

# Terms & Conditions of Business

*Revision 8.10*

*If you have any queries relating to these  
terms & conditions,  
please contact our Finance Department on  
+44 (0) 845 458 0497*

## 1. Interpretations

The definitions and interpretative provisions in Schedule 1 apply to these terms and conditions (**Terms**).

## 2. General

- 2.1 These Terms shall apply to and be incorporated into each element of each Contract and to all tenders, offers, quotations, orders, acceptances, agreements and deliveries relating to the supply of Products by the Company.
- 2.2 Subject to clause 3.3, written acceptance of a Quotation and/or use of any Product and/or acceptance of any Product by the Client (whichever is earliest) will establish a contract for the supply and purchase of Products on these Terms (**Contract**).
- 2.3 To the extent that there is a conflict between these Terms and the terms of a Quotation, the terms of the Quotation shall prevail.
- 2.4 All descriptions, specifications, drawings, prices, performance ratings and other information quoted or submitted by the Company or included in any sales literature, quotation, price list, acknowledgement of order, invoice or other document or information issued by the Company are to be deemed approximate only (except where stated in writing to be exact) and none of such items or any part thereof shall form part of the Contract (other than as approximations).
- 2.5 Any typographical, clerical or other error or any omission in any sales literature, quotation, price list, acknowledgement of order, invoice or other document or information issued by the Company will be subject to correction without any liability on the part of the Company.
- 2.6 The Company reserves the right to make any changes in the specifications of Hardware or Software or Third Party Software which are required to conform with any applicable safety or other legal requirements or which do not materially affect their quality or performance.
- 2.7 The Client's standard terms and conditions (if any) attached to, enclosed with or referred to in any Client Communication or other document shall not govern the Contract.

## 3. Charges and Deposit

- 3.1 The charges and/or Deposit payable by the Client for the supply of Products and/or Recurring Items will, unless otherwise agreed in writing or subject to the terms of any applicable Finance Agreement, be:
  - 3.1.1 as stated in the Quotation subject to any variations required as a result of a site survey or audit; or
  - 3.1.2 where no charges are quoted or, where quoted charges are no longer valid having expired pursuant to the terms of the Quotation, the charges and/or Deposit communicated by the Company to the Client from time to time.
- 3.2 Where a contractual relationship exists between the parties but additional matters, not set out in the Quotation, have been requested by the Client, the Client hereby authorises the Company to incur up to £1,000 (one thousand pounds) plus VAT in charges in each Contract for such additional matters unless otherwise agreed in advance.
- 3.3 Unless otherwise agreed in writing by the Client, the Client hereby authorises the Company to receive its orders up to an amount of £1,000 (one thousand pounds) plus VAT per order via e-mail, and to communicate with the Client in relation to such orders via e-mail. The Client acknowledges and agrees that a Contract only comes into force in relation to such orders when the Company notifies the Client by return e-mail or otherwise of its acceptance of such order. The Client acknowledges that any order by e-mail will be subject to these Terms.
- 3.4 The Company may increase the charges at any time without prior notification to the Client as a result of any error or inadequacy in any specifications, instructions or design provided by the Client or a third party on its behalf or any modifications carried out by the Company at the request of the Client or pursuant to clause 3.1.
- 3.5 All charges are exclusive of VAT and all other expenses incurred in connection with the supply of Products, for which the Client shall be additionally liable.
- 3.6 Any Deposit paid by the Client will be non-refundable and the Client hereby expressly agrees that any Deposit may be retained by the Company whether or not the relevant Product has been delivered or provided.
- 3.7 When Support and/or Services are provided on a time and materials basis, the charges in question will be invoiced per commenced hour and rounded up by reference to the Company's then hourly rates.
- 3.8 The Client agrees that the Company may increase the amount of the Support Fee or other fees for Services on an annual basis by no more than 3% above any increase in RPI for the 12 month period ending two months before the anniversary of the Contract in question. In so doing, the Company may take into account any changes to the Customer's environment and any new Products delivered or provided or additional hardware, Equipment or software introduced since the previous anniversary of the Contract in question, whether installed at the Location or otherwise.

- 3.9 Notwithstanding the provisions of clause 3.8, if additional hardware, Equipment or software has been introduced or installed at the Location, whether by the Company or otherwise, the Company reserves the right to increase the amount of the Support Fee or other fees for Services with immediate effect without waiting for the anniversary of the Contract, such increase to be calculated on a pro rata basis with reference to the relevant Quotation. The Company will give the Client written notice of any such increase. For the avoidance of doubt, the Company will not pay any refund in the event that less Support is required by the Client than is set out in the relevant Quotation.
- 3.10 The Client further agrees that the Company may increase the fees for Recurring Items on an annual basis by no more than 3% above any increase in RPI for the 12 month period ending two months before the anniversary of the Contract in question.

## 4. Payment

- 4.1 The Client shall elect, by giving the Company written notice, to pay for the Products that will be the subject of the Contract by way of standard cash terms (**Cash Option**) or by an applicable Finance Agreement (**Finance Option**). In the absence of any such election, the Client shall be deemed to have selected the Cash Option. Clauses 4.2 to 4.6 of these Terms will apply if the Client selects the Cash Option. Clauses 4.8 and 4.9 of these Terms will apply if the Client selects the Finance Option.

### *Cash Option*

- 4.2 The Company will be entitled to invoice the Client at any time after the Contract has been made (including for the avoidance of doubt, prior to the forthcoming anniversary of the Commencement Date of the Contract) and in the case of delivery of Hardware, Software or Third Party Software either before or after delivery of the Hardware, Software or Third Party Software, or in the case of the supply of Support, yearly on or at any time before the Commencement Date. Unless otherwise set out in the Quotation, Services will be provided on a time and material basis at the rates set out in the Quotation and will be invoiced monthly in arrears. Such rates may be increased on an annual basis in accordance with the provisions of clause 3.8. The Client acknowledges and agrees that:
  - 4.2.1 the Company reserves the right to levy an additional reasonable charge if the Client makes any payments by debit or credit card. Such charge may vary depending on the type of card used and will be a percentage of the amount payable. The percentage will be variable and may be changed at any time by the Company without prior notification to the Client. The Client will, however, be notified of these charges/the percentage at the time when card details are given to Company to perform a payment/charge on the card;
  - 4.2.2 the Company reserves the right to levy an additional charge of up to £30 (thirty pounds) plus VAT if any cheque is not honoured or if any direct debit or BACS scheduled payment is not completed; and
  - 4.2.3 all increases to charges that are levied on the Company by Third Party providers will be passed on to the Client.
- 4.3 The Client will pay all charges in full together with any VAT and other expenses (without legal or equitable set-off or counterclaim) in accordance with the terms of the relevant invoice or Quotation. If the invoice or Quotation in question is silent in relation to payment terms, all charges for Recurring Items will be payable annually in advance, and all other charges will be payable within 14 days of the date of the invoice or Quotation.
- 4.4 Unless otherwise agreed in writing by the Company, whether in the Quotation or otherwise, a Deposit equal to the cost to the Client of the Hardware, Software and Third Party Software will be payable. If the Deposit is required and is not paid within 14 days of the date of the Quotation, the Company may, upon giving written notice to the Client, suspend delivery and/or the provision of the Product concerned, pending payment of the Deposit. If the Deposit is not received in cleared funds within seven days of such written notice, the provisions of clauses 4.5 and 15.2 will apply.
- 4.5 If the Client disputes an invoice or Deposit request in a Quotation, it must do so in writing within 14 days of receipt of such invoice or Quotation setting out grounds for such dispute. Where no such written communication is received by the Company within such period, the invoice or Deposit will be deemed to be undisputed. The Client will pay all parts of a bona fide disputed invoice or Deposit that are not in dispute on the due date. Both parties will use reasonable endeavours to resolve such dispute as expeditiously as possible. Where a dispute is not resolved within 14 days of the Client disputing an invoice or Deposit, without prejudice to any other rights or remedies, the Company will be entitled to:
  - 4.5.1 suspend the performance of any element of or all elements of any Contract (whether related to the Contract that is the subject of the dispute or not) and the Client will fully indemnify the Company for any and all losses (including loss of profit) or expenses incurred;
  - 4.5.2 suspend the performance of any element of or all elements of the Contract that is the subject of the dispute and the Client will fully indemnify the Company for any and all losses (including loss of profit) or expenses incurred;
  - 4.5.3 terminate any element of or all elements of any Contract (whether related to the Contract that is the subject of the dispute

or not) and the Client will fully indemnify the Company for any and all losses (including loss of profit) or expenses incurred;

- 4.5.4 terminate the Contract or any element of the Contract that is the subject of the dispute and the Client will fully indemnify the Company for any and all losses (including loss of profit) or expenses incurred;
- 4.5.5 charge a reasonable administration fee as well as interest on any monies due at the rate of 4% above the base rate of the Bank of England from the due date until the date of actual payment; and/or
- 4.5.6 charge the cost of recovering such debt including any reasonable fees, charges or expenses payable to any professional adviser, collection agency or other person in relation to the debt.
- 4.6 Unless contemplated otherwise in the applicable manufacturer's warranty, the Client will be responsible for any courier delivery costs (both ways) for all Third Party items that need to be repaired by the manufacturer and which are returned to the Company by the Client for this purpose.
- 4.7 Unless otherwise agreed by the Company, all Recurring Items must be paid by direct debit and will following the first anniversary of the Commencement Date of the Contract in question, in the absence of written agreement by the Company, be payable on an annual basis. The direct debit must be deducted within 14 days of the invoice in question.

#### Finance Option

- 4.8 Upon:
  - 4.8.1 the completion of the delivery and installation (as appropriate) of the Hardware and/or Software that is the subject of the Contract; and
  - 4.8.2 the Client signing the appropriate Finance Agreement in respect of the Hardware and/or Software that is the subject of the Contract,

the Client shall within one Working Day sign any applicable certificate of satisfaction or acceptance (or similar document) (**Acceptance Certificate**) contained in the relevant Finance Agreement.

- 4.9 In the event that the Client does not sign such Acceptance Certificate in accordance with clause 4.8, the Client acknowledges and agrees that it will, upon receipt of written notice setting out all sums due to the Company that would have been payable to the Company by the party with which the Client had signed the relevant Finance Agreement (in order to compensate the Company for its inability to recover sums due under the relevant Finance Agreement), be immediately obliged to pay all such sums. If the notice does not set out the sum due to the Company, it will be calculated by multiplying the proposed monthly payment to the party with which the Client had signed the relevant Finance Agreement by the proposed number of monthly payments, less interest payable to the party over the term of the Finance Agreement.
- 4.10 In the event of a service of notice pursuant to clause 4.9, the Client shall be treated as having initially elected the Cash Option and the remaining provisions of clauses 4.2 to 4.7 shall apply with the necessary adoption as required.

## 5. Client's obligations

- 5.1 The Client will:
  - 5.1.1 pay all sums, fees, Deposits and other charges due under any Contract by their due date, time of payment being of the essence;
  - 5.1.2 if a Service is delayed other than through the Company's fault, at the election of the Company (to be exercised in the Company's sole discretion) pay any fees or expenses incurred and/or any sums required by the Company in respect of idle-time incurred for the delay, including delay as a result of the Client's agents or representatives. The Company's fees will be charged at the Company's then current hourly rate. Any agreed time schedules will be deferred to a period of time to be determined in the sole discretion of the Company;
  - 5.1.3 take all reasonable precautions to protect the health and safety of the Company's personnel whilst at the Location;
  - 5.1.4 allow the Company to exercise upon reasonable notice a right of entry over all premises in the possession of or under the control of the Client in order for the Company to perform its duties under the Contract and to determine whether the Client is complying with its obligations under these Terms;
  - 5.1.5 be responsible for ensuring that the Location is ready to receive the Products concerned;
  - 5.1.6 promptly furnish the Company with any information required by the Company in order to provide the Products and will ensure its employees or agents co-operate in a timely manner with the Company;
  - 5.1.7 if the Client fails for any reason (including, without limitation, a failure by the Client to pay a Deposit or as a result of a delay that is not caused by the Company) to complete any purchase of any

Product within the period notified to the Client at any time by the Company, indemnify the Company against any loss (including loss of profit), damage or cost of whatever nature suffered or incurred by the Company reasonably relating to such failure on the part of the Client including, without limitation, reasonable charges and/or expenses incurred by Third Parties retained by the Company;

- 5.1.8 indemnify and keep the Company indemnified in respect of any losses (including loss of profit), costs, damages, claims and/or expenses incurred by the Company due to any claims by any Third Party arising out of any use, access to or modification of the Client's computer systems by the Company on the Client's instructions and/or use of any materials supplied to the Company by the Client. The indemnity in this clause 5.1.8 will survive the termination or expiry of this Contract;
- 5.1.9 not copy or reproduce in any way the Documentation or any part thereof without receiving the Company's prior written consent; and
- 5.1.10 perform such other obligations as are set out in the Quotation, in an Incident, Query or Request, installation schedule or as reasonably requested by a representative of the Company.
- 5.2 The Client will promptly provide the Company, on request, with all information and assistance that the Company may reasonably require in the performance of its duties under the Contract.
- 5.3 The Client warrants that any of its representatives who enter into the Contract have the Client's authority to do so and that the Client will take responsibility for any employee, ex-employee or other person who holds themselves out to be an authorised representative of the Client.

## 6. Delivery, inspection and commencement of risk

- 6.1 All dates supplied by the Company for the delivery or installation or implementation or testing of an element of Hardware, Software and/or Third Party Software or the provision of any Support or any Service will be treated as being approximate only and are not guaranteed. Time for delivery of Hardware, Software and/or Third Party Software or the completion of any Service or Support will not be of the essence. The Company will use its reasonable endeavours to meet such dates, but no liability will attach to the Company if such dates are not met for any reason.
- 6.2 Risk of damage to or loss of Hardware, Software or Third Party Software will pass to the Client:
  - 6.2.1 on delivery by the Company to the Location;
  - 6.2.2 if the Client fails to take delivery, when the Hardware, Software or Third Party Software are tendered for delivery; or
  - 6.2.3 when possession of the Hardware, Software or Third Party Software is taken by a carrier for the Post Office for delivery to the Client,

whichever is the earliest.
- 6.3 With effect from delivery and, for the avoidance of doubt, in the period until title in the Hardware passes to the Client, the Client is responsible for insuring the Hardware against loss or damage for the full cost of its replacement. With effect from delivery of the Software and/or Third Party Software, the Client is responsible for insuring the Software and/or Third Party Software in question against loss or damage for the full cost of its replacement.
- 6.4 The Company does not accept any liability for loss or damage to the Hardware, Software or Third Party Software whilst in transit to the Client unless they are carried by the Company and the Company is notified of such loss or damage within two days of delivery or scheduled delivery (time being of the essence).
- 6.5 Where the Company agrees to remedy any fault or damage pursuant to clause 6.4, the Company may, at its option, replace the Hardware, Software and/or Third Party Software in question in which event the Client will immediately return the damaged or faulty Hardware, Software and/or Third Party Software in question to the Company.
- 6.6 If the Client fails or is unable to take possession of the Hardware, Software or Third Party Software or is unable or unwilling to permit the Company to perform the Services or Support pursuant to the Contract after the Company has tendered delivery or performance, then without prejudice to other rights or remedies the Company will:
  - 6.6.1 be entitled to suspend the performance of any element of or all elements of any Contract (whether related to the Contract in question or not) in which case payment by the Client for the Products will immediately become due whether or not an invoice has been rendered by the Company;
  - 6.6.2 be entitled to suspend the performance of any element of or all elements of the Contract in question in which case payment by the Client for the Products will immediately become due whether or not an invoice has been rendered by the Company;
  - 6.6.3 be entitled to terminate any element of or all elements of any Contract (whether related to the Contract in question or not) in which case payment by the Client for the Products will

immediately become due whether or not an invoice has been rendered by the Company;

- 6.6.4 be entitled to terminate the performance of any element of or all elements of the Contract in question in which case payment by the Client for the Products will immediately become due whether or not an invoice has been rendered by the Company; and/or
- 6.6.5 hereby be indemnified by the Client for all losses (including loss of profit), costs and expenses incurred.

## 7. Provision of Hardware, Software and Third Party Software

### General

- 7.1 The Client will not in any way charge by way of security for any indebtedness any of the Hardware, Software or Third Party Software which remain the property of the Company.
- 7.2 The Client acknowledges that the Contract is binding and that any Hardware, Software or Third Party Software referred to in the Contract cannot be returned to the Company even if such Hardware or Software or Third Party Software has not been opened or made use of.

### Provision of Hardware

- 7.3 Title in the Hardware will not pass to the Client until the total price payable for it and any other sums due from the Client have been received in full in cleared funds by the Company.
- 7.4 Until title in the Hardware has passed to the Client, the Client will hold the Hardware as bailee for the Company.
- 7.5 The Client will keep the Hardware separate from any other goods in its possession and promptly store, protect, insure and identify them as belonging to the Company.
- 7.6 Until title in the Hardware passes, the Client will, upon request, deliver up such of the Hardware as is in the possession of the Client and if the Client fails to do so forthwith the Company may enter the premises owned occupied and controlled by the Client and repossess the Hardware.

### Provision of Software or Third Party Software

- 7.7 Title to and the Intellectual Property Rights in the TIG Software Modules and in the Third Party Software will not pass to the Client. If, pursuant to the Quotation, title in the Bespoke Software should pass to the Client, such title will not pass until the total price payable for it and any other sums due from the Client have been received in full cleared funds by the Company and the Client has signed and returned the applicable Software Solution Completion Form to the Company. The Client acknowledges and agrees that where source code has not been provided as part of the Bespoke Software, such Bespoke Software may not be reverse-engineered, save to the extent permitted by law.
- 7.8 Provided the Company receives in full cleared funds the total price payable for the Software and/or the Third Party Software, the Client is licensed to use the Software in accordance with these Terms and/or use the Third Party Software in accordance with the applicable licence terms, and by entering into the Contract, the Client agrees to comply with such terms. For the avoidance of doubt, the owners of the Third Party Software are the licensors of the Third Party Software.
- 7.9 The licence pursuant to which the Software is granted will be perpetual (until terminated), non-transferable and non-exclusive.
- 7.10 The licence hereby granted in relation to the Software is subject in any event to the following restrictions:
- 7.10.1 subject to clause 7.10.5, the Software will be used by the Client only for the purposes of the Client's own internal business;
- 7.10.2 the Client will not alter, modify, copy or adapt the Software or any part thereof;
- 7.10.3 the Client will not assign, sublicense, charge or otherwise dispose of or grant rights over or out of the licence hereby granted for the Software, without the Company's prior written consent (such consent not to be unreasonably withheld);
- 7.10.4 to the maximum extent permissible in law, the Client agrees not to attempt to ascertain or list the source programs or source code relating to the Software;
- 7.10.5 notwithstanding clause 7.10.1, the Client will not, without the prior written consent of the Company, use the Software as part of a computer bureau business or for a business which the Client does not at the date of the Contract carry on; and
- 7.10.6 the Client will not interfere with or attempt to circumvent the operation of any dongle or other device whose function is to prevent the unlawful copying or use of the Software.
- 7.11 Notwithstanding a description of the Client's rights as or by virtue of a "sale" (and whether made orally or in writing and whether made in their terms or in any other document) unless specifically set out otherwise in the Quotation, the Client's only right to use the Software is by way of a licence pursuant to these Terms and the Contract (and any licence proffered by or on behalf of the owner of the Third Party Software).

## 8. Provision of Support

- 8.1 During the continuance of the Contract, the Company will provide the Client with all or any of the Support (as set out below) as more particularly set out in the Quotation, the Schedule of Cover and/or if applicable, the service level agreement entered into by the Company and the Client. For the avoidance of doubt, the Client acknowledges that Support does not include any installation work provided by the Company for the Client, which will be charged, subject to clause 9.9, on a time and materials basis at its then current rates, whether or not such installation work is carried out at the Location or remotely:

### Service Desk Support

- 8.1.1 The Client can telephone the Service Desk or log an Incident/Request/Query (**Call**) online via the Client extranet which is available during the Normal Operational Hours for advice about the diagnosis or correction of problems in connection with the use of the IT Infrastructure. All Calls logged will be dealt with in accordance with the Client's applicable Schedule of Cover and/or service level agreement.

### Query

- 8.1.2 Assistance will be provided to the Client in relation to the IT Infrastructure, its advanced features and any information contained in any manual in respect of the IT Infrastructure, for example, "How do I complete a mail merge in Word?".

### Incident

- 8.1.3 Support will be provided by telephone or remotely over the internet to solve issues arising during the operation of the IT Infrastructure, for example, "I cannot receive my e-mail". In the event that a fault is determined in the IT Infrastructure, support will be provided on alternative methods of achieving the desired result(s) of the Client.

### Virus control and unauthorised access

- 8.1.4 The Company will use its reasonable endeavours to assist the Client in the prevention of the passing of software viruses, spam, spyware and unauthorised access to the Client's computer systems, whether by the provision of appropriate Third Party Software provided pursuant to the Quotation or during its normal use of the IT Infrastructure, but is not liable for any damage (of any nature) arising out of software viruses, spyware, material which is technologically harmful or out of any unauthorised access.

### Preventative maintenance

- 8.1.5 The Company will use its reasonable endeavours to review the Client's network and computer systems to advise upon and assist, so far as is practicable, in maintaining the performance of the network. As part of this service the Client agrees to provide the Company with such discretionary rights as set out in more detail at clause 8.8. The Company is not liable for any damage (of any nature) arising out of software viruses or any unauthorised access, nor is the Company liable for any data, files or software removed pursuant to clause 8.8.

### Request

- 8.1.6 Assistance will be provided to the Client in relation to the IT Infrastructure, regarding adds, moves and changes, as set out in the applicable Schedule of Cover.

### Problem

- 8.1.7 Support will be provided by telephone or remotely over the internet to solve recurrent issues arising from multiple incidents relating to the IT Infrastructure, for example, "I regularly cannot log in from home".

### IT Infrastructure monitoring (event management)

- 8.1.8 The Company may, if applicable, install Software on the Client's IT Infrastructure to identify warnings or faults and will, where reasonably necessary, automatically generate an Incident for any issues that are detected.
- 8.1.9 If the Company detects a critical issue within the Client's network during Normal Operational Hours, the Company will generate an Incident, which will be dealt with in accordance with the Client's applicable Schedule of Cover and/or service level agreement.
- 8.1.10 If the Company detects a critical issue within the Client's network outside of Normal Operational Hours and the Client has subscribed to the "Enhanced 24x7 Support Service" as set out in the Schedule of Cover, the Company will generate an Incident, which Incident will be dealt with in accordance with the Client's applicable Schedule of Cover and/or service level agreement. The Client will be invoiced on a time and materials basis at the Company's then current rates.
- 8.1.11 If the Company detects a critical issue within the Client's network outside of Normal Operational Hours and the Client has not subscribed to the "Enhanced 24x7 Support Service", the Company will generate an Incident, which Incident will be dealt

with during Normal Operational Hours in accordance with the Client's applicable Schedule of Cover and/or service level agreement.

- 8.2 The Client will supply to the Company via use of the online extranet or Service Desk a detailed description of any fault requiring Support as set out in clause 8.1 and the circumstances in which it arose, and will submit sufficient material.
- 8.3 The Company will keep the Client informed of the progress of incident resolution. Support staff will attempt to solve an Incident in accordance with the Client's applicable Schedule of Cover and/or Service level agreement.
- 8.4 The Company will use reasonable endeavours to answer all incidents reported to the Company in accordance with the Schedule of Cover and, if applicable, the service level agreement. The Company will use reasonable skill and care in the provision of Support.

#### Support

- 8.5
  - 8.5.1 Support during Normal Operational Hours will normally be provided by telephone or remotely via the internet.
  - 8.5.2 Where the Client requires Support to be provided remotely by the internet outside Normal Operational Hours, it will be entitled, provided that it has subscribed to the "24x7 Support Service" as set out in the Schedule of Cover and paid the appropriate Support Fee to contact the 24x7 Service Desk. In such circumstances, the Client will be able to log a call and receive Support within the time frames specified in the applicable Schedule of Cover. All Support provided outside of Normal Operational Hours will be invoiced on a time and materials basis at the Company's then current rates. The Client will be entitled to utilise the 24x7 support service only for Incidents and not for Queries or Requests, unless otherwise agreed by the Company in writing.
  - 8.5.3 Where the Client requests attendance at the Location during Normal Operational Hours, or the Company acting reasonably, determines that Support cannot be provided by telephone, the Client will be entitled to request an engineer to attend at the Location. Such attendance at the Location will be the subject of an independent Quotation and the Client will be invoiced on a time and materials basis at the Company's then current rates.
  - 8.5.4 The Company will not provide Support at the Location outside Normal Operational Hours unless otherwise agreed in writing.
  - 8.5.5 It is the responsibility of the Client to ensure continuous internet access during the provision of remote Support and the Company is not liable for any loss (including loss of profit) incurred by the Client due to an internet connection which is interrupted, contains errors or is unavailable.
- 8.6 The Company shall be under no obligation to provide Support in respect of:
  - 8.6.1 incidents resulting from any modifications or customisation of the IT Infrastructure not authorised in writing by the Company or the supplier of such IT Infrastructure;
  - 8.6.2 any hardware and/or software which has been obtained illegally, unlawfully, or is otherwise unregistered with the supplier thereof;
  - 8.6.3 incorrect or unauthorised use of the IT Infrastructure or operator error;
  - 8.6.4 any fault in the Equipment or Hardware, arising through (but not limited to) failure or fluctuation of electric power, air conditioning, humidity control, other environmental conditions, head crash or failure of any fixed or removable storage media;
  - 8.6.5 any recovery, reconfiguration or reconstruction of any data or Software lost, damaged or destroyed as a result of any unauthorised access to or misuse of the Equipment or Hardware or any IT Infrastructure on it or as a result of any software virus (howsoever termed);
  - 8.6.6 use of the elements of the IT Infrastructure in any combination other than those specified in the Documentation or pursuant to instructions received from the Company;
  - 8.6.7 use of the IT Infrastructure with computer hardware, operating systems or other supporting software other than those recommended by the vendor in question;
  - 8.6.8 unless otherwise agreed in the Quotation, use by the Client of a version of the IT Infrastructure which is not within the three most recent versions thereof;
  - 8.6.9 Bespoke Third Party Software unless the Client has support arrangements in place directly with the third party vendor or unless otherwise agreed by the Company; and
  - 8.6.10 any IT Infrastructure (or part thereof) added without the knowledge of the Company.

- 8.7 The Company will upon request by the Client provide Support notwithstanding that the fault results from any of the circumstances described in clause 8.6. Any time spent by the Company investigating such faults will be chargeable at its then current rates on a time and materials basis. The Company will invoice such charges at its discretion.
- 8.8 The Client acknowledges and agrees that the Company may at its discretion (but will be under no obligation to) remove any data, files or software as part of the Support provided, from the Client's network and/or computer systems, which, in the Company's opinion, is affecting the smooth running of the Client's network. Examples of such data, files or software that the Company may remove are:
  - 8.8.1 illegal data, files or software (including but not limited to pornographic materials);
  - 8.8.2 data, files or software which, in the Company's opinion, are likely to pass software viruses, spam, spyware or any other unauthorised access to the Client's computer systems; and/or
  - 8.8.3 data, files or software which, in the Company's opinion, could result in unplanned downtime.
- 8.9 The Company will be obliged to make modifications or provide Support in relation to the Client's computer hardware, software, or third party application software or any data feeds or external data only if expressly set out in a Quotation.
- 8.10 While the Company is providing Support, the Client agrees that neither it nor any Third Party will be allowed to have access to the IT Infrastructure to provide support or otherwise unless agreed in writing by the Company. During such period, the Company will retain the network password which will only be disclosed to the Client upon termination of the Support Contract and all monies payable under such Support Contract and any other Contract that has been terminated having been received in full in cleared funds by the Company. If the Client gains or procures administrator access to the network or Software, the Contract may be suspended, mutatis mutandis, in accordance with clause 15.3.
- 8.11 It is the responsibility of the Client to maintain and keep up to date all of its Equipment that is not Supported pursuant to the Contract.
- 8.12 Provided the Client has so instructed and paid the Company and there is a Quotation in respect thereof, the Company will, if suitable in the absolute discretion of the Company, implement procedures whereby automatically released patches and upgrades to the IT Infrastructure can be installed on the Client's systems without necessitating intervention by the Company.

## 9. Provision of Services

### General

- 9.1 Where the Company agrees to provide the Services specified in the Quotation, the following provisions apply unless otherwise specified in the Quotation.
- 9.2 Where leased line connectivity is to be provided under the Contract, it is subject to:
  - 9.2.1 wayleave;
  - 9.2.2 site survey;
  - 9.2.3 the Acceptable Use Policy; and
  - 9.2.4 Third Party supplier confirmation.
- 9.3 Unless specifically set out otherwise in the Quotation, the Company will own and be fully entitled to use in any way it deems fit any Intellectual Property Rights or intellectual property skills, techniques, materials, concepts or know-how acquired, developed or used in the course of performing the Services and any improvements made or developed during the course of the Services. For the avoidance of doubt, this will include any improvements or modifications to Software during the term of the Contract. Nothing herein will be construed or will give effect to any transfer of right, title or interest in the Company's Intellectual Property Rights.
- 9.4 Any estimate or indication by the Company as to the number of man days or man hours required by the Company to undertake a specific task will be construed as being an estimate only and the Company reserves the right to allocate personnel to the task in question at its absolute discretion. The Company will in no circumstances be liable for a delay or for any other loss, damage or cost of whatsoever nature (including without limitation Consequential Loss) suffered or incurred by the Client where such estimate or indication is incorrect or where more senior personnel are allocated in relation to the task in question.
- 9.5 If the Location lies outside the M25, the Company will, in addition to the charges agreed for the Services, charge its then current rates for travel, accommodation and subsistence expenses, as well as the cost of time spent travelling incurred in the provision of the Services.
- 9.6 For the avoidance of doubt, if the Services to be provided pursuant to the Quotation contemplate the provision of audit services only, the provisions relating to, *inter alia*, Support, installation, implementation and systems integration will not apply.
- 9.7 The Client acknowledges and agrees that there may be circumstances where performance of business systems may be disrupted. In these

circumstances the Company will use reasonable endeavours on a time and materials basis to remedy such disruption within a reasonable period of time subject to prompt and adequate notice of such disruption by the Client.

#### Installation

- 9.8 The Client will at its own expense and prior to the delivery of the Hardware or Software or Third Party Software comply with the Company's reasonable requests in order to allow the Company to provide the installation services. If installation, or any aspect thereof, is delayed by the Client through no fault of the Company, the Client hereby indemnifies the Company for all losses (including loss of profit), costs and expenses reasonably incurred by the Company or its authorised representatives as a result of the delay.
- 9.9 The Company will normally carry out installation services during Installation Operational Hours but may, on reasonable notice, require the Client to provide it access to the Location at other times. At the Client's request the Company may agree to carry out installation services outside Installation Operational Hours. This will, however, be subject to any additional charge that may be made by the Company for complying with such request. Such charges will be agreed in writing as part of the Quotation prior to commencement of out of hours work and in the absence of agreement will be one and a half times the Company's then hourly rates.
- 9.10 All personnel required under this Contract for the installation services will be provided by the Company and will be facilitated wherever possible by use of the Client's own staff.
- 9.11 The Company will take all reasonable precautions to ensure that its employees retain in complete confidence any information or trade secrets of the Client, its business or its clients of which they become aware as a result of performing their duties under this Contract.
- 9.12 Personnel provided under this Contract will remain under the management and conditions of employment of the Company or its nominated subcontractor.
- 9.13 In the event that the Company requests information from the Client in order to complete an installation request and the Client does not provide satisfactory information in a timely manner, the Company will attempt to procure such information for a further maximum period of three weeks. If the required information has not been provided by the end of such three week period, the installation will be deemed to have been completed to the Client's satisfaction. Any further work in relation to such installation will be charged for independently and will be the subject of a separate Quotation.
- 9.14 Upon completion or deemed completion of the installation request, the Company will provide the Client with a Network Completion Form to confirm that the installation is complete. The Network Completion Form will be deemed to be completed upon the earlier of: (1) signature by a representative of the Client of the Network Completion Form or (2) seven days after receipt by the Client of the Network Completion Form.
- 9.15 The Client will be entitled to note any "snagging" issues which it, in its reasonable opinion, deems to be outstanding. Any issues included on the "snag list" that the Company, in its reasonable opinion, agrees are outstanding will be remedied by the Company at no further charge. The snag list must be provided to the Company by the Client within seven days of receipt of the Network Completion Form failing which, the Client will be deemed to have no "snagging" issues.
- 9.16 The Company will provide the Client with reasonable notice of any work requiring downtime in order to complete an installation request (**Maintenance Window**). The Client will permit the Company to utilise the Maintenance Window in order to complete the installation request.
- 9.17 If the Client wishes to change the scope of any work as set out in a Work Schedule and/or Quotation then all work and/or services under the applicable Work Schedule and/or Quotation will be suspended pending further Work Schedules and/or Quotations being signed by the Client.
- 9.18 Notwithstanding clause 3.3, in the event that the Client requires the Company to provide services on short notice or perform emergency work, the Client agrees that it may not be practicable for the Company to complete and/or for the Client to sign a Work Schedule and/or Quotation prior to commencing the services or work in question. The Company will use its reasonable endeavours to provide such services or perform such work and the Client acknowledges and agrees that the Company is not liable for any loss (including loss of profit) incurred by the Client due to any services provided on short notice or any emergency work performed in accordance with this clause 9.18. Services provided or work performed in accordance with this clause 9.18 will be invoiced on a time and materials basis at the Company's then current rates.
- 9.19 The provisions of clauses 9.8 to 9.18 may be amended by a Work Schedule agreed and signed in writing by an authorised representative of the Company and by an authorised representative of the Client.

#### Implementation and systems integration

- 9.20 It is the Client's responsibility to take adequate copies of data, operating and application software so that the system and files may be restored in the event of corruption or other similar loss howsoever occasioned.

- 9.21 The Company may appoint subcontractors to supply the Services or any element of the Services. The Company will remain solely responsible to the Client for any subcontracted element of the Services.

#### E-mail archiving services

- 9.22 The e-mail archiving service is a non-perpetual service for a minimum term of 36 months with payment terms as per the Quotation. On termination of the archiving service, the Client will be required to pay an additional fee of £1,000 (one thousand pounds) to facilitate the transfer of the necessary Software to a server of the Client's choice as well as all monies due under the e-mail archiving service Contract, and for the avoidance of doubt, this will include the entire amount of the Company's fee for the period which has not been completed. In addition, the Client agrees that on termination of such Service, it will allow or procure that the Company will be allowed to log-on and access the Client's server to facilitate same.

#### Audit services

- 9.23 The Client must provide the Company with all information reasonably necessary in the Company's opinion to complete an audit. Audits will be carried out on the basis of the information provided and the Company accepts no liability for information that is incorrect, inadequate or not provided. There will be no reduction in fees in the event that information is incorrect, inadequate or not provided.

### 10. Specification

- 10.1 The Company reserves the right to make any changes to the specification in the Hardware or Software or Third Party Software or Support or Services required and set out in the Quotation and charge for such changes which are required to conform with:
- 10.1.1 any applicable safety or other statutory requirements and which do not materially affect the quality or performance of the Contract; and/or
- 10.1.2 the true requirements of the Client following a site survey or audit undertaken by the Company or the changing requirements of the Client during the course of the Contract.
- 10.2 If the Hardware or Software or Third Party Software or Support or Services are carried out to a specification instruction or design supplied by the Client or any Third Party on behalf of the Client or the Client does not agree with the goods or services which the Company believes are required pursuant to clause 10.1 then:
- 10.2.1 the suitability and accuracy of the specification instruction or design will be the Client's sole responsibility; and
- 10.2.2 the Client will indemnify the Company against any infringement of any Intellectual Property Rights and any loss (including loss of profit), damage or expense it may incur because of any such infringement in any country and the Client will indemnify the Company against any and all loss, damage or expense in respect of any liability arising under the Consumer Protection Act 1987 by reason of the specification or design of the Hardware or Software or Third Party Software or Support or Services.

### 11. Warranties

- 11.1 The Company warrants to the Client that:
- 11.1.1 it has the right to provide or procure the provision of the Hardware or Software or Third Party Software or Support or Services;
- 11.1.2 all Services supplied under this Contract will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated;
- 11.1.3 in relation to Support or Services it will:
- 11.1.3.1 subject to clauses 5.1.2 and 15, provide such Support or Services in a timely and professional manner;
- 11.1.3.2 use its reasonable endeavours to provide the same in accordance with any time schedules agreed in writing between the Company and the Client; and
- 11.1.3.3 conform to the standards generally observed in the industry for similar services; and
- 11.1.4 at delivery, any Hardware or Software or Third Party Software will conform substantively to any specification given in relation thereto.
- 11.2 The warranties given by the Company to the Client in respect of the Hardware are those which are given by the manufacturer of such Hardware to the Company and are subject to any relevant limitations and exclusions imposed by such manufacturer. Any warranties in respect of the Third Party Software are those set out in the applicable software licence. The Company will provide the Client with details of such warranties and remedies for breach of such warranties (if available) upon request.

- 11.3 The Company will not be liable for a breach of warranty if:
- 11.3.1 the Client makes or causes to be made any modifications to the Hardware or Software or Third Party Software without the Company's prior written consent;
  - 11.3.2 the Hardware or Software or Third Party Software is used in combination with any software or materials not supplied by the Company or not recommended by the Company;
  - 11.3.3 the Hardware or Software or Third Party Software is used incorrectly; or
  - 11.3.4 there is an external cause or causes affecting the Hardware or Software or Third Party Software including but not limited to failure or fluctuations of electrical power, fire, flood or other natural disasters.

## 12. General exclusions, indemnity and limitations of liability

- 12.1 To the maximum extent permissible in law all conditions and warranties which are to be implied by statute or otherwise by general law into these Terms or relating to the Hardware or Software or Third Party Software or Support or Services are hereby excluded.
- 12.2 The Company does not warrant that the Software or Third Party Software is virus or error free and that it is without interruption.
- 12.3 The Company does not warrant that it will pro-actively detect all faults. The Client acknowledges and agrees that the Company is not liable for any loss (including loss of profit) incurred by the Client due to a fault not being detected.
- 12.4 The Company will in no circumstances be liable to the Client for any indirect or Consequential Loss.
- 12.5 The total liability which the Company will owe to the Client and in respect of all claims under these Terms will not exceed the price paid by the Client in the previous 12 months in respect of such Hardware or such Software or such Third Party Software or such Support or such Services.
- 12.6 Nothing in these Terms will limit the Company's liability to the Client for liabilities which cannot be limited or excluded as a matter of law including:
  - 12.6.1 death or personal injury resulting from the negligence of the Company, its employees, agents or subcontractors; and
  - 12.6.2 fraud or fraudulent misrepresentation.
- 12.7 The Client will at all times keep the Company fully and effectively indemnified against any liability, claim, loss (including loss of profit), damage or expense which:
  - 12.7.1 the Company, its employees, agents, subcontractors or other clients may suffer due to the negligence of or breach of contract by the Client, its employees, agents or subcontractors; and/or
  - 12.7.2 any client of the Client or any Third Party dealing with the Client will claim against the Company in respect of the Hardware or Software or Third Party Software or Support or Services.
- 12.8 Neither party will have any liability to the other in respect of any claim under this clause 12 unless the claiming party has given written notice of the same to the defaulting party as soon as is reasonably practicable and in any event no later than three months from the date on which such loss or damage arose.
- 12.9 Where the Company has introduced the Client to any Third Party as the supplier of any goods or services to the Client (including without limitation the provision of any finance or rental arrangement for the Hardware or any Software or Third Party Software) the Company gives no warranty or guarantee as to the suitability or quality of any goods or services supplied or that any internet access will be uninterrupted or error free or of any particular level of availability or quality of such internet access and will not under any circumstances be liable for any interruptions or downtime of any service and the Client acknowledges that it has sole responsibility for selecting them.
- 12.10 It is acknowledged by the Client that the charges agreed by the Company and its entry into the Contract are in reliance upon the limitations of liability and disclaimers of warranties and damages set out in these Terms and that the same form an essential basis of the agreement between the Company and the Client.
- 12.11 The Client acknowledges and agrees that the allocation of risk in this clause 12 is fair and reasonable having regard to the level of charges payable by the Client under the Contract and is recognition of the fact that it is not within the Company's control how and for what purpose the Hardware or Software or Third Party Software or Support or Services are used by the Client and the Client is able to rely upon its own business insurance to bear or recover any losses under clause 12.5. In entering into the Contract the Client acknowledges and confirms that it has had reasonable opportunity to take advice from its own legal advisers with regard to the existence and extent of the limitations of liability between the parties and the Client has had the opportunity to discuss these terms with the Company and amend them where possible.
- 12.12 The exclusions from and limitations of liability set out in this clause 12 will be considered independently. The validity or unenforceability of any one

clause, subclause, clause or subclause of this clause 12 will not affect the validity or enforceability of any other part of this clause 12.

- 12.13 The provisions of this clause 12 will survive the termination of the whole or a part of this Contract.

## 13. The Location

- 13.1 The Client warrants that the Location is safe and suitable for the purposes for which the Client intends to engage the Company to carry out the Services.
- 13.2 The Client will:
  - 13.2.1 be responsible for obtaining all licences consents or authorisations that may be necessary to enable the delivery of the Hardware or the Software or the Third Party Software or Services or Support to be performed by the commencement of the Contract;
  - 13.2.2 insure the Location its contents and all occupiers (including the Company's employees or contractors) against all risks unless otherwise agreed in writing;
  - 13.2.3 at its own expense and in sufficient time suitably prepare the Location as requested by the Company (if applicable) and afford the Company or its representatives all reasonable assistance to enable the Company or its representatives to fulfil their obligations under the Contract;
  - 13.2.4 provide the Company with such information concerning the Location as may be required to enable the Company to carry out the Services; and
  - 13.2.5 pay the Company based on the hourly time charges of its consultants or employees as advised from time to time and time incurred by the consultants or employees of the Company away from the Company business anywhere the Client fails to keep an appointment with the Company.
- 13.3 Where the Company provides Support to the Client, the Client grants the Company the right on reasonable notice during normal business hours to enter the Location from time to time or will procure such access to such premises upon which the IT Infrastructure is located for the Company to inspect it for purposes of compliance with these Terms.

## 14. Force majeure

The Company will not be liable to the Client for any loss (including loss of profit) or damage whatsoever nor deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of the Company's obligations under the Contract if the loss, damage or delay or failure is due to a cause beyond the Company's reasonable control which, for the avoidance of doubt and without prejudice to the generality of the foregoing will include outages of the Company's equipment wherever located, governmental actions, war, riots, civil commotion, fire, flood, epidemic, labour disputes including labour disputes involving the workforce of the Company, restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials, currency restrictions and acts of God.

## 15. Term and termination

- 15.1 Where the Company agrees to provide:
  - 15.1.1 Support; or
  - 15.1.2 ongoing Services including, without limitation, Recurring Items,

the Contract in question will commence on the Commencement Date and will remain in force thereafter for a minimum period of 12 months, unless stated otherwise in the applicable Quotation. Unless terminated in accordance with clause 15.2, the Contract will renew automatically on each anniversary of the Commencement Date of the Contract in question for consecutive minimum periods of 12 months (or, in the case of a Contract which is for a minimum period which is greater than 12 months, such Contract will extend automatically for a further period of 12 months commencing on the day after expiry of such initial period ("the commencement date") and thereafter will renew automatically on each anniversary of such commencement date for consecutive periods of 12 months).
- 15.2 Either party may terminate a Contract at the end of the initial or any consecutive 12 month period by giving at least three months' prior written notice (which must, notwithstanding the provisions of clause 24.1 and for the avoidance of doubt, be received by the recipient at least three months prior to the anniversary of the Commencement Date of the Contract). By way of example and for illustration purposes only, if the anniversary of the Commencement Date of the Contract is 15 December 2012, the notice of termination must be received by the other party by no later than 15 September 2012. Any notice of termination must be provided utilising a means of delivery that requires the recipient to sign on receipt, with such signature to serve as proof of receipt by the recipient. A failure by the sending party to obtain proof of receipt by the recipient when providing notice of termination will render that notice ineffective. If payment of any invoice from the Company after the Company's receipt of the notice of termination is not received by the Company within 14 days of delivery, the Client's notice of termination will be rendered ineffective.

15.3 In the event of:

- 15.3.1 any distress, execution or other legal process being levied upon any of the Client's assets or revenues;
- 15.3.2 the Client (being a company) admitting or being adjudged to be unable to pay its debts as they fall due or entering into or taking any step to enter into any arrangement or composition with its creditors pursuant to Part 1 Insolvency Act 1986 or otherwise or a petition being presented or an order being made or an effective resolution being passed for its winding up, except for the purposes of amalgamation or reconstruction as a solvent company, or a receiver, manager, administrative receiver, administrator, liquidator, or similar officer being appointed in respect of the whole or any part of its undertaking or assets;
- 15.3.3 the Client (being an individual) admitting or being adjudged to be unable to pay his debts as they fall due or entering into or taking any step to enter into any arrangement or composition with his creditors pursuant to Part 8 Insolvency Act 1986 or otherwise or an order being made for his bankruptcy or a receiver, manager, trustee in bankruptcy or similar officer being appointed in respect of him or any of his assets or dying or becoming mentally incapacitated;
- 15.3.4 any member or partner of the Client (being a general partnership or limited liability partnership or unincorporated association) becoming subject to any of the events listed in clause 15.3.3;
- 15.3.5 the occurrence of an event in whatever country or jurisdiction which is analogous to an event listed in clauses 15.3.1 to 15.3.4;
- 15.3.6 the Client ceasing or threatening to cease to carry on business;
- 15.3.7 the Client ceasing or threatening to cease to exist in its present form or substantially alter its nature or composition, including but not limited to where the Client is a general partnership or a limited liability partnership, the dissolution of or change in the partners or members (as appropriate) of that partnership;
- 15.3.8 any breach of these Terms by the Client in relation to any element of any Contract;
- 15.3.9 non-payment by the Client of any undisputed invoice or Quotation or the undisputed portion of any invoice or Quotation;
- 15.3.10 the expiry of the Contract for Support or termination by the Client or the Company of the provision of Support; or
- 15.3.11 the Company reasonably suspecting that any of the events mentioned above is about to occur,

the Company will be entitled on written notice to the Client to:

- (a) suspend the performance of any element of or all elements of any Contract (whether related to the Contract to which the provisions of clause 15.3 apply or not);
- (b) suspend the performance of any element of or all elements of the Contract to which the provisions of clause 15.3 apply;
- (c) terminate any element of or all elements of any Contract (whether related to the Contract to which the provisions of clause 15.3 apply or not); and/or
- (d) terminate any element of or all elements of the Contract to which the provisions of clause 15.3 apply.

In the circumstances set out in clauses 15.3(c) and 15.3(d) the Company will be entitled to cancel the unperformed portion of the Contract in question and:

- (i) the whole of the price payable under that Contract or any other agreement including any sums in relation to which the Company has provided deferred terms such as staged payments will be payable immediately; and
- (ii) recover as damages from the Client all loss and damage of whatever kind, including Consequential Loss, which the Company may sustain with such cancellation.

15.4 In the event of termination or expiry of any Contract in relation to Products that are not ongoing, the Client will immediately cease use of all Software (and any updates of the same) and at its own expense, remove from all computers under its control all copies of Software (and updates) and return or destroy them (certifying in writing to the Company that such destruction has taken place).

15.5 For a period of six months following expiry or termination of any Contract, the Client will on not less than two days' notice from the Company, permit authorised representatives of the Company to access its systems, whether remotely or by entering its premises during normal business hours for the purposes of:

- 15.5.1 removing any probes or other Company property; and
- 15.5.2 confirming that the Client has complied with its post-termination obligations.

15.6 Provided the Company has received full payment for any Intellectual Property Rights specifically assigned to the Client pursuant to the Quotation, the provisions of clauses 15.4 and 15.5 will not apply to such Intellectual Property Rights.

15.7 Any expiry or termination of any Contract (howsoever caused) will not affect any accrued rights or liabilities of either party, nor will it affect the coming into force or the continuance in force of any provision of these Terms which is expressly or by implication intended to come into or continue in force on or after such termination.

15.8 Upon expiry or termination of any Contract for whatever reason the Client will be liable to pay all monies due under the Contract in question up until the date of expiry or termination including but not limited to paying in full for any Products which have been ordered but not paid for by the Client including any sums in relation to which the Company has provided deferred terms such as staged payments, and if such termination occurs other than at the end of any 12 month period of the Contract in question the Client will remain liable for the entire amount of the Company's fee for that 12 month period which has not been completed.

15.9 Following expiry or termination of a Contract for any reason the Company will provide the Client with a Service Termination Schedule. It will be necessary following expiry or termination for the Company to complete its termination process and undertake various administrative tasks, for example, to remove its Software from the Client's computer systems, handing over to a Third Party company and effect domain transfers. The Company will levy an administration fee in relation to such tasks. Such fee shall be limited to the greater of £1,000 (one thousand pounds) and 5% of the Support Fee payable by the Client for the previous 12 month period plus VAT.

15.10 If a Contract expires or if the Company terminates a Contract pursuant to this clause 15, then the Client will not be entitled to any refund of the fee or Support Fee or any part thereof that has been paid and will be obliged to immediately pay the Company all amounts due under this Contract in accordance with clause 15.8. In addition, the Company will be entitled, within 30 days of the date of expiry or termination and subject to the provision of the services referred to in clause 15.9, to cease providing any or all of the Services to the Client.

15.11 Without prejudice to the provisions of clause 15.4, on termination or expiry of any Contract, the Company will not provide any further Support, warranty cover or Services to the Client under that Contract, whether in respect of Third Party Software or otherwise.

15.12 The Client acknowledges and agrees that the Company has a general and particular lien (right of retention) over any of the Client's e-mails, access codes or other data, whether stored electronically or otherwise, in or coming into the possession of the Company. If any payment remains outstanding, the Company may after reasonable notice enforce such lien by sale or otherwise dealing with all or any of such items as it considers appropriate.

**16. Data protection**

Each party undertakes to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of the Contract.

**17. Intellectual Property Rights**

17.1 The Client acknowledges that all Intellectual Property Rights in or relating to Software or Third Party Software and in all related Documentation will remain the exclusive property of the Company (or in the case of Third Party Software, the exclusive property of the owner of that Third Party Software).

17.2 The ownership of and sole right to Intellectual Property Rights originated created produced or prepared by or on behalf of the Company during the course of the Contract or otherwise relating to the provision of the Hardware or Software or Third Party Software or Services or Support for the Client under the Contract will be vested in the Company from the outset and the Company will be at liberty to effect and be responsible for securing such protection as it may see fit. The Intellectual Property Rights cannot be used copied transferred sold or dealt with in any way without the prior written consent of the Company.

17.3 The Client will, where appropriate, give the Company all assistance in securing registration of any such Intellectual Property Rights if required by the Company to do so by the Company executing any assignment of any such Intellectual Property Rights but the right of the Company to require such assignment shall in no way be construed as indicating that the Intellectual Property Rights are other than vested in the Company in accordance with these Terms.

17.4 The Client agrees with the Company that it will not, without the previous written consent of the Company, modify or change or alter any of the Intellectual Property Rights created by the Company in the performance of the Contract which in the opinion of the Company is material to the Intellectual Property Rights or to permit any such Intellectual Property Rights to be so altered modified or varied by any other person firm or company. The Client further agrees that it will not utilise any trade marks (whether registered or not) of the Company without the prior written approval of the Company.

17.5 The Client warrants that in so far as it is necessary for the Company to have use of any software or any Intellectual Property Rights belonging to any Third Party it has all the necessary licences and rights to use such

software or Intellectual Property Rights in so far as the Company requires it for the provisions of its obligations under the Contract.

## 18. Security and control

The Client will during the continuance of the Contract:

- 18.1 effect and maintain adequate security measures to safeguard the IT Infrastructure from access or use by any unauthorised person; and
- 18.2 comply with all of the Company's reasonable advice with regard to the use of the IT Infrastructure, including, without limitation, the implementation of upgrades to the IT Infrastructure, specified operating system and computer hardware.

## 19. Non-solicitation

- 19.1 During the continuance of this Contract, and for a period of 12 months following termination thereof (howsoever arising), the Client undertakes that it will not directly or indirectly canvass, with a view to offering or providing employment to, any of the Company's employees, agents or contractors. Nothing in this clause 19 will restrict the Client from engaging an employee, agent or contractor of the Company where the employee, agent or contractor applies unsolicited in response to a general advertising or recruitment campaign.
- 19.2 In the event of any threatened or actual breach by the Client of the provisions of clause 19.1 the Client acknowledges that damages may not be an adequate remedy and that the Company will be entitled to an injunction or other equitable remedy for any threatened or actual breach in addition to any damages or other remedies to which they may be entitled.

## 20. Severability

If a provision (or any part of it) in the Contract is held by any competent authority to be invalid or wholly or partly unenforceable such invalidity or unenforceability will not in any way affect the remainder of the provision or of the Contract.

## 21. Assignment

- 21.1 The Client will not be entitled to assign, delegate, novate, transfer or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under any Contract without the prior written consent of the Company which it may in its absolute discretion refuse.
- 21.2 The Company will be entitled to assign, delegate, novate, transfer or otherwise dispose of or create any trust in relation to any or all of its rights and obligations under any Contract.

## 22. Confidentiality

- 22.1 Each party agrees with the other in respect of all information of a confidential nature disclosed in the Contract or discovered further to the operation of the Contract (which includes without limitation, in the case of information to be kept confidential by the Client, information as to the operation of the business of the Company and information relating to the Hardware or Services or Software or the Third Party Software) (**Confidential Information**):
  - 22.1.1 to keep the Confidential Information in strict confidence and secrecy;
  - 22.1.2 not to use the Confidential Information save for complying with its obligations under the Contract;
  - 22.1.3 not to disclose the same to a Third Party;
  - 22.1.4 to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its employees and others who of necessity need the same in the performance of their duties as envisaged by the Contract and in such circumstances to ensure that such employees and others are aware of the confidential nature of the Confidential Information; and
  - 22.1.5 not allow access by third parties to the Company's extranet,

provided however that where a part of the Confidential Information is already or becomes commonly known in the trade (except through a breach of the obligations imposed under the Contract) then the foregoing obligations of confidentiality in respect of such part will not apply or will cease to apply (as the case may be).
- 22.2 This obligation of confidentiality will survive the termination of the Contract.

## 23. Amendment and waiver

- 23.1 Except as contemplated elsewhere in these Terms, no amendment to these Terms or any Contract will be binding unless confirmed in writing and signed by a board director of the Company and by an authorised representative of the Client, and the parties waive any rights to rely on any verbal or unsigned variations or collateral agreements.
- 23.2 The failure of the Company at any time to enforce a provision of the Contract will not be deemed a waiver of such provision or of any other provision of the Contract or of the Company's right thereafter to enforce any provision of the Contract.

## 24. Notices

- 24.1 Any demand, notice or other communication must be in writing and may be delivered by hand, prepaid first class post, fax or e-mail to the relevant party's address as set out in the Quotation or to such other address, fax number or e-mail address as either party may have notified to the other. A confirmatory copy of any notice transmitted by fax or e-mail must also be delivered or sent by first class post to the relevant party. Any notice or other communication is, subject to clause 24.2. deemed to have been given: (1) if delivered by hand, on the day it was delivered, (2) if sent by prepaid first class post, four Working Days following the date it was sent, (3) if sent by e-mail, on the same Working Day as transmission (unless notification of unsuccessful transmission is received) and (4) if sent by fax, on the receipt of an error-free reception code.
- 24.2 The deeming provisions in clause 24.1 do not apply to notices of termination served in accordance with clause 15.
- 24.3 Unless otherwise agreed in writing by the parties, the Company shall be entitled to act in accordance with any Client Communication it receives from any individual who has, or purports to have, ostensible authority to send such Client Communication on behalf of the Client and every such Client Communication is deemed to be made with the consent of the Client.
- 24.4 The Company shall be under no obligation to confirm, verify or obtain the approval from the Client of any Client Communication it receives (including but not limited to cases where the Company receives one or more Client Communications containing conflicting instructions or information), and upon receipt of a Client Communication the Company shall be entitled, subject to clause 24.5, to take whatever action it considers necessary without further reference to the Client.
- 24.5 In the event that the Company receives conflicting Client Communications, it shall act on the Client Communication that was received first.

## 25. Entire agreement and representations

- 25.1 These Terms together with (1) the Quotation, (2) any documents referred to in these Terms, (3) any applicable Schedule of Cover and (4) any service level agreement constitute the entire Contract and supersede all previous written or other documents or agreements (written or oral) relating to the subject matter of the Contract.
- 25.2 The parties acknowledge that in entering into the Contract they have not relied upon any representations other than those set out in writing in the Contract. The provisions of this clause 25.2 will not apply to any fraudulent misrepresentation.

## 26. Third Parties

No Third Party may enforce any provision of these Terms by virtue of the Contracts (Rights of Third Parties) Act 1999.

## 27. No partnership

Nothing in the Contract creates a partnership or establishes a relationship of principal and agent or any other fiduciary relationship between the parties.

## 28. Law and jurisdiction

The formation, construction, performance, validity and all aspects whatsoever of the Contract shall be governed by English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

**Schedule 1**  
**Definitions and interpretation**  
(Clause 1)

1. The provisions of Schedule 1 apply to the interpretation of these Terms.
2. The following words and expressions have the following meanings:

<b>24x7 Service Desk</b>	the Company's service desk receiving incoming calls from clients of the Company that have subscribed to the 24x7 support service.
<b>Acceptable Use Policy</b>	the acceptable use policy set out on the Company's website or notified to the Client from time to time.
<b>Bespoke Third Party Software</b>	software written by a third party based on the Client's bespoke requirements.
<b>Bespoke Software</b>	software written by the Company based on the Client's bespoke requirements and/or modifications of the TIG Software Modules based on the Client's bespoke requirements.
<b>Client</b>	the person, company or other body purchasing the Hardware and/or Software and/or Third Party Software and/or Support and/or Services from the Company pursuant to the Contract.
<b>Client Communication</b>	any information, instruction, order, request, acceptance, notice or communication of any kind in any medium whatsoever provided by the Client to the Company.
<b>Commencement Date</b>	the earliest of (1) the date of acceptance of the Quotation, (2) the date set out in the Quotation as the day on which the Support and/or the Services in question is stated to commence and (3) the date on which the Support and/or Services in question actually commenced.
<b>Company</b>	The Internet Group Limited (company number 4308824) whose registered address is 66 Chiltern Street, London W1U 4JT or any of its divisions.
<b>Confidential Information</b>	as defined in clause 22.
<b>Consequential Loss</b>	without limitation: <ol style="list-style-type: none"> <li>1. pure economic loss;</li> <li>2. losses incurred by one party, any customer of that party or other Third Party;</li> <li>3. loss of profits (whether categorised as direct or indirect);</li> <li>4. losses arising from business interruption;</li> <li>5. loss of business revenue, goodwill, anticipated savings;</li> <li>6. losses arising from wrongful termination of a Contract;</li> <li>6. losses whether or not occurring in the normal course of business, wasted management or staff time; or</li> <li>7. loss or corruption of data.</li> </ol>
<b>Contract</b>	a contract for the supply of Products, as established under clause 2.2, to which these Terms apply.
<b>Deposit</b>	the sum (if any) specified in the Quotation or otherwise which the Client will be required to pay the Company prior to the supply of Hardware and/or Software and/or Third Party Software and/or Support and/or Services.
<b>Documentation</b>	the operating manuals, user instructions, technical literature and all other related materials in eye-readable form supplied to the Client in relation to the Hardware or Software or Third Party Software or Support or Services.
<b>Equipment</b>	such computer equipment other than the Hardware.
<b>Finance Agreement</b>	any lease, finance, hire purchase or similar agreement relating to the Products between the Client and a financial services provider, including if brokered by the Company.
<b>Hardware</b>	the hardware to be supplied to the Client pursuant to the Contract.
<b>Incident</b>	as defined in clause 8.1.3.

<b>Installation Operational Hours</b>	the hours of 8.00 a.m. to 5.00 p.m. during a Working Day.
<b>Intellectual Property Rights</b>	in respect of any item, rights of any nature whatsoever, whether registered or unregistered including, without limitation, any patent, right in a design, copyright, trade mark, database right and other intellectual property right whether or not capable of registration.
<b>IT Infrastructure</b>	all of the hardware, software and networks required to provide IT-related services to the Client, but excluding associated personnel, processes and documentation.
<b>Location</b>	the Client's premises where the Equipment is located or the Services or the Support are to be provided or the Hardware or the Software or the Third Party Software are to be delivered.
<b>Network Completion Form</b>	the form to be signed by the Client confirming completion of a network installation.
<b>Normal Operational Hours</b>	the hours of 8.00 a.m. to 7.00 p.m. during a Working Day.
<b>Product or Products</b>	as the case may be, any Hardware and/or Software and/or Third Party Software and/or Support and/or Services as set out in the applicable Quotation or Contract.
<b>Query</b>	as defined in clause 8.1.2.
<b>Quotation</b>	an applicable quotation.
<b>Recurring Item</b>	any item or Services or Support that is/are to be paid on a recurring basis.
<b>Request</b>	as defined in clause 8.1.6.
<b>RPI</b>	the All Items Retail Prices Index or any official index replacing it.
<b>Schedule of Cover</b>	the document setting out the Support provided by the Company and the response times within which such Support will be provided.
<b>Service Desk</b>	the Company's service desk reserving incoming calls from Clients of the Company that have not subscribed to the 24x7 Support service.
<b>Service Termination Schedule</b>	a schedule setting out the tasks to be undertaken and key responsibilities, bespoke requirements and Client obligations reasonably necessary to complete the termination or expiry process.
<b>Services</b>	the services to be supplied by the Company to the Client pursuant to the Contract, including, without limitation, audit, installation, implementation, training and consultancy services.
<b>Software</b>	the TIG Software Modules and/or Bespoke Software to be supplied to the Client by the Company pursuant to the Contract.
<b>Software Solution Completion Form</b>	the form to be signed by the Client confirming completion of a Software Solution.
<b>Support</b>	the support services to be provided to the Client by the Company pursuant to the Contract and <b>Supported</b> will be construed accordingly.
<b>Support Fee</b>	the fee due by the Client to the Company for the provision of Support.
<b>Terms</b>	these terms and conditions.
<b>Third Party</b>	any person, company or other body not being the Company or the Client.
<b>Third Party Software</b>	the third party computer software to be supplied to the Client by the Company pursuant to the Contract.
<b>TIG Software Modules</b>	the software modules which belong to the Company, to be supplied to the Client by the Company pursuant to the Contract.
<b>VAT</b>	value added tax.
<b>Work Schedule</b>	a schedule setting out the equipment list, tasks to be undertaken, key responsibilities, bespoke requirements, Client obligations, site access requirements and any additional Company obligations necessary to fulfil an installation request.
<b>Working Day</b>	any day other than Saturday or Sunday on which banks in London are open for a full range of banking.