires the End User to enter into a EULA, it shall liaise with the end user directly and the Customer shall not be party to such discussions or the EULA. The Supplier shall notify the Customer that it has entered or will enter the EULA in accordance with Condition 4.7, prior to the Customer issuing an Order. In the event of termination or expiry of the Contract the EULA shall continue in accordance with its terms.
- 4.7.1 Where the Software is supplied by the Licensor pursuant to a EULA then the Supplier shall be bound by the terms of the EULA and where there is any conflict or ambiguity between any of the provisions in the EULA and any other terms in the Contract, the terms of the EULA shall prevail to the full extent necessary to resolve any conflict or ambiguity. The Supplier shall comply with the terms of the EULA and shall indemnify the Customer and its End User and keep the Customer and its End User indemnified from and against any and all damages, losses, costs and expenses that the Customer and/or its End User may suffer as a result of the Supplier's breach of the EULA.
- 4.7.2 The Supplier shall bring to the Customer's attention, prior to the placing of an Order by the Customer, whether the Software is the subject of a EULA. Once the Supplier has identified to the Customer that the Software is supplied subject to the terms of a EULA, the Supplier shall be responsible for negotiating any amendments to the EULA that it may require directly with the End User and the Customer shall not be involved in those negotiations. The Supplier shall be responsible for ensuring that any required amendments are made to the EULA and for entering the EULA directly with the Licensor if so, required by the Licensor, or for incorporating terms of the EULA into the Contract provided always that the Seller shall not be under any obligation to the Buyer greater than that which the Licensor has to the Seller.
- 4.8 **Licence without EULA:** If the Software is supplied without a EULA then the provisions of this Condition 4.8 (Licence without EULA) shall apply.
- 4.8.1 The Buyer and its End User shall have the right to use the Software as follows: (i) the Software shall only be used for the purpose for which it is supplied by the Licensor; (ii) the term of the licence shall be limited to the period, number of users, locations for which the licence fee has been paid by the Customer or its End User or as more specifically set out in the Quotation; (iii) the licence shall be non-exclusive, non-assignable, non-sublicensable and non-transferable without the Licensor's prior consent.
- 4.8.2 Except as permitted by Applicable Laws, the Customer will not and will not allow any third party to copy, adapt, reverse engineer, decompile, disassemble or modify the Standard Software in whole or in part.
- 4.8.3 The Customer acknowledges that the Seller gives no representation, warranty or undertaking that the Standard Software is free from defects or will operate without interruption.
- 4.8.4 The Supplier warrants and represents that: (i) the supply of the Software by the Supplier to the Customer and its use by the Customer and its End User in accordance with the terms of the licence will not infringe the copyright of any third party; and, (ii) at the time of delivery the Software shall be free from viruses and malicious code.
- 4.8.5 So far as it is able, the Supplier shall assign to the Customer and End User, or procure for the benefit of the Customer and its End User, the benefit of any maintenance, support, warranties or guarantees, if any, that the Supplier has received for the Software from the Licensor.
- 4.8.6 Except as expressly stated in this Condition 4.8, all warranties, terms and conditions implied by statute, common law or otherwise are excluded to the extent permitted by Applicable Laws.
- 4.8.7 The Supplier shall not have liability for loss of, damage to or corruption of data to the extent it is not attributable to the Suppliers breach of Contract.
- 5. DELIVERY**
- 5.1. The Supplier shall supply all items of Software specified in the Order and shall make available all user information as provided by the Licensor, including but not limited to related operating manuals, user instruction manuals, technical literature, specifications and other documentation ("**Documentation**") relating to the Software.
- 5.2. Software shall be delivered through the delivery channels usually used by the Licensor and the Supplier shall facilitate access to the Software in accordance with the channel requirements electronically, if available, or by such other means as agreed between the parties in the Contract.
- 5.3. The Supplier shall make available all user information for the Software as provided by the Licensor.
- 5.4. The Software shall be delivered through the delivery channels usually used by the Licensor and the Seller shall facilitate access to the Software in accordance with the channel requirements.
- 5.5. The Supplier shall invoice the Customer for the Bespoke Software upon Acceptance in accordance with Condition 8, all other Software shall be invoiced in accordance with Condition 6.
- 5.6. If the Software is not delivered on the delivery date, then, without limiting any other right or remedy the Customer may have, the Customer may: (a) refuse to take any subsequent attempted delivery of the Software; or, (b) terminate the Contract with immediate effect without any liability to the Customer.
- 5.7. The Supplier agrees on request to provide the Customer with any necessary declarations and documents stating the origins of any Software.
- 5.8. The Supplier shall comply with the Customer policies (including but not limited to the Customer charter) as made known to the Supplier by the Customer from time to time.
- 5.9. The Supplier shall co-operate with any regulatory authority as required from time to time.
- 5.10. The Customer may terminate all or part of the Contract at any time by giving written notice via email to the Supplier. If the Software is capable of re-sell by the Supplier, prior to the date of termination, then such termination shall be without liability on the part of the Customer. If the Supplier has incurred reasonable costs which cannot be otherwise avoided, the Customer will be given an option to pay such reasonable costs or continue with the Contract.
- 6. PRICE AND PAYMENT**

- 6.1. The Customer shall pay all undisputed invoices within sixty (60) days from the receipt of the invoice unless expressly stated otherwise in the Order.
- 6.2. The Supplier may invoice the Customer for the Software in accordance with the payment dates referred to in the Order if the Software has been delivered in accordance with the Contract and the Customer has notified the Supplier promptly by issuing a goods receipt note.
- 6.3. If any amount due to the Supplier is subject to any withholding tax or deduction by the Customer then, the Customer will gross up the payment so that the Supplier receives the agreed amount, and the surplus is remitted to the relevant tax authority.
- 6.4. The Supplier shall not be entitled to invoice the Customer later than ninety (90) days following receipt of a goods receipt note from the Customer and the Customer shall not be obliged to pay the Supplier for such Software after such ninety (90) days has elapsed. For the avoidance of doubt, this Condition shall not apply where any delay has been caused by the Customer's failure to provide the goods receipt note.
- 7. ACCEPTANCE**
- 7.1. For the avoidance of doubt this Condition 7 shall only apply to software that is not standard Software or Open-Source Software and has been customised in accordance with the Customer requirements ("**Bespoke Software**").
- 7.2. The Customer shall notify the Supplier of the criteria upon which the acceptance of such Bespoke Software by the Customer shall be tested ("**Acceptance Criteria**"), if applicable.
- 7.3. The Customer shall have a reasonable time from the delivery date to inspect the Bespoke Software in order to evaluate its compliance with the Contract and to measure the Bespoke Software against the Acceptance Criteria ("**Acceptance Test**") and shall inform the Supplier that either (i) the Bespoke Software has passed the Acceptance Test and the Customer accepts the Hardware; or (ii) the Bespoke Software has failed to pass the Acceptance Test.
- 7.4. Where the Bespoke Software fails the Acceptance Tests, the Customer may exercise the following options, without prejudice to any other remedies available to it and at the Suppliers cost and expense (i) require the Supplier to use reasonable endeavours to correct all faults or defects in the Bespoke Software in a timely manner so that the Bespoke Software can pass the Acceptance Tests (ii) reject the Bespoke Software and terminate the Contract on written notice with immediate effect (iii) request refund the price paid for the Bespoke Software (iv) require the Supplier to facilitate the return of any non-compliant Bespoke Software to the originating manufacturer. Where option (i) is exercised, the Acceptance Test shall be repeated within a reasonable time.
- 7.5. If no Acceptance Test is conducted within the period specified in Condition 7.3, then within such reasonable time after delivery date the Acceptance Test shall be deemed to have taken place.
- 8. CONFIDENTIALITY**
- 8.1. The Supplier shall:
- 8.1.1 protect all information, disclosed by the disclosing party, or its employees, officers, advisers, agents or representatives ("**Representatives**"), pursuant to the Contract, including but not limited to, financial, End User information, business or technical or other data and all other confidential information (whether written, oral, visual or in electronic form or in magnetic or other media) ("**Confidential Information**") and, in doing so, must use no less than the equivalent degree of care that such party applies to its own Confidential Information which shall in no case be less than a reasonable standard of care;
- 8.1.2 have internal systems to ensure that Confidential Information is stored and handled in such a way as to prevent unauthorised disclosure;
- 8.1.3 procure that its personnel and any third parties do not; disseminate, copy, employ, exploit, adapt, modify or in any other manner whatsoever utilise the Confidential Information other than strictly for the provision of licencing the Software. For the avoidance of doubt, the Supplier shall be liable for all acts and/or omissions of its personnel and any third parties.
- 8.2. The obligations contained in Conditions 8.1.1 to 8.1.3 shall not apply to any Confidential Information which-
- (a) is lawfully in the possession of the Supplier prior to receipt from the disclosing party, as reasonably evidenced in writing;
- (b) is or becomes publicly known, other than as a consequence of a breach of the Contract;
- (c) can be reasonably evidenced by written records that it has been developed independently by the Supplier without access to, use of, or incorporation of the Confidential Information;
- (d) is required to be disclosed by a court of competent jurisdiction or operation of law, provided the Supplier, where reasonably practicable, provides notice to the Customer of such disclosure;
- (e) is received from a third party without breach of any other relevant confidentiality obligations;
- 8.3. The Supplier shall not disclose to any third party the terms upon which it has licenced the Software to the Customer or End Users, without the Customer's prior written consent unless required to do so by law.
- 9. DATA PROTECTION**
- 9.1. For the purpose of this Condition 9, "Controller", "Personal Data" and "Process" shall have the meanings given to them in the Data Protection Act 2018 unless and until: (a) the General Data Protection Regulation (Regulation (EU) 2016/679) ("**GDPR**") is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK; and then (b) any successor legislation to the GDPR or the Data Protection Act 2018 ("**Data Protection Legislation**");
- 9.2. The Parties each acknowledge and agree that they may need to Process Personal Data (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the Software ; (b) request and receive the Software ; (c) compile, dispatch and manage the payment of invoices relating to the Software; (d) manage the Contract and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the Software; and (f) comply with their respective regulatory obligations.
- 9.3. Each party shall Process Personal Data for the purposes set out in Condition 9.2 in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share Personal Data with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in Clause 9.2, and in doing so each party will ensure that the sharing and use of this Personal Data complies with DPA.
- 9.4. Where the Supplier is Processing End User Personal Data, the Customer will require the Supplier to agree to a Data Protection agreement with the End User directly. A copy of this agreement will be provided to the Supplier.
- 10. CUSTOMER MATERIALS**
- 10.1. The Supplier shall not and shall procure that any subcontractor does not store, copy, disclose, or use material which is made available or supplied by the Customer to the Supplier ("**Customer Materials**") except as necessary for the performance by the Supplier of its obligations under the Contract or as otherwise expressly authorised in writing by the Customer.
- 10.2. The Supplier shall take all precautions necessary to preserve the integrity of Customer Materials and to prevent any corruption,

destruction or loss of data relating to the Customer or End User which is processed, stored, generated, or capable of access by, or which otherwise comes into the possession of the Supplier or any subcontractor.

## 11. INSURANCE

11.1. The Supplier agrees to take out and maintain insurance in respect of cyber insurance, employer's liability, public liability and professional liability as is commercially prudent and reasonable with a reputable insurance company and such insurance of a sufficient value and in respect of the types of insurance that it is reasonable for the Customer to require of a supplier supplying Software and similar to those of the Supplier under this Contract to maintain, as well as any other insurance required by law from time to time. The Supplier shall provide the Customer with a copy of such insurance certificates upon reasonable request in order to verify the extent and level of insurance cover taken out by the Supplier and the payment of the relevant premiums.

## 12. IPR INDEMNITY

12.1 The Supplier shall indemnify and hold the Customer harmless from and against any and all liability or damage (including reasonable and verifiable costs and expenses) suffered or incurred by the Customer and arising from any action, claim or proceedings brought against the Customer by a third party alleging that the proper possession or use of the Software by the Customer infringes such third party's IPR ("Claim") provided that: (i) the Supplier is given prompt written notice of such Claim; (ii) is given information, reasonable assistance, and exclusive authority to defend or settle the Claim; (iii) that the Customer complies with all reasonable instructions of the Supplier with regard to the continuing use of the relevant Deliverable; and (iv) that Customer does not prejudice the Supplier's defence or settlement of the Claim.

## 13. LIMITATION OF LIABILITY

13.1. Neither party excludes or limits its liability to the other for:

- 13.1.1. personal injury or death caused by its negligence;
- 13.1.2. any matter for which, under Applicable Laws, a party cannot exclude or limit or attempt to exclude or limit its liability;
- 13.1.3. for breach of Condition 8 (Confidentiality), Condition 9 (Data Protection) and Condition 23 (Intellectual Property Rights); and
- 13.1.4. fraud or fraudulent misrepresentation.

13.2. Subject 13.1, neither party shall have any liability to the other party for any indirect, special or consequential loss, loss of profits, loss of revenue, loss of savings, damage to reputation or goodwill or loss of data.

13.3. Subject to Condition 13.1 and 13.2, each party's total liability to the other whether for breach of contract, tort, breach of statutory duty or otherwise shall not exceed:

- 13.3.1 £10,000,000 (ten million) per claim for liability resulting from negligence;
- 13.3.2 £10,000,000 (ten million) per claim for all liability arising from defects in the supplied products;
- 13.3.3 for all other liability, 150% of the total charges paid or payable by the Customer to the Supplier under the Contract.

## 14. ANTI-BRIBERY, CORRUPTION AND FACILITATION OF TAX EVASION

14.1. The Supplier shall and shall procure that persons associated with it or other persons who are performing services in connection with this Contract shall:

- 14.1.1. comply with all applicable laws statutes, regulations, and codes relating to anti-bribery and anti-corruption, Bribery Act 2010 and Criminal Finances Act 2017 (**Relevant Requirements**);
- 14.1.2. not engage in any activity, practice or conduct which would constitute an offence under the following sections:

14.1.2.1. a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or

14.1.2.2. a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017; or

14.1.2.3. 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK.

14.1.3. have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010 and to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier) and to ensure compliance with **Error! Bookmark not defined.** 14.1.2;

14.1.4. notify Customer (in writing) if it becomes aware of any breach of clause 14.1.1. or clause 14.1.2, or has reason to believe that it or any person associated with it has received a request or demand for any undue financial or other advantage in connection with the performance of this Contract;

14.1.5. immediately notify Customer (in writing) if a foreign public official becomes an officer or employee of the Supplier or acquires a direct or indirect interest in the Supplier and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Contract);

14.1.6. if requested, provide Customer with any reasonable assistance, at the Customer reasonable cost, to Customer to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with Relevant Requirements.

14.1.7. within [NUMBER] months of the date of this agreement, and annually thereafter, certify to Customer in writing signed by an officer of the Supplier, compliance with this clause 14 by the Supplier and all persons associated with it under clause 14.2. The Supplier shall provide such supporting evidence of compliance as Customer may reasonably request.

14.2. The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 14 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Customer for any breach by such persons of any of the Relevant Terms.

14.3. Any breach of this clause 14 shall be deemed a material breach and a Party shall terminate under clause 16.

## 15. ANTI-SLAVERY

15.1 The Supplier undertakes, warrants and represents that:

15.1.1. It, its sub-contractors and third party vendors will comply with all Applicable Laws relating to the prevention of slavery ("Anti-slavery Laws");

15.1.2. neither the Supplier nor any of its officers, employees, agents, sub-contractors or third party vendors have: (a) committed an offence under Anti-slavery Laws; or (b) been notified that it is subject to an investigation relating to an alleged offence or prosecution under Anti-slavery Laws; or (c) it is not aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged offence or prosecution under Anti-slavery Laws;

15.1.3. it shall notify the Customer immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents, sub-contractors or third party vendors have breached or potentially breached any of the Supplier's obligations under this Condition 15.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.

- 15.2. Any breach of Condition 15.1 by the Supplier shall be deemed a material breach of the Contract and shall entitle the Customer to terminate the Contract with immediate effect.
- 15.3. The Supplier shall seek to impose upon its sub-contractors (or any third party within its supply chain) similar provisions to those in this Condition 15.

## 16. TERMINATION

- 16.1. Either party may by written notice terminate the Contract if the other party is in material breach of any Condition(s) of the Contract, which is either (i) not capable of remedy; or (ii) being capable of remedy, has not been remedied within thirty (30) days after written notice from the other party requiring it to do so.
- 16.2. For the purposes of this Condition 16, a number of breaches (whether of the same or different obligations and regardless of whether those breaches are remedied) may collectively constitute a material breach to which Condition 16.1 applies whether or not each breach on its own would be considered a material breach.
- 16.3. Either party may terminate the Contract at any time with immediate effect if:-
- 16.3.1. a resolution is passed, or an order is made for the winding up (or equivalent order in the relevant jurisdiction) of the other party, otherwise than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction;
- 16.3.2. the other party becomes subject to an administration order; a liquidator, receiver or administrative receiver or similar is appointed over any of its property or assets;
- 16.3.3. the other party enters into an arrangement or composition with its creditors, ceases or threatens to cease to carry on business, becomes insolvent or ceases to be able to pay its debts as they fall due;
- 16.3.4. the other Party commits a breach under Condition 14 (Anti-Bribery Laws) and 15 (Anti-Slavery Laws); or
- 16.3.5. a Force Majeure Event (defined in Condition 22.1) continues for a period of sixty (60) days.
- 16.4. If the Contract is terminated: (i) the Contract shall continue in force to the extent necessary to give effect to those of its provisions which expressly or by implication have effect after termination; and (ii) the rights of either party accrued on or prior to termination shall remain unaffected.
- 16.5. In the event of termination or expiry of the Contract the EULA shall continue in accordance with its terms.
- 16.6. Upon early termination of the Contract in accordance with its terms by either party, where the Customer has paid the Supplier the price for Software that have not been supplied at the date of termination, the Supplier shall, upon demand, either repay such price to the Customer or deliver the Software to the Customer.

## 17. AUDIT AND INSPECTION

- 17.1. The Supplier shall permit the auditors to conduct audits of the Supplier during the term of the Contract (and for six years after the expiry or termination of the Contract). The right of audit includes a right for the auditor to enter any of the Supplier premises to inspect and take copies of such books and records and to interview members of the Supplier personnel once per annum.
- 17.2. The purpose of any audit carried out under this Condition 16 shall be to: provide the Auditor with assurance as to the Supplier's compliance with the Contract; to enable the Customer to investigate any complaints or queries of or provide information required by a regulatory authority or any Customers of the Customer group relating to the Software or the conduct of the Supplier, the Supplier personnel; and to investigate any suspicion of fraud or wrongful practice on the part of the Supplier, the Supplier personnel.
- 17.3. The Supplier shall cooperate with the auditor and will provide or procure such access and assistance as the Auditor requires in order to enable the Auditor to fully exercise the rights set out in

Condition 16.1. Except where the audit is undertaken in respect of suspected fraud or breach or by a regulatory authority which stipulates that no notice should be given, the Customer shall provide at least three (3) Working Days (as defined below) written notice of the audit; shall conduct the audit (or procure it is conducted) within the hours of 9.00 am to 5.30 pm GMT ("**Normal Business Hours**") on a day other than a Saturday, Sunday or a bank holiday in the jurisdiction of the Customer ("**Working Day**").

## 18. ASSIGNMENT AND SUB-CONTRACTING

- 18.1. The Supplier shall not assign, transfer or sub-contract its rights or obligations under the Contract without the Customer's prior written consent. Any such consent shall not relieve the Supplier of its obligations under the Contract.

## 19. NOTICES

- 19.1. Where the Contract requires notice to be given by one party to the other such notice shall be in writing and shall be delivered by hand, e-mail, courier, first class post or special delivery post to the following:
- 19.1.1. in the case of delivery to the Customer, to the CFO or General Counsel at New Hampshire Court, St. Paul's Road, Portsmouth, PO5 4AQ;
- 19.1.2. in the case of e-mail, to an email address previously used by the receiving party for the purposes of issuing or receiving Orders and which the sender has reasonable grounds to believe is in use, if a non-automated confirmation of receipt is not received within 24 hours of sending then another method of delivery shall also be used but this shall not affect the deemed receipt of the e-mail;
- 19.1.3. in the case of delivery to the Supplier to a Director at the Supplier's registered office address.
- 19.2. Notices sent by e-mail, must be sent to an email address previously used by the receiving party for the purposes of issuing or receiving Orders and which the sender has reasonable grounds to believe is in use, if a non-automated confirmation of receipt is not received within 24 hours of sending then another method of delivery shall also be used but this shall not affect the deemed receipt of the e-mail.
- 19.3. Notices will be deemed to have been duly served if delivered by hand or by courier at the time of delivery; if by e-mail at the time of sending; if delivered by first class post or special delivery post 48 hours after being posted, if by email at the time of sending, provided that where in the case of delivery by hand, e-mail or courier such delivery occurs either after 4.00 pm on a Working Day, or on a day other than a Working Day, service will be deemed to occur at 9.00 am on the next Working Day.
- 19.4. In the case of communications relating to the Contract which do not relate to matters where the Contract requires notice to be given, communications may take place by email between the parties using then current e mail addresses usually used between the parties.

## 20. SEVERABILITY

- 20.1. If any provision(s) under the Contract are deemed or found to be invalid or unenforceable by a court of competent jurisdiction, such provisions shall be deemed omitted, all other provisions shall remain in full force and effect.

## 21. THIRD PARTY RIGHTS

- 21.1 Save for the Indemnified Persons, a person who is not a party to the Contract may not enforce any of the provisions in it.

## 22. FORCE MAJEURE

- 22.1 Neither party shall be liable for the failure to perform its obligations under the Contract, if such failure results from any event which is beyond such party's reasonable control, which prevents or delays the performance of its obligations under this Contract ("**Force Majeure Event**").
- 22.2 Each party shall use all reasonable endeavours to limit the effects of any Force Majeure Event. and a party which relies upon a Force Majeure Event to excuse performance may only do so if it has taken

reasonable steps to mitigate the effects upon it of the Force Majeure Event and continues to perform the obligations that are not affected.

22.3 Each party agrees to give notice forthwith to the other party upon becoming aware of a Force Majeure Event, such notice to contain details of the circumstances giving rise to the Force Majeure Event.

### **23 INTELLECTUAL PROPERTY RIGHTS**

23.1 Nothing in this Contract shall transfer any intellectual property rights including but is not limited to; patents, designs and trademarks (whether registered or unregistered), copyright, database rights and know how ("Intellectual Property Rights") from the Supplier to the Customer or End User.

### **24 VARIATION AND WAIVER**

24.1 No variation of this Contract shall be effective unless it is in writing and signed by the parties.

24.2 A waiver of any right or remedy under this Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

24.3 A failure or delay by a party to exercise any right or remedy provided under this 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 under this Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

### **25 ENTIRE AGREEMENT**

25.1 The Contract contains all the terms which the Customer and the Supplier have agreed in relation to the supply of the Software and supersedes any prior written or oral agreements, representations or understandings between the parties relating to such Software. The Supplier's standard terms and conditions referred to in any correspondence or Quotation form shall not apply to the Contract. The Supplier acknowledges that it has not relied upon any warranty, representation, statement or understanding made or given by or on behalf of the Customer which is not set out in the Contract and agrees that it shall have no claim in respect of the same. Nothing in the Contract will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

### **26 NO PARTNERSHIP, JOINT VENTURE, AGENCY OR EMPLOYMENT**

26.1 Nothing contained in the Contract, and no action taken by the parties pursuant to the Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party's behalf.

### **27 PUBLICITY**

27.1 The Supplier shall not: (a) make any public announcement or issue any public circular (including a media or press release) relating to the Contract or its subject matter without the prior written approval of the Customer; or (b) use the name or logos of the Customer and member of its group of companies or of its customers, as a reference or in any advertising or promotional materials without the Customer's prior written consent (on every occasion), which may be withdrawn at any time if it is given.

### **28 JURISDICTION AND GOVERNING LAW**

28.1 The 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 at all times in accordance with Dutch Law and the parties submit to the exclusive jurisdiction of the courts of The Netherlands. The Vienna Sales Convention (CISG) will expressly not apply.