

Terms of Business - Supply Of IT Services Agreement Version 1 – 09/08/2011

D2 Network Associates Limited, Lymedale Business Centre, Hooters Hall Road, Newcastle-under-Lyme, Staffordshire, ST5 9QF.

Email: info@d2na.com website: www.d2na.com

THIS AGREEMENT is dated on the date set out on the Order Form or by Electronic Acceptance.

Parties

- (1) D2 Network Associates Limited incorporated and registered in England and Wales with company number 05638885 whose registered office is at Lymedale Business Centre, Hooters Hall Road, Newcastle under Lyme, Staffordshire, ST5 9QF (**Supplier**).
- (2) The Party set out in Schedule 2 to this Agreement as the Customer.

Background

- A) This Agreement constitutes an offer to the Customer to purchase IT Services from the Supplier in accordance with these Conditions.
- B) The Agreement shall only be deemed to be accepted when the Supplier issues written of the Order in response to a quotation at which point and on which date the Contract shall come into existence.

Agreed terms

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Acceptance: means the notice of the Customer's Agreement to the suppliers offer to provide services in any of the following ways:

- (a) By signing this Agreement the Customer Information Schedule.
- (b) By electronic Agreement and acceptance of the offer made by the Supplier.
- (c) By conduct when the services commenced being delivered.

Agreed: means on the criteria set out in the Acceptance above.

Agreement: means this document (including these terms and any associated Schedules).

Customer: means the person, Company or organisation set out in Schedule 2.

Customer's manager: means a primary point of contact for the Supplier with the Customers organisation. This person is expressly authorised to agree costs with the Supplier.

Customer's Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

Deliverables: means all documents, products, services and materials developed by the Supplier or its agents, contractors and employers as part of or in relation to the services in any form, including without limitation computer programs, data, reports and specifications (including drafts).

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image,

tape, disk or other device or record embodying information in any form. **Documents:** means any multiple of these.

Equipment: means any computer hardware (including individual and network hardware and any operating system software) listed in the asset register Agreed by the Parties.

Goods: means any and all Goods, products, all forms of information technology materials components and equipment in any format and of any nature supplied for the purposes of this Agreement. Goods shall include any and all forms of services as the context requires.

Location: means any physical situation of the equipment within the United Kingdom. Additional Equipment means any equipment not included in the asset register which the Supplier identifies that requires support under the terms of this Agreement (and where appropriate for any additional cost. Such equipment may be new purchases or existing assets which were omitted at the outset of this Agreement.

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

Minimum Term: Is the period of time (if any) set out in Schedule 2 (the Order Form).

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

Initial Period: means the initial term of this Agreement as set out in the Client Information Schedule.

Pre-existing material: means material which existed before the commencement of this Agreement.

Party or Parties: means the Supplier and Customer as defined in Customer Information Schedule.

Services: the services to be provided by the Supplier under this Agreement as set out in the Schedules, together with any other services which the Supplier provides or agrees to provide to the Customer.

Supplier: means D2 Network Associates Limited.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate Agreement between the parties under which title passes to the Customer.

Third Party: means any person who is not a party to this Agreement.

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

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that

person's legal and personal representatives, successors and permitted assigns.

1.4 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

1.5 Words in the singular shall include the plural and vice versa.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.7 A reference to **writing** or **written** includes e-mail only when accompanied by a delivery receipt.

1.8 Where the words **include(s)**, **including** or **in particular** are used in this Agreement, they are deemed to have the words **without limitation** following them. Where the context permits, the words **other** and **otherwise** are illustrative and shall not limit the sense of the words preceding them.

1.9 Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

1.10 References to clauses and Schedules are to the clauses and Schedules of this Agreement.

2. COMMENCEMENT AND DURATION

2.1 The Supplier shall provide the Services to the Customer on the terms and conditions of this Agreement.

2.2 The Supplier shall provide the Services to the Customer at the date specified in the Schedule 2.

2.3 Any minimum term of this Agreement shall be set out in Schedule 2 (the Order Form).

2.4 The Services supplied under this Agreement shall continue to be supplied until the Agreement is terminated in accordance with clause 18 below.

3. SERVICE PACKAGE

3.1 The Services and any associated service package (s) shall be Agreed in the following manner:

(a) The Supplier will assess your needs and recommend a solution or service package. In the event it is outside the scope of the Services they can provide they will assist in managing others to deliver the appropriate solution.

(b) The Supplier shall, as soon as reasonably practicable, provide the Customer with a draft proposal and quotation, for the Customer's approval.

3.2 Once approved the Parties shall record their Agreement in Schedule 2.

4. Use of the Cloud Services

4.1 It is the Customer's responsibility to obtain and keep in force any licence necessary for End Users to use any Cloud Service. The Customer shall procure that when using the Service, End Users shall comply with this Agreement, as well as the terms and conditions of use of any Partner Networks as apply from time to time.

4.2 The Customer warrants that any use of the Service by End Users complies with this Agreement, and the terms and conditions of use of the Partner Networks, and the Customer will indemnify the Supplier for any breach of this warranty.

4.3 Access to the Service is provided to the Customer for End Users' use only. Neither the Customer nor any End-User may re-sell the Service to any third party for money or money's worth.

4.4 The Customer shall not do, and shall not permit any End-User to do, anything that is likely to adversely interfere with the provision of the Services.

4.5 The Customer hereby acknowledges that the Supplier has the right to suspend the Service and terminate the Service immediately in the event of a breach by the Customer or any End Users of any of the provisions of these this Agreement or because of the following actions including without limitation:

(a) no Customer or End-User uses equipment which is defective or illegal;

(b) if any End-User causes any technical or other problems to other users or internet users;

(c) if in the Suppliers reasonable opinion, any Customer or any End-User is involved in fraudulent or unauthorised use of the Service;

(d) if the Customer or any End-User resells access to the Service; or

(e) if the Customer or any End-User uses the Service in a way that breaches any laws of regulations within England and Wales;

(f) the content hosted or generated using the Service is unlawful or immoral or of an offensive nature in the reasonable opinion of the Supplier;

(g) the Service is used to facilitate the hosting or exchange of copyrighted or pornographic or immoral material;

(h) the Service is used to facilitate the distribution of advertising or promotional material known as SPAM or Unsolicited Commercial Email (UCE);

(i) the Customer publishes defamatory material or harasses any person or Company or otherwise in the reasonable opinion of the Supplier invades the privacy of another.

5. SUPPLIER'S OBLIGATIONS

5.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance with the Schedules of this Agreement.

5.2 The Supplier shall use reasonable endeavours to meet any performance dates in the Schedules, but any such dates shall be estimates only and time for performance by the Supplier shall not be of the essence of this Agreement.

5.3 The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under clause 6.1(e), provided that it shall not be liable under this Agreement if, as a result of such compliance, it is in breach of any of its obligations under this Agreement.

6. CUSTOMER'S OBLIGATIONS

6.1 The Customer shall:

- a) Co-operate with the Supplier in all matters relating to the Services and appoint a Customer's Manager in relation to the Services, who shall have the authority contractually to bind the Customer on matters relating to the Services;
- b) Provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier;
- c) Provide, in a timely manner, such Material and other information as the Supplier may reasonably require, and ensure that it is accurate in all material respects;
- d) Be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Supplier of all of the Customer's obligations and actions under this clause 6.5(d);
- e) Inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at the Customer's premises; and
- f) Ensure that all the Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements.
- (g) Ensure that proper environmental conditions are maintained for the Equipment and shall maintain in good condition the accommodation of the Equipment, the cables and fittings associated therewith and the electricity supply thereto;
- (h) Not make any modification to the Equipment without the Supplier's prior written consent;
- (i) Keep and operate the Equipment in a proper and prudent manner in accordance with the manufacturer's operating instructions and ensure that only competent trained employees (or persons under their supervision) are allowed to operate the Equipment;
- (j) Ensure that the external services of the Equipment are kept clean and in good condition;
- (k) Not move or remove the Equipment from the Location without the Supplier's prior written consent;
- (l) Not use in conjunction with the Equipment any accessory, attachment, or additional equipment other than that which has been supplied by or approved in writing by the Supplier;
- (m) Provide the Supplier with full and safe access to the Equipment for the purposes of this Agreement;

- (n) Provide adequate working space around the Equipment for use of the Supplier's personnel and shall make available such reasonable facilities as may be requested from time to time by the Supplier for storage and safekeeping of any test equipment and spare parts;
- (o) Use its best endeavours to provide a suitable vehicle parking facility for use by the Supplier's personnel which is free from any legal restrictions and close to the Customer's Location;
- (p) Promptly notify the Supplier if the Equipment needs maintenance or is not operating correctly. Failure by the Customer to so notify the Supplier within one month of the Customer first becoming aware of such a failure shall free the Supplier from all obligations to investigate or correct such failure;
- (q) Make available to the Supplier such programmes, operating manuals, passwords, information and personnel as may be necessary to enable the Supplier to perform its obligations under the terms of this Agreement including personnel who are familiar with any Equipment;
- (r) Make available to the Supplier free of charge all facilities and all services reasonably required by the Supplier to enable the Supplier to perform the services under this Agreement without limitation but including print outs, data preparation, office accommodation, access, and personnel support; and
- (s) The Customer will provide such telecommunication facilities as are reasonably required by the Supplier for testing and diagnostic purposes at the Customer's location and at the Customer's sole expense;

6.2 The Customer agrees to liaise as soon as practicable and in any event within 24 hours of any event any issues identified by the Supplier as being a Third Party's responsibility including but not limited to internet service providers and telecom providers and to inform the Supplier when the issue is resolved as soon as is practicable and in any event within 24 hours.

6.3 If the Supplier's performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay.

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

7. EXCEPTIONS

7.1 The services do not include any maintenance of the equipment which is necessitated as a result of any cause other than fair wear and tear including without limitation:

- 7.1.1 any failure or fluctuation of electric power, air conditioning, humidity control or other environmental conditions; or
- 7.1.2 an accident, transportation, neglect, misuse or default of the client, its agents or employees or a third party; or
- 7.1.3 any fault in any attachments or associated equipment (whether or not supplied by the Supplier) which does not form part of the Equipment; or
- 7.1.4 any attempt by any person other than the Supplier's personnel to repair and maintain, verify or adjust or amend the Equipment save for as directed explicitly by the Supplier's staff; or
- 7.1.5 any failure of any fixture or removable storage media whether electronic, paper, electromagnetic or software based;
- 7.1.6 any damage caused by any Third Party actions.

7.2 The services do not include:

- 7.2.1 service provided at any place other than the Location (or other such location as the Supplier may have approved in writing);
- 7.2.2 any repair or renewal of tapes, back up discs, removable storage devices, printing cartridges or other consumable supplies;
- 7.2.3 electrical or other environmental work external to the equipment;
- 7.2.4 maintenance of any attachments or associated equipment (whether or not supplied by the Supplier) which do not form part of the Equipment;
- 7.2.5 recovery or reconstruction of any data or programmes lost or spoilt as a result of any breakdown of or fault with the equipment except when utilising the suppliers recommended backup solution;
- 7.2.6 maintenance or support of any application software.

8. REPLACEMENT PARTS

8.1 The Customer shall purchase from the Supplier such spares as the Supplier or any other reputable product supplier shall recommend, which shall be supplied at the Supplier's list prices from time to time in force;

8.2 The Customer shall keep such spare parts at the Location or a place immediately close thereto as advised by the Supplier from time to time. The Supplier may draw on this stock of spare parts for the maintenance and repair of the Equipment;

8.3 The Supplier shall not be liable for any delay in performing its obligations under the terms of this Agreement if the recommended replacement parts are not available (otherwise than due to the fault of the Supplier) and shall be entitled to charge the client Customer for all additional expenses and costs incurred by the Supplier as a result of such a delay.

9. CHANGES TO THE SERVICES

9.1 If either party wishes to change the scope or execution of the Services, it shall submit details of the requested change to the other in writing.

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

- a) The likely time required to implement the change; and
- b) Any necessary variations to the Supplier's charges (if any) arising from the change.

9.3 If the Customer wishes the Supplier to proceed with the change, the Supplier has no obligation to do so unless and until the Parties have agreed the necessary variations to its charges and recorded these in writing signed by both Parties.

9.4 Notwithstanding clause 9.1 and 9.2, the Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Supplier requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

9.5 The Supplier may charge for the time it spends assessing a request for change from the Customer on a time and materials basis in accordance with clause 12.

10. CONTINUOUS IMPROVEMENT

10.1 The Supplier shall, from time to time, submit a report to the Customer identifying the emergence of any new and evolving relevant technologies and processes which could improve the Services provided under the terms of this Agreement.

10.2 Such a report shall be provided in sufficient detail to enable the Customer to evaluate properly the benefits of the new technology or processes and where appropriate will include the Supplier's costings in relation to these proposed improvements.

11. SERVICE VISITS

11.1 The Supplier shall make an additional charge, in accordance with its standard scale of charges from time to time for service visits which are made that the request of the Customer by reason of any faults in the equipment due to causes not covered by the services; or

11.2 The Supplier may make an additional charge, in accordance with its standard scale of charges from time to time in force, for visits which are unnecessary and which the Supplier finds are frivolous in nature.

12. CHARGES AND PAYMENT

12.1 The charges for the services shall be on a monthly basis, unless additional work is Agreed on the hourly rate:

- a) The charges shall be calculated in accordance with the Supplier's standard monthly and/or hourly fee rates, as set out in Schedule 2;
- b) The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the services including, but not limited to, travelling expenses, hotel costs, subsistence and any

- associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the services, and for the cost of any materials.
- 12.2 The Supplier reserves the right to increase its standard monthly fee rates, provided that such charges cannot be increased more than once in any 12 month period. The Supplier will give the Customer written notice of any such increase 3 months before the proposed date of the increase. If such increase is not acceptable to the Customer, it shall notify the Supplier in writing within 2 weeks of the date of the Supplier's notice and the Supplier shall have the right without limiting its other rights or remedies to terminate the contract by giving 4 weeks' written notice to the Customer.
- 12.3 The Supplier shall invoice the Customer monthly in advance.
- 12.4 The Customer shall pay each invoice submitted by the Supplier:
- a) Monthly in advance unless otherwise specified on the Suppliers invoice;
 - b) In full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the contract.
- 12.5 All amounts payable by the Customer under the contract are exclusive of amounts in respect of Value Added Tax (VAT) chargeable for the time being. Where any taxable supply for VAT purposes is made under the contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the services.
- 12.6 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the contract by the due date for payment (**Due Date**), the Supplier shall have the right to charge interest on the overdue amount under The Late Payment of Commercial Debts (Interest) Act 1998 at the rate of 8 per cent per annum above the then current Lloyds TSB Bank PLC (London) (Company Number 2065) base lending rate accruing on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 12.7 The Customer shall pay all amounts due under the contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 12.8 In consideration of the provision of the services by the Supplier, the Customer shall pay the charges as set out in Schedule 2, which shall specify whether they shall be on a time and materials basis, a fixed monthly price basis or a combination of both. Clause 12.9 shall apply if the Supplier provides Services on a time and materials basis and clause 12.10 shall apply if the Supplier provides Services for a fixed monthly price. The remainder of this clause 12 shall apply in either case.
- 12.9 Where Services are provided on a time and materials basis:
- a) The charges payable for the Services shall be calculated in accordance with the Supplier's standard hourly fee rates as set out in Schedule 2;
 - b) The Supplier's standard hourly fee rates for each individual engineer are calculated on the basis of an eight-hour day, worked between 8.30 am and 5.30 pm on weekdays (excluding public holidays);
 - c) The Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, which are outside the monthly price; and
 - d) The Supplier shall invoice the Customer monthly in arrears for its monthly fee, any additional work undertaken on the hourly rate and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this clause 12.
- 12.10 Where Services are provided for a fixed monthly price, the total price for the Services shall be the amount set out in Schedule 2. The Customer shall pay the total price to the Supplier (without deduction or set-off) as set out in Schedule 2.
- 12.11 All sums payable to the Supplier under this Agreement shall become due immediately on its termination, despite any other provision. This clause 12 is without prejudice to any right to claim for interest under the law, or any such right under this Agreement.
- 12.12 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
- 13. RETENTION OF TITLE**
- 13.1 Any and all Goods supplied under the terms of this Agreement are supplied on retention of title basis. The Customer acknowledges that ownership of the Goods shall only pass to them as and when all monies (howsoever arising) owed by the Customer been paid to the Supplier in full and final settlement of all sums due.
- 13.2 This clause 13 shall survive termination of this Agreement, howsoever arising.
- 14. REJECTION OF GOODS**
- 14.1 The Customer may reject Goods supplied by the Supplier to them if the Goods are not of the type specified by the Supplier in writing or if the Goods arrive in a condition such that the Goods are not of a sufficient quality or fit for their intended use.
- 14.2 Any rejection of Goods is to be prior to use and the Goods must be capable of being returned at no cost to the Supplier.
- 14.3 This clause 14 shall survive termination of this Agreement, howsoever arising.
- 15. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**
- 15.1 The Customer and Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the other, its employees, agents, consultants or subcontractors and any other confidential information concerning the Customer's business or the Supplier's products, services, goods or prices which the Customer may obtain.

- 15.2 Each Party undertakes to the other that they will use their best endeavours to prevent the publication or disclosure of any confidential information concerning this Agreement and commercial sensitive data.
- 15.3 The Customer and Supplier shall not use any such information for any purpose other than to perform its obligations under this Agreement.
- 15.4 Each party shall keep the others Confidential Information secure and hold it in confidence and unless required by law, shall not make the others Confidential Information available to any third party or use the others Confidential Information for any purpose other than the implementation of this Agreement.
- 15.5 Each party shall take all reasonable steps to ensure the others Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.
- 15.6 These confidentiality provisions shall survive the termination of this Agreement but shall not apply to the extent that any confidential information has been placed into the public domain by some other party or by some other means not attributable to the party relying on this provision.
- 16. INTELLECTUAL PROPERTY RIGHTS**
- 16.1 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier. The Supplier hereby licences all such rights to the Customer free of charge and on a non-exclusive, Worldwide basis to such extent as is necessary to enable the Customer to note reasonable use of the Deliverables and the Services as is envisaged by the parties. If the Supplier terminates the Agreement then this licence will automatically terminate and the Customer acknowledges that they will need to pay a licence fee following termination,
- 16.2 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional upon the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors as such terms as will entitle the Supplier to licence such rights to the Customer.
- 16.3 The Customer agrees that they shall take all steps necessary to ensure that any persons engaged by them (whether through a contract of employment or a contract for services or otherwise) in furtherance of the fulfilment of this Agreement assigns all intellectual property rights to the Customer in order for them to comply with this clause 16.
- 16.4 The Customer undertakes not to supply to any third party the same or substantially Goods or services as those supplied to us without their express written consent and approval of the Supplier.
- 16.5 This clause 16 shall survive termination of this Agreement, howsoever arising.
- 17. LIMITATION OF LIABILITY**
- THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 17.1 This clause 17 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants and subcontractors) to the Customer in respect of:
- a) Any breach of this Agreement, including any deliberate personal repudiatory breach by the Supplier, or its employees, agents or subcontractors;
- b) Any use made by the Customer of the Services, the Deliverables or any part of them; and
- c) Any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 17.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 17.3 Nothing in this Agreement limits or excludes the liability of the Supplier:
- a) For death or personal injury resulting from negligence; or
- b) For any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
- c) For any liability incurred by the Customer as a result of any breach by the Supplier of the clause as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- 17.4 Subject to clause 17.1 and clause 17.3:
- (a) The Supplier shall not be liable for:
- a) Loss of profits;
- b) Loss of data;
- c) Loss of service; or
- d) Loss of business; or
- e) Depletion of goodwill and/or similar losses; or
- f) Loss of Goods; or
- g) Loss of contract; or
- h) Loss of use; or
- i) Loss or corruption of data or information; or
- j) Any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
- (b) The Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Agreement shall be limited to the price paid for the Services by the Customer and in any event limited to £10,000 in total.
- 17.5 This clause shall survive termination of this Agreement, howsoever arising.
- 18. TERMINATION**
- 18.1 Unless a Minimum Term is set out in Schedule 2 then the Customer or Supplier may give 30 days' notice at any time.
- 18.2 Without prejudice to any other rights or remedies which the parties may have, either party may terminate this Agreement without liability to the other on giving the other not less than the notice specified in Schedule 2 in writing or immediately on giving notice to the other if:

- a) The other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment; or
 - b) The other party commits a material breach of any of the material terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - c) The other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement; or
 - d) The other party suspends, or threatens to suspend, payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts; or
 - e) The other party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for, or enters into any compromise or arrangement with, its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or
 - f) A petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies, or the solvent reconstruction of that other party; or
 - g) An application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other party; or
 - h) A floating charge holder over the assets of that other party has become entitled to appoint, or has appointed, an administrative receiver; or
 - i) A person becomes entitled to appoint a receiver over the assets of the other party, or a receiver is appointed over the assets of the other party; or
 - j) A creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
 - k) The other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 18.3 On termination of this Agreement for any reason:
- a) The Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- b) The Customer shall, within 7 days, return all of the Supplier's Equipment, if any is at the Customer's premises. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
 - c) The accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.
- 18.4 On termination of this Agreement (however arising) the following clauses shall survive and continue in full force and effect:
- d) Clause 13 in its entirety;
 - e) Clause 14 in its entirety;
 - f) Clause 15 in its entirety;
 - g) Clause 16 in its entirety;
 - h) Clause 17 in its entirety;
 - i) Clause 25 in its entirety;
 - j) Clause 28 in its entirety;
 - k) Clause 30 in its entirety; and
 - l) Clause 31 in its entirety.
- 19. Force majeure**
- 19.1 A party, provided that it has complied with the provisions of clause 19.3, shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement (and, subject to clause 19.4, the time for performance of the obligations shall be extended accordingly) arising from or attributable to acts, events, omissions or accidents beyond its reasonable control (**Force Majeure Event**), including but not limited to any of the following:
- a) Acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster;
 - b) War, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
 - c) Terrorist attack, civil war, civil commotion or riots;
 - d) Nuclear, chemical or biological contamination or sonic boom;
 - e) Voluntary or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law);
 - f) Fire, explosion or accidental damage;
 - g) Extreme adverse weather conditions;
 - h) Collapse of building structures, failure of plant machinery, machinery, computers or vehicles;
 - i) Interruption or failure of utility service, including but not limited to electric power, gas, water, telecommunications and broadband.

- 19.2 If the events set out in Clause 19.1 should occur then the corresponding obligations of the other party will be suspended to the same extent.
- 19.3 Any party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- (c) It promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - (d) It could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all the matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
 - (e) It has used all reasonable endeavours to mitigate the effect of the Force Majeure Event, to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as soon as reasonably possible.
- 19.4 If the Force Majeure Event prevails for a continuous period of more than 1 calendar month, either party may terminate this Agreement by giving 14 days' written notice to all the other party. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring prior to such termination.

20. CUSTOMER INSOLVENCY

- 20.1 In the event that the Customer enters into an arrangement with its creditors or becomes subject to an order appointing a receiver over all or any part of their business or they enter into administrative receivership or that they indicate formally or informally that they may cease trading or that you oversupply money following an Agreed date for payment the Supplier shall have the right, but not the obligation, to treat this Agreement as having come to an end without any further liability on the Supplier's behalf.
- 20.2 In such circumstances the Supplier shall be entitled, upon request, and without any further formality for the immediate return of all Goods supplied by the Supplier to the Customer at their sole cost and expense.

21. VARIATION

- 21.1 Subject to clause 25, no variation of this Agreement or of any of the documents referred to in it shall be valid unless it is in writing and signed by or on behalf of each of the parties.

22. WAIVER

- 22.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law shall not constitute a waiver of that (or any other) right or remedy, nor shall it preclude or restrict any further exercise of that (or any other) right or remedy.
- 22.2 No single or partial exercise of any right or remedy provided under this Agreement or by law shall preclude or restrict the further exercise of any such right or remedy.
- 22.3 A waiver (which may be given subject to conditions) of any right or remedy provided under this Agreement or by law shall only be effective if it is in writing and shall apply only to the party to whom it is addressed and for the specific circumstances for which

it is given. It shall not prevent the party who has given the waiver from subsequently relying on the right or remedy in other circumstances.

- 22.4 A party that waives a right or remedy provided under this Agreement or by law in relation to another party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.
- 22.5 Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

23. TIME NOT OF THE ESSENCE

- 23.1 Any time, date or period mentioned in any provision of this Agreement for the purposes of supply of services or Goods may be extended by mutual Agreement between the parties at any time.
- 23.2 Time is not to be of the essence in relation to the delivery of Goods and services as the Supplier will be reliant upon external factors it cannot ordinarily control. Any times, dates or periods are therefore aspirational and not binding upon the parties.

24. SEVERANCE

- 24.1 If any provision of this Agreement (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Agreement, and the validity and enforceability of the other provisions of the Agreement shall not be affected.
- 24.2 If a provision of this Agreement (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

25. ENTIRE AGREEMENT

- 25.1 This Agreement and any documents referred to in it constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter of this Agreement.
- 25.2 Nothing in this clause shall limit or exclude any liability for fraud.
- 25.3 This Agreement may be recorded electronically and a signature includes any electronic or online signature.
- 25.4 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.

26. ASSIGNMENT

- 26.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract, or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 26.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract, or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 26.3 Each party that has rights under this Agreement is acting on its own behalf and not for the benefit of another person.

27. NO PARTNERSHIP OR AGENCY

27.1 Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

28. RIGHTS OF THIRD PARTIES

28.1 A person who is not a party to this Agreement shall not have any rights under or in connection with it.

29. NOTICES

29.1 A notice under this Agreement:

- a) Shall be in writing in the English language;
- b) Shall be sent for the attention of the person, and to the address, or fax number, given in this clause (or such other address, fax number or person as the party may notify to the others); and
- c) Shall be:
 - (1) Delivered personally; or
 - (3) Sent by pre-paid first-class post, recorded delivery or registered post; or
 - (4) If the notice is to be served by post outside the country from which it is sent by registered airmail; or
 - (5) Sent by email with a delivery receipt and acknowledgement (when emailed to the email address specified in Schedule 2) and by First Class post if it is not acknowledged.

29.2 Except where set out above in Clause 29.1 the addresses for service of a notice are listed in the first paragraph of this Agreement.

29.3 A notice is deemed to have been received:

- a) If delivered personally, at the time of delivery;
- b) In the case of fax, at the time of transmission;
- c) In the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting;
- d) In the case of registered airmail, five days from the date of posting;
- e) If deemed receipt under the previous paragraphs of this sub-clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a Business Day in the place of receipt), when business next starts in the place of receipt;
- f) If by email, when acknowledged.

29.4 The provisions of this clause 19 shall not apply to the service of any process in any legal action or proceedings.

29.5 A notice or other communication required to be given under or in connection with this Agreement shall not be validly served if sent by e-mail.

30. DISPUTE RESOLUTION

30.1 This clause 30.1, does not apply in the instance where the dispute arises in relation to unpaid invoices or non payment of fees by the Customer to the Supplier.

30.2 If any dispute arises in connection with this Agreement, the Supplier and the Customer shall, within 30 days of a written request from one party to the other, meet in a good faith effort to resolve the dispute.

30.3 If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise Agreed between the parties, the mediator will be nominated by CEDR. To initiate the mediation, a party must give notice in writing (**ADR notice**) to the other party requesting mediation. A copy of the request should be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

30.4 Except for the matters exempted by Clause 30.1 above, no party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute by mediation and either the mediation has terminated or the other party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

31. GOVERNING LAW AND JURISDICTION

31.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, the law of England and Wales.

31.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

Schedule 1 Service Package(s)

SERVICE PACKAGE SCHEDULES	<p>THE SUPPLIERS SERVICE PACKAGE SCHEDULES NUMBERED 1.1 TO 1.40 WILL BE INCORPORATED HERE WHEN FORWARDED TO YOU SEPERATE TO THIS AGREEMENT.</p> <p>THESE SCHEDULES ARE NON CONTRACTUAL AND ARE PROVIDED FOR INFORMATION ONLY AND DO NOT FORM PART OF THIS AGREEMENT.</p>
----------------------------------	--