



DATED [AS PER SCHEDULE]

SOFTWARE DEVELOPMENT AGREEMENT

between

- (1) **MAXIM COMPUTER SERVICES LIMITED** incorporated and registered in England and Wales with company number 02379070 whose registered office is at Unity 7 Key Point Lower Keys Business Park Hednesford Staffordshire WS12 2FN (**Supplier**).

and

[CUSTOMER AS PER SCHEDULE]



THIS AGREEMENT is dated as per schedule.

AGREED TERMS

1. INTERPRETATION

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

Acceptance Date: the date on which the Supplier Software is accepted under clause 8.

Acceptance Tests: the tests of the Supplier Software after installation to be agreed in accordance with clause 7.1 and annexed as **Error! Reference source not found..**

Affiliate: any entity that directly or indirectly controls, is controlled by, or is under common control with another entity.

Bespoke Software: software programs developed by the Supplier specifically for the Customer as part of the Supplier Software and listed in **Error! Reference source not found..**

Business: the business of the Customer as specified in **Error! Reference source not found..**

Business Days: means any day other than a Saturday, Sunday or other public bank holiday on which the clearing banks in London are open.

Business Requirements Specification: the specification agreed between the Customer and the Supplier which sets out the Customer's business requirements regarding the Supplier Software, contained in **Error! Reference source not found..**

Change Agreement: an agreement made under clause 11.3.

Commencement Date: the date on which this agreement becomes effective, as specified in **Error! Reference source not found..**

Completion Date: the estimated date specified in the Implementation Plan (which may be varied in accordance with clause 9) by which the Supplier is to provide the Supplier Software Ready for Service.

Confidential Information: information of commercial value, in whatever form or medium, which has been kept confidential by the party [(or any of its Affiliates)] from whom the information originates and which has not come into the public domain during the term of this agreement in breach of any obligation of confidence, including information relating to the Supplier Software or any of its constituent



parts, the Source Code relating to the Supplier Software or any such parts, commercial or technical know-how, technology, information pertaining to business operations and strategies, and information pertaining to customers, pricing and marketing.

Computer Hardware: the computers and other equipment to be used by the Customer in conjunction with the Supplier Software, as specified in **Error! Reference source not found.**

Customer Representative: a person duly authorised by the Customer to act on its behalf for the purposes of this agreement and identified to the Supplier by written notice from the Customer.

Data Protection Law: all applicable data protection law and regulations in any jurisdiction.

Defect: an error in the Supplier Standard Software or the Bespoke Software that causes it to fail to operate substantially in accordance with the relevant Documentation.

Dispute Resolution Procedure: the procedure for dealing with disputes under this agreement as set out in clause 40.

Documentation: the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by the Supplier as specified in **Error! Reference source not found.**

Implementation Plan: the time schedule and sequence of events for the performance of this agreement set out in **Error! Reference source not found.**, which may be varied in accordance with clause 9.

Installation Date: the estimated date by which the Supplier will complete installation of a specified Software Module as specified in the Implementation Plan.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, including the right to sue for and recover damages for past infringements.

Licence: the licence granted under clause 13.

Licensed Software: the Supplier Software as specified in **Error! Reference source not found.** (except the Open-Source Software and the Third-Party Software) and all



subsequent amendments and updates to, or new versions of, such Supplier Software as may be provided under this agreement.

Licensed Users: the employees and agents of the Customer who use the Licensed Software, up to the maximum number specified in **Error! Reference source not found.**

Modified Software: the standard software programs proprietary to the Supplier and/or third parties listed in **Error! Reference source not found.**, modified or to be modified by the Supplier under this agreement.

Modified Software (Supplier): those elements of the Modified Software listed in **Error! Reference source not found.** and identified as such.

Modified Software (Third Party): those elements of the Modified Software listed in **Error! Reference source not found.** and identified as such.

New Release: a new release of all or any part of the Software suitable for use by the Customer which has been developed to deal with any 'bug' fixes.

Normal Working Hours: the hours 9 am to 5 pm GMT, Monday to Friday, except English Bank Holidays.

Open-Source Software: any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (<http://www.opensource.org/docs/definition.php>) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at <http://www.gnu.org/licenses/gpl.html>), or anything similar, included or used in, or in the development of, the Supplier Software, or with which the Supplier Software is compiled or to which it is linked.

Permitted Purposes: the meaning given in clause 21.1.

Personal Data: data subject to protection under Data Protection Law in any jurisdiction.

Pre-Installation Test Plan: the document prepared as provided in clause 5.2(a) and to be annexed as **Error! Reference source not found.**

Pre-Installation Tests: the tests to be carried out on the Modified Software and the Bespoke Software before delivery to the Site(s) as provided for in clause 5.

Price: the aggregate price for the Work and the Licence, as specified in **Error! Reference source not found.**

Project Manager: the Supplier employee who has overall responsibility for the Work.

Ready for Service: installed, tested and having passed or deemed to have passed the Acceptance Tests under clause 8.



Services: the services to be provided by the Supplier under this agreement and any data migration referred to in the Business Requirements Specification.

Service Report: the report to be signed off by the Customer under clause 8(a).

Site(s): the location(s) at which the Supplier Software is to be used as specified in **Error! Reference source not found.**

Software Delivery Date: the estimated delivery date specified in the Implementation Plan on which the Supplier will deliver a Software Module to the Site(s).

Software Module: any one of the individual software programs in the Supplier Software.

Source Code: the source code of the software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation, all of a level sufficient to enable the Customer's development personnel to understand, develop and maintain that software.

Supplier Software: the Supplier Standard Software, the Third-Party Software, the Modified Software, the Open-Source Software, the Tools and the Bespoke Software.

Supplier Standard Software: the software programs proprietary to the Supplier, listed in **Error! Reference source not found.**, which are to be provided to the Customer without modification.

Support Staff: those officers, employees, agents or subcontractors of the Supplier of any of its Affiliates connected with this agreement, including those individuals who perform the Supplier's obligations under this agreement.

Technical Specification: the specification of the Supplier Software contained in **Error! Reference source not found.** and agreed between the Supplier and the Customer to meet the Business Requirements Specification.

Third-Party Licences: the open-source software licences relating to the Supplier Software, including the general public licence (if applicable), and any proprietary third-party software licences

Third-Party Software: the software programs proprietary to third parties, listed in **Error! Reference source not found.**, which are to be provided to the Customer without modification.

Tools: any tools and know-how developed, and methods invented, by the Supplier in the course of or as a result of carrying out the Work, whether or not developed or invented specifically or used exclusively to carry out the Work.

Training: the training as specified in **Error! Reference source not found.**, to be provided by the Supplier as part of the Services.



VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

Work: all the works, duties and obligations to be carried out by the Supplier under this agreement.

- 1.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.5 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.6 Except where a contrary intention appears, a reference to a clause, schedule or annex is a reference to a clause of, or schedule or annex to, this agreement.
- 1.7 Clause and schedule headings do not affect the interpretation of this agreement.
- 1.8 **Writing** or **written** includes faxes but neither e-mail nor any other form of electronic communication, except where expressly provided to the contrary.
- 1.9 The schedules to this agreement, together with any documents referred to in them, form an integral part of this agreement and any reference to this agreement means this agreement together with the schedules and all documents referred to in them, and such amendments in writing as may subsequently be agreed between the parties.
- 1.10 If any conflict arises between the terms and conditions of this agreement and any provision of any schedule, the terms and conditions of the schedule shall prevail.
- 1.11 If the Licensed Software or any of the Services is provided to a Customer in any country listed in **Error! Reference source not found.**, then that schedule shall also apply. In the case of conflict or ambiguity between any provision contained in the



body of this agreement and any other schedule and any provision contained in **Error! Reference source not found.**, the provision contained in that schedule shall prevail, but only in respect of the Customer's use of the Licensed Software or receipt of those Services in that country.

- 1.12 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.

2. SCOPE

- 2.1 The Supplier grants the Licence and shall supply the Supplier Software, the Documentation and the Services to the Customer and its Affiliates in accordance with this agreement.
- 2.2 The supply under clause 2.1 and Price are subject to the terms and conditions set out in this agreement.

3. SOFTWARE AND DOCUMENTATION

- 3.1 The Supplier shall carry out the Work with reasonable diligence and despatch, and with reasonable skill and expertise, to provide the Supplier Software in accordance with the Technical Specification by the Completion Date.
- 3.2 The Supplier shall provide the Third-Party Software and any Modified Software (Third Party) to the Customer and its Affiliates under the standard licence terms provided by the relevant third parties, copies of which shall be provided to the Customer, and the Customer agrees to be bound to the relevant third parties by such licence terms and to use reasonable endeavours to ensure that its Affiliates are bound under similar obligations owed to the relevant third parties.
- 3.3 The Supplier shall provide the Supplier Standard Software, the Bespoke Software and any Modified Software (Supplier) under the terms of this agreement.
- 3.4 The Supplier shall provide to the Customer, from time to time, copies of the Documentation containing sufficient up-to-date information for the proper use and maintenance of the Supplier Software. Such Documentation may be supplied in electronic form.



3.5 The Customer may make such further copies of the Documentation as are reasonably necessary for the use and maintenance of the Supplier Software and for training the Customer's personnel in use of the Supplier Software. The Customer shall ensure that all of the Supplier's proprietary notices are reproduced in any such copy.

3.6 The Customer may provide copies of the Documentation to any third party who needs to know the information contained in it, provided that such third party first enters into a confidentiality obligation in accordance with clause 21.3(c).

4. SERVICES

4.1 The Supplier shall develop the Bespoke Software and make the modifications to the Modified Software in accordance with the requirements of the Technical Specification.

4.2 The Supplier agrees:

- (a) to deliver and install the Supplier Software at the Site(s) if agreed in writing between the parties;
- (b) to carry out, in conjunction with the Customer, the Acceptance Tests; and
- (c) to provide the Supplier Software Ready for Service by the Completion Date,

on the terms and conditions set out in this agreement.

4.3 In performing the Services, the Supplier shall comply with the Customer's reasonable instructions to ensure minimal disruption to the Business.

5. PRE-INSTALLATION TESTING

5.1 Before delivering any item of Supplier Standard Software or Third-Party Software to the Site(s), the Supplier shall carry out reasonable tests to ensure that such item is in operable condition and is capable of meeting the requirements of the Technical Specification once properly installed.

5.2 The Supplier shall carry out the Pre-Installation Tests on the Modified Software and Bespoke Software before delivery to the Site(s) in accordance with the following provisions:

- (a) no later than 30 days from the date of signing this agreement, the Customer shall deliver to the Supplier proposed user acceptance criteria and test data



for the Pre-Installation Tests for each module of Modified Software and Bespoke Software. These criteria and data shall be such as are reasonably required to show that each module complies with the relevant parts of the Technical Specification. The Supplier shall provide the Customer, at the Customer's request, with assistance to prepare such user acceptance criteria and test data at the Customer's request at the Supplier's standard rates then in force. The parties shall use best endeavours to agree the Pre-Installation Test Plan containing the Pre-Installation Tests for each module within ten Business Days from the date of delivery to the Supplier of the proposed criteria and data, and such Pre-Installation Test Plan shall be annexed to this agreement as **Error! Reference source not found.**;

- (b) within a reasonable time before the Software Delivery Date for each Software Module, the Supplier shall carry out the agreed Pre-Installation Tests for the appropriate Software Module. The Supplier shall give the Customer at least 24 hours' notice of the start of the Pre-Installation Tests and permit the Customer to observe all or any parts of the testing; and
- (c) if the Software Module fails to pass the Pre-Installation Tests, the Supplier shall remedy the defects and deficiencies, and the relevant test(s) shall be repeated within a reasonable time.

5.3 If the Software Module fails, in some material respect, to pass the Pre-Installation Tests within 14 Business Days from the date of its second submission to the Pre-Installation Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion to specify (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the Software Module on the same terms and conditions as are set out in clause 5.2. If the Software Module fails such further tests, then the Customer may:

- (a) request a repeat test under this clause 5;
- (b) permit installation of the Software Module subject to such change of acceptance criteria, amendment of the Business Requirements Specification and/or reduction in the Price as, after taking into account all the relevant circumstances, is reasonable; or
- (c) if the Supplier is unable to correct material defects within a period of six months from the start of Pre-Installation Tests under clause 5.2(b) and provided such delays are not due in any way to any default of the Customer, reject the Software Module as not being in conformity with this agreement, and terminate this agreement.



6. SOFTWARE DELIVERY, INSTALLATION AND DELAYS

- 6.1 The Supplier shall deliver each Software Module to the Site(s) by the applicable Software Delivery Date.
- 6.2 The Supplier shall supply to the Customer, within a reasonable time before any Software Delivery Date, such information and assistance as may be necessary to enable the Customer to prepare the Site(s) for the installation of the relevant Software Module.
- 6.3 The Customer shall, at its own expense, prepare the Site(s) in accordance with the information provided by the Supplier in advance of each Software Delivery Date. On completion of such preparation, the Supplier may inspect the Site(s) (if set out in the Technical Specification) and specify, within a reasonable time before the Software Delivery Date, any corrections or modifications required. If the Supplier fails to inspect the Site(s) before the Software Delivery Date, the Supplier shall in no circumstances be liable for remedying any deficiency in the Site(s) preparation that is discovered after that date.
- 6.4 The Supplier shall deliver each Software Module to the Site(s) on or before the Delivery Date for that item.
- 6.5 The Supplier shall complete installation of each Software Module at the Site(s) by the Installation Date for that Software Module.
- 6.6 The Customer shall be responsible for ensuring that each item of Computer Hardware is installed and is in working order and available to the Supplier no later than the relevant date specified in the Implementation Plan.
- 6.7 If any delivery is delayed at the request of the customer, or because of his acts or omissions, the Implementation Plan shall be amended to take account of such delay in accordance with clause 9.5. If the Supplier can demonstrate that the delay has resulted in an increase in cost to the Supplier of carrying out its obligations under this agreement, the Supplier may, at its sole discretion, notify the Customer that it wishes to increase the Price by an amount not exceeding any such demonstrable cost. The Supplier may invoice the Customer for any additional monies that become payable in this way, within 30 Business Days of demonstrating the increase in costs.



7. ACCEPTANCE TESTS

- 7.1 No later than 30 Business Days from the Commencement Date, the Customer shall deliver proposed user acceptance criteria to the Supplier and test data for the Acceptance Tests for the Supplier Software. These criteria and data shall be such as are reasonably required to show that the Supplier Software complies with the Technical Specification. The Supplier shall provide the Customer with reasonable assistance to prepare such user acceptance criteria and test data at the Customer's request and at the Supplier's standard rates then in force. The parties shall use best endeavours to agree the Acceptance Tests for the Supplier Software within ten Business Days from the date of delivery to the Supplier of the proposed criteria and data.
- 7.2 The Supplier shall carry out the agreed Acceptance Tests for each Software Module within ten Business Days of its Installation Date. The Acceptance Tests shall be started as soon as reasonably possible after installation and shall be run continuously during Normal Working Hours. The Supplier shall give the Customer at least 24 hours' notice of the start of the Acceptance Tests, and permit the Customer to observe all or any part of the testing.
- 7.3 If any Software Module fails to pass the Acceptance Tests, the Customer shall, within 5 Business Days from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall remedy the defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 7.4 If any Software Module fails in some material respect to pass any repeated Acceptance Tests within 14 Business Days from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion:
- (a) to fix (without prejudice to the Customer's other rights and remedies) a new date for carrying out further tests on the Software Module on the same terms and conditions. If the Software Module fails such further tests then the Customer may request a repeat test under this clause 7.4(a);
 - (b) to permit installation of the Software Module subject to such change of acceptance criteria, amendment of the Business Requirements Specification and/or reduction in the Price as, after taking into account all the relevant circumstances, is reasonable; or
 - (c) if the Supplier is unable to correct material defects within a period of three months from the commencement of Acceptance Tests under clause 7.2, to



reject the Supplier Software as not being in conformity with the agreement, in which event the Customer may terminate this agreement.

8. ACCEPTANCE

Acceptance of the Supplier Software shall be deemed to have occurred on whichever is the earliest of:

- (a) the signing by the Customer of a Service Report for the final Software Module to pass the Acceptance Tests;
- (b) the expiry of five Business Days after the completion of all the Acceptance Tests, unless the Customer has given any written notice under clause 7.3;
- (c) the expiry of ten Business Days after the Installation Date of the final Software Module if the Acceptance Tests for that module have not started, or have not been pursued with due diligence; or
- (d) the use of the Supplier Software by the Customer or any of its Affiliates in the normal course of the Business.

9. IMPLEMENTATION PLAN AND EXTENSION OF TIME

9.1 Both parties shall perform their obligations under this agreement in accordance with the Implementation Plan.

9.2 The Supplier shall complete the Work in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to clause 9.3.

9.3 The Supplier shall be given an extension of the timetable of any one or more of the stages in the Implementation Plan if one of more of the following events occurs:

- (a) a variation to the Supplier Software is made at the Customer's request under the change control procedures set out in clause 11;
- (b) a force majeure event occurs as described in clause 38;
- (c) a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third-party contractors.

9.4 If the Supplier is entitled to an extension of time under clause 9.3, it shall give written notice to the Customer not later than seven Business Days after the beginning of the event. Such notice shall specify the event relied on and, in the case of a force majeure event under clause 38, shall estimate the probable extent of the delay.



9.5 The Customer Representative and the Project Manager shall use best endeavours to agree in writing, signed by both parties, what extension of time is reasonable in the circumstances. The Implementation Plan shall be deemed amended accordingly.

10. PAYMENT

10.1 The Supplier shall submit invoices in accordance with **Error! Reference source not found.** The Customer shall make payment of each invoice by the due date stated in that invoice or within 28 days of the date of the invoice, whichever is later (or if no such dates is stated in the invoice).

10.2 The Price, and all other payments stated in **Error! Reference source not found.** are net of tax. The Customer shall, in addition, pay to the Supplier the amount of any tax, duty or assessment, including any applicable VAT, which the Supplier is obliged to pay and/or collect from the Customer in respect of any supply under the agreement (other than tax on the Supplier's income).

10.3 If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then, without limiting the Supplier's remedies under clause 29, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Royal Bank of Scotland's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

10.4 All invoices issued by the Supplier under or in connection with this agreement shall be accompanied by a sufficiently detailed breakdown of the matters being invoiced (including any details of time taken to perform services per individual).

10.5 For the duration of this agreement, and for a period of seven years from termination or expiry of this agreement, the Supplier shall maintain full and accurate records, in a form to be approved in writing by the Customer, of all charges, prices, costs and expenses associated with, and invoiced in respect of, the Supplier Software and the Services.

11. CHANGE CONTROL AND TECHNOLOGY SUBSTITUTION

11.1 The Customer may, by giving written notice to the Supplier at any time during the term of this agreement, request a change to the Supplier Software.



- 11.2 Within seven Business Days of receipt of such notice, the Supplier shall, at its standard rates then in force, prepare for the Customer a written estimate of any increase or decrease in the Price, and of any effect that the requested change would have on the Implementation Plan.
- 11.3 Within 14 Business Days of receipt of the written estimate referred to in clause 11.2, the Customer shall inform the Supplier in writing of whether or not the Customer wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed and signed a written agreement (**Change Agreement**) specifying, in particular, any changes to the Implementation Plan and Price.
- 11.4 The Supplier undertakes to offer to the Customer, and the Customer may at any time before the relevant Software Delivery Date and at its sole discretion choose to obtain from the Supplier, any item of software in substitution for any corresponding item of Supplier Software where the substitute item contains new technology or has better performance characteristics than such Supplier Software. As part of the offer, the Supplier shall notify the Customer of any change in the Price which would result from such substitution. If the Customer chooses to obtain any such substitute item, the parties shall use best endeavours to agree and execute a Change Agreement in accordance with clause 11.3.

12. OWNERSHIP

- 12.1 The Intellectual Property Rights in the Supplier Software (other than the Third-Party Software) are, and shall remain, the property of the Supplier, and the Supplier reserves the right to grant a licence to use the Supplier Software to any other party or parties.
- 12.2 The Licensed Software and the Documentation are the property of the Supplier (or the appropriate third-party rights-owner(s)) and the Customer acquires no rights in or to the Licensed Software or the Documentation other than those expressly granted by this agreement.
- 12.3 The Customer shall do, and execute or arrange for the doing and executing of, each necessary act, document and thing that the Supplier may consider necessary or desirable to perfect the right, title and interest of the Supplier in and to the Intellectual Property Rights in the Bespoke Software, the Tools and the Modified Software (Supplier).



- 12.4 The Customer shall use reasonable endeavours to prevent any infringement of the Supplier's Intellectual Property Rights in the Licensed Software and shall promptly report to the Supplier any such infringement that comes to its attention. In particular, the Customer shall:
- (a) ensure that each Licensed User, before starting to use the Licensed Software, is made aware that the Licensed Software is proprietary to the Supplier and that it may only be used and copied in accordance with this agreement;
 - (b) implement suitable disciplinary procedures for employees who make unauthorised use or copies of the Licensed Software, except as provided for in clause 14.1; and
 - (c) not permit third parties to have access to the Licensed Software without the prior written consent of the Supplier, who may require that such third party executes a written confidentiality agreement before being given access to the Licensed Software.

13. SOFTWARE LICENCE AND DOCUMENTATION

- 13.1 The Supplier grants, subject to the terms of this agreement, the Customer and its Affiliates the non-exclusive, non-transferable right (subject to clause 27): to use the Licensed Software on the Computer Hardware and the Documentation for any purpose related to the Business (**Licensed Purposes**).
- 13.2 The Licensed Software may be used only by Licensed Users at the Site(s), except as follows:
- (a) the Licensed Software may be used on any replacement for all or any part of the Computer Hardware;
 - (b) the Licence may, with the prior written consent of the Supplier, be extended to additional Licensed Users, and **Error! Reference source not found.** may be amended accordingly, provided that any appropriate additional fee is paid to the Supplier before such use;
 - (c) if the Customer transfers the whole of the Business permanently to another site, the Licensed Software may be used at the new site by the Licensed Users, provided that the Supplier is informed in writing of the change of site before use of the Licensed Software commences at the new site;
 - (d) if the Computer Hardware becomes inoperable for any reason, the Licensed Software may be temporarily used on backup equipment until the Computer Hardware is repaired, and the Customer may use the Licensed Software for the purpose of testing whether any such backup equipment is suitable for use while the Computer Hardware is inoperable; and



- (e) if any Site becomes temporarily unusable due to flood, fire or similar damage, or an emergency situation, the Licensed Software may be used at an alternative site until the Site is again usable, provided that the Customer gives the Supplier notice of such alternative site and permits the Supplier to inspect such site once the Licensed Software is again in use at the Site to ensure that no copy of all or any part of the Licensed Software remains at the temporary site. If the alternative site is managed by a third party, the third party must have signed a confidentiality undertaking addressed to the Supplier to protect the Supplier's Confidential Information before the Licensed Software is transferred to the alternative site.

13.3 The Customer shall comply with the Third-Party Licences and shall indemnify and hold the Supplier harmless against any loss of damage which it may suffer or incur as a result of the Customer's breach of such terms howsoever arising.

13.4 The Supplier may treat the Customer's breach of any Third-Party Licence as a breach of this agreement.

14. TRANSFER OR REPRODUCTION OF LICENSED SOFTWARE

14.1 The Customer may make such copies of the Licensed Software as are reasonably necessary for use in accordance with this agreement and for the purposes of backup and security. The Customer has no right to make, or authorise the making of, any other copies of the Licensed Software.

14.2 The Supplier shall at all times own all copies of all or any part of the Licensed Software. For copies recorded on a tangible medium, the Customer shall place on each copy of all or any part of the Licensed Software a clearly visible label indicating that the copy is the property of the Supplier, and reproducing the Supplier's proprietary rights notice. For electronic copies, the Customer shall ensure that all proprietary notices contained in the Licensed Software shall be maintained in such copies and shall display when the software is run, in the same way as in the case of the Licensed Software as supplied by the Supplier. The Customer shall keep all copies of the Licensed Software in a secure place when not in use and shall, at all times, keep all such copies in its possession or control.

14.3 The Customer shall not:

- (a) sub-license, rent, lend, assign or transfer in any other way this agreement or the Licensed Software to any person without the prior written consent of the Supplier; and



- (b) give access to the Licensed Software through any network of computers to users who are not employees or agents of the Customer.

15. USE AND ADAPTATION OF LICENSED SOFTWARE

- 15.1 The Customer may use the Licensed Software with other software.
- 15.2 The Customer may not make adaptations or variations of the Licensed Software without the prior consent of the Supplier.
- 15.3 The Customer may not disassemble, decompile, reverse translate or in any other manner decode the Licensed Software, except as permitted by law.

16. SUPPORT SERVICES

- 16.1 The Supplier shall supply the Customer with New Releases in machine-readable form together with related amendments to the Documentation. The Supplier may make such New Releases available for downloading over the internet and will promptly notify the Customer when such downloads are available.

17. TRAINING

- 17.1 The Supplier undertakes to provide the Training to the Customer as set out in the Implementation Plan.
- 17.2 Any additional training required by the Customer shall be provided by the Supplier at the Supplier's standard rates then in force.
- 17.3 Training shall be carried out at the Site(s) , or as may otherwise be agreed by the Customer. Any special equipment necessary for the Training shall be provided by the Supplier.

18. SUPPLIER PERSONNEL: SUPPLIER SOFTWARE AND SUPPORT SERVICES

- 18.1 The Supplier undertakes that its employees and contractors, while on the Site(s) or any other premises of the Customer, will comply with all relevant rules and regulations laid down by the Customer from time to time for the behaviour of its own employees and contractors, as notified to the Supplier in writing to the Supplier from to time. Access to the same via the Customer's intranet shall be deemed to satisfy such notification requirement. The Supplier shall remove any employee or



contractor whom the Customer can demonstrate has failed to comply with such rules, regulations and requirements.

18.2 The Supplier alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of the Support Staff. The Supplier assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the Customer.

18.3 During the term of this agreement and for a period of six months after its termination neither party shall, without the prior written consent of the other, solicit, or permit any Affiliate or Associate to solicit, the employment of any person who is employed by the other party in the course of developing, supplying, maintaining or supporting the Supplier Software or any part of it.

19. SUPPLIER SOFTWARE: PROJECT MANAGEMENT

19.1 No later than five Business Days after the Commencement Date, the Customer shall notify the Supplier of the name and qualifications of the person appointed as the Customer Representative.

19.2 The Supplier shall appoint the Project Manager, who shall have the responsibility and commensurate authority for the overall progress of the Work and to whom all questions regarding this agreement can be referred. The name and qualifications of the appointed individual shall be notified in writing to the Customer Representative.

19.3 The Customer Representative shall co-operate with the Project Manager and shall attend meetings as agreed between the parties to advise and assist the Supplier on all matters relating to the Work.

19.4 The provision of employees, subcontractors and agents of the Supplier to carry out the Work shall be at the discretion of the Supplier.

19.5 The Supplier agrees that the Project Manager shall not be replaced before the Acceptance Date without notice to the Customer, unless:

- (a) the individual to be replaced is prevented by ill-health from carrying out his duties in connection with the agreement for a significant period;
- (b) the individual resigns from employment with the Supplier;
- (c) the contract of employment of the individual is terminated; or



- (d) the Customer makes a reasonable, written request to the Supplier to replace the individual because he has performed unsatisfactorily or has caused a breach of any of the Supplier's obligations under this agreement.
- 19.6 If any such person is replaced, the Supplier shall consult with the Customer Representative about the identity of a suitable replacement.
- 19.7 The Customer agrees that the Customer Representative shall not be replaced before the Acceptance Date without notice to the Supplier, unless:
- (a) the individual to be replaced is prevented by ill-health from carrying out his duties in connection with the agreement for a significant period;
 - (b) the individual resigns from employment with the Customer;
 - (c) the contract of employment of the individual is terminated;
 - (d) the Supplier makes a reasonable, written request to the Customer to replace the individual because he has performed unsatisfactorily or has caused a breach of any of the Customer's obligations under this agreement.
- 19.8 The Customer shall consult with the Project Manager about the identity of a suitable replacement.
- 19.9 The Supplier shall:
- (a) take all reasonable steps to maintain continuity in relation to the Support Staff team; and
 - (b) to the extent possible, give the Customer reasonable written notice of any proposed holiday or leave of absence to be taken by the Support Manager.

20. SUPPORT SERVICES

- 20.1 Following the Acceptance Date the Supplier shall not provide any on-going support service for the Supplier Software under the terms of this agreement.

21. CONFIDENTIALITY AND PUBLICITY

- 21.1 Each party undertakes not to use the Confidential Information otherwise than in the exercise and performance of its rights and obligations under this Agreement (**Permitted Purposes**).
- 21.2 In relation to the Customer's Confidential Information:



- (a) the Supplier shall treat as confidential all Confidential Information of the Customer supplied under this agreement. The Supplier shall not divulge any such Confidential Information to any person, except to its own employees and then only to those employees who need to know it for the Permitted Purposes. The Supplier shall ensure that its employees are aware of, and comply with, this clause 21; and
- (b) the Supplier may provide any subcontractor authorised under clause 27 with such of the Customer's Confidential Information as it needs to know for the Permitted Purposes, provided that such sub-contractor has first entered into a written obligation of confidentiality owed to the Supplier in terms similar to clause 21.2(a) (which the Supplier shall ensure is adhered to).

21.3 In relation to the Supplier's Confidential Information:

- (a) the Customer shall treat as confidential all Confidential Information of the Supplier contained or embodied in the Supplier Software or Documentation, or otherwise supplied to the Customer during the performance of this agreement;
- (b) the Customer shall not, without the prior written consent of the Supplier, divulge any part of the Supplier's Confidential Information to any person other than:
 - (i) the Customer's Representative; and
 - (ii) other employees of the Customer or any of its Affiliates who need to know it for the Permitted Purposes; and
- (c) the Customer undertakes to ensure that the persons mentioned in clause 21.3(b) are made aware, before the disclosure of any part of the Supplier's Confidential Information, that the same is confidential and that they owe a duty of confidence to the Customer in terms similar to clause 21.3(a) (which the Customer shall ensure is adhered to).

21.4 The restrictions imposed by clause 21.1, clause 21.2 and clause 21.3 shall not apply to the disclosure of any Confidential Information which:

- (a) is now in or hereafter comes into the public domain otherwise than as a result of a breach of this clause 21;
- (b) before any negotiations or discussions leading to this agreement was already known by the receiving party (or, in the case of the Customer, any of its Affiliates) and was obtained or acquired in circumstances under which the receiving party was (or, in the case of the Customer, the Customer and its Affiliates were) not bound by any form of confidentiality obligation; or



(c) is required by law or regulation to be disclosed to any person who is authorised by law or regulation to receive the same (after consultation, if practicable, with the disclosing party to limit disclosure to such authorised person to the extent necessary).

21.5 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.

21.6 Nothing in this agreement shall prevent either party from using any Tools, knowledge of which is contained in the unaided memory of such party's personnel or those of its Affiliates developed or disclosed under this agreement, provided that in doing so such party does not breach its obligations of confidentiality under this clause 21 or breach any Intellectual Property Rights of the other party or any of its Affiliates. An individual's memory is only "unaided" with respect to any information if the individual has not retained a copy of the information and has not intentionally memorised that information other than is required to perform the Services.

21.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including any relevant securities exchange), any court or other authority of competent jurisdiction.

21.8 This clause 21 shall remain in full force and effect, despite any termination of the Licence or this agreement.

22. DATA PROTECTION

22.1 The following definitions apply:

(a) the terms "data controller", "data processor", "data subject" and "processing" bear the respective meanings given them in the Data Protection Act 1998, and "data protection principles" means the eight data protection principles set out in Schedule 1 to that Act.

(b) data includes Personal Data.

(c) **Customer Personal Data** means any Personal Data provided by or on behalf of the Customer.



- 22.2 The Supplier shall:
- (a) only carry out processing of any Customer Personal Data on the Customer's instructions;
 - (b) implement appropriate technical and organisational measures to protect any Customer Personal Data against unauthorised or unlawful processing and accidental loss or damage; and
 - (c) only transfer Customer Personal Data to countries outside the European Economic Area that ensure an adequate level of protection for the rights of the data subject.
- 22.3 The Supplier shall promptly and fully notify the Customer in writing of any notices in connection with the processing of any Customer Personal Data, including subject access requests, and provide such information and assistance as the Customer may reasonably require.
- 22.4 The Customer acknowledges that the Supplier will be acting as a data processor, rather than as a data controller, in respect of all such data processing activities which the Supplier carries out under this agreement.

23. EXPORT

- 23.1 Neither party shall in any circumstances export, directly or indirectly, any technical data acquired from the other party under this agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations (**Export Control Laws**), including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.
- 23.2 Each party undertakes:
- (a) contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
 - (b) if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.



24. WARRANTIES

- 24.1 The Supplier warrants and represents that:
- (a) the Bespoke Software, Supplier Standard Software and Documentation are proprietary to the Supplier (except where otherwise stated in **Error! Reference source not found.**) and that it has the right to license all UK Intellectual Property Rights in and to the Bespoke Software, Supplier Standard Software and Documentation to the Customer;
 - (b) the Supplier Software at the Acceptance Date, and for six months after that date, will perform in accordance with the Technical Specification;
- 24.2 The sole remedies for breach of the warranties in clause 24.1(a) and clause 24.1(b) are set out in clause 25.
- 24.3 The sole remedy for breach of the warranty under this clause 24.1(b) shall be correction of Defects by the Supplier within a reasonable time from notification by the Customer of the Defect that constitutes such breach.
- 24.4 The warranties set out in clause 24.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this agreement. Without limitation, the Supplier specifically denies any implied or express representation that the Supplier Software will be fit:
- (a) to operate in conjunction with any hardware items or software products other than with those that are identified in the Documentation as being compatible with the Supplier Software; or
 - (b) to operate uninterrupted or error-free.
- 24.5 Any unauthorised modifications, use or improper installation of the Supplier Software by, or on behalf of, the Customer shall render all the Supplier's warranties and obligations under this agreement null and void.
- 24.6 The Supplier shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of the Supplier.
- 24.7 The Customer acknowledges that the only warranties in relation to the Third-Party Software and the Modified Software (Third Party), or the supply thereof, are those contained in the licence from the third-party supplier(s) of the same, and that to the



extent that any of such warranties are given to the Supplier, it will pass on the benefit of such warranties to the Customer and its Affiliates.

24.8 Any Open-Source Software provided by the Supplier may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided "as is" and expressly subject to the disclaimer in clause 24.4.

24.9 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this agreement and that those signing this agreement are duly authorised to bind the party for whom they sign.

25. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

25.1 The Supplier shall indemnify the Customer against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with use of the Supplier Software, any New Release or Documentation provided that, if any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the Customer:

- (a) as soon as reasonably practicable, gives written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
- (b) does not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) gives the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
- (d) subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, takes such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.



- 25.2 Without prejudice to clause 24.5, the Supplier shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:
- (a) caused or contributed to by the Customer's use of the Supplier Software or any New Release (as the case may be) in combination with software not supplied or approved in writing by the Supplier (other than the operating system of any Computer Hardware, provided that the Supplier was notified in writing of the identity of this operating system before this agreement was entered into);
 - (b) based on use of any version of the Supplier Software other than the latest version supplied by the Supplier, if such claim could have been avoided by the use of such supplied version; or
 - (c) where the claim for infringement arises in respect of a feature of the Supplier Software which was specified by the Customer in the Business Requirements Specification.
- 25.3 If use of the Supplier Software becomes, or in the opinion of qualified legal counsel is likely to become, the subject of any such claim, the Supplier may:
- (a) replace all or part of the Supplier Software or the New Releases with functionally equivalent software or documentation without any charge to the Customer;
 - (b) modify the Supplier Software or New Releases as necessary to avoid such claim, provided that the Supplier Software or the New Releases functions in substantially the same way as the Supplier Software or the New Releases before modification;
 - (c) procure for the Customer a licence from the relevant claimant to continue using the Supplier Software or the New Releases (as the case may be).
- 25.4 If:
- (a) use of the Supplier Software or any New Release (as the case may be) is determined in a court of law to be infringing;
 - (b) the Supplier is advised by a barrister of at least ten years' call that use or possession by the Customer or any of its Affiliates of the Licensed Software and/or the Documentation in accordance with this agreement is likely to constitute infringement of a third party's rights; or
 - (c) if an injunction or similar order is granted in connection with a claim of the types referred to in clause 25.1 which prevents or restricts the use or possession by the Customer or any of its Affiliates of the Licensed Software and/or the Documentation in accordance with this agreement;



and the Supplier is unable, after best efforts, to procure for the Customer the right to continue using the Supplier Software or the New Releases (as the case may be) or to provide the Customer with functionally equivalent non-infringing software, this agreement and the Licence will be terminated.

25.5 Notwithstanding any other provision in this agreement, clause 25.1 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software or through the breach of any Third-Party Licence relating to any Open-Source Software by the Customer or any of its Affiliates.

25.6 If a payment due from the Supplier under this clause is subject to tax (whether by way of direct assessment or withholding at its source), the Customer shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Customer in respect of the payment is the same as it would have been were the payment not subject to tax.

25.7 Nothing in this clause shall restrict or limit the Customer's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

26. LIMITATION OF LIABILITY

26.1 Neither party excludes or limits liability to the other party for:

- (a) fraud or fraudulent misrepresentation;
- (b) death or personal injury caused by negligence;
- (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any matter for which it would be unlawful for the parties to exclude liability.

26.2 Subject to clause 26.1, the Supplier shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
- (b) any loss or corruption (whether direct or indirect) of data or information;
- (c) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or



- (d) any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 26.3 Clause 26.2 shall not prevent claims, which fall within the scope of clause 26.4, for:
- (a) direct financial loss that are not excluded under any of the categories set out in clause 26.2(a) to clause 26.2(d); or
 - (b) tangible property or physical damage.
- 26.4 Subject to clause 26.1, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall in respect of any other cause of action related to this agreement (including any cause of action related to the Supplier Software), be limited to the amount of the Price.
- 26.5 Any dates quoted for delivery of the Work are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Work that is caused by an event, circumstance or cause within the scope of clause 38 or the Customer's failure to provide the Supplier with adequate delivery instructions.
- 27. ASSIGNMENT AND SUBCONTRACTING**
- 27.1 Subject to clause 27.3, this agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the supplier.
- 27.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 27.3 The Supplier may assign, transfer or subcontract any or all of its rights and obligations under this agreement to an Affiliate of that party for so long as that company remains an Affiliate of that party. The assignor shall procure that such company assigns any rights assigned to it in accordance with this clause 27.3 back to the assignor or another Affiliate of that party immediately before it ceases to be an Affiliate of that party.



27.4 Notwithstanding clause 21, a party assigning any or all of its rights under this agreement may disclose to a proposed assignee any information in its possession that relates to this agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 27.4 shall be made until notice of the identity of the proposed assignee has been given to the other party.

28. DURATION

28.1 This agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 29, until the Work has been completed.

29. TERMINATION

29.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement with immediate effect by giving written notice to the other party 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;
- (b) the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 Business Days after being notified in writing to do so;
- (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;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (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;



- (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;
 - (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;
 - (h) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - (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;
 - (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;
 - (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 29.1(d) to clause 29.1(j) (inclusive);
 - (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - (m) any warranty given in clause 24 is found to be untrue or misleading.
- 29.2 The parties acknowledge and agree that any breach of clauses 29.1(a) shall constitute a material breach of a term for the purposes of this clause.
- 29.3 Either party may terminate this agreement in accordance with clause 38.
- 29.4 The Customer may terminate the Licence at any time by giving written notice to the Supplier and by complying with clause 29.5.
- 29.5 On termination of the Licence, the Customer shall either return to the Supplier or, at the Supplier's option, destroy all material copies of the Licensed Software and Documentation, and shall ensure that any copies of the Licensed Software on hard discs or other storage means associated with any computer equipment owned or controlled by the Customer are permanently deleted.



- 29.6 This agreement shall automatically terminate on termination or expiry of the Licence, but expiry or any termination of this agreement (however caused) shall have no effect on the Licence.
- 29.7 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.
- 29.8 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including clause 1, clause 12, clause 21 to clause 26, and clause 29 shall remain in full force and effect.
- 29.9 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.
- 29.10 Notwithstanding its obligations in this clause 29, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 29.11 On termination of this agreement for any reason, each party shall as soon as reasonably practicable:
- (a) return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party containing, reflecting, incorporating or based on Confidential Information belonging to the other party. ;
 - (b) permanently delete any proprietary software belonging to the other party and not the subject of a current licence granted by the other party from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. ;
 - (c) subject to clause 29.12(b), return all of the other party's equipment and materials, failing which, the other party may enter the relevant premises and take possession of them, provided, regarding the Customer's rights under this clause 29.12(b), that the Customer has (if appropriate) paid the Supplier in full for such equipment and materials. Until these are returned or repossessed, [the party in possession] shall be solely responsible for their safe-keeping.



- 29.12 On termination of this agreement for any reason, the Supplier shall:
- (a) promptly refund such portion of the Price as relates to the period after expiry or termination on a pro rata basis;
 - (b) as soon as reasonably practicable, vacate the Customer's premises leaving them clean and tidy and removing any goods, materials or equipment belonging to it. Any goods, materials or equipment that have not been removed after 30 Business Days after termination of this agreement may be disposed of by the Customer as it thinks fit.
- 29.13 On termination of this agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

30. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

31. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

32. ENTIRE AGREEMENT

- 32.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 32.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.



33. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

34. SEVERANCE

34.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

34.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

35. COUNTERPARTS

35.1 This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

36. THIRD-PARTY RIGHTS

No person other than a party to this agreement shall have any rights to enforce any term of this agreement.

37. NO PARTNERSHIP OR AGENCY

37.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

37.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.



38. FORCE MAJEURE

38.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 180 days, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

39. NOTICES

39.1 Any notice or other communication required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out in **Error! Reference source not found.** or as otherwise specified by the relevant party by notice in writing to each other party.

39.2 Any notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

39.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.

39.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

40. DISPUTE RESOLUTION

40.1 Any dispute which may arise between the parties concerning this agreement shall be determined as provided in this clause 40.

40.2 For the purpose of this clause 40, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.



- 40.3 Unless this agreement has already been terminated by the date of the notice of dispute, the Supplier shall, in every case, continue with the Work with all due diligence regardless of the nature of the dispute and the Customer shall continue to make payments (excluding any disputed sums) in accordance with **Error! Reference source not found.**
- 40.4 After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this clause 40.4 shall be extendable by mutual agreement):
- (a) within two days, the Project Manager and the Customer Representative shall meet to attempt to settle the dispute;
 - (b) if the Project Manager and the Customer Representative are unable to reach a settlement within seven days from the date of service of the notice, the managing directors of each of the parties shall meet within the following seven days to attempt to settle the dispute; and
 - (c) if no settlement results from the meeting specified in clause 40.4(b), for the following 28 days the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.
- 40.5 If no settlement is reached under clause 40.4:
- (a) if the dispute is of a technical nature concerning the interpretation of the Business Requirements Specification or Technical Specification or any similar or related matter then such dispute shall be referred for arbitration. The arbitrator's decision shall (in the absence of clerical or manifest error) be final and binding on the parties and his or her fees for so acting shall be borne by the parties in equal shares unless he determines that the conduct of either party is such that such party should bear all of such fees;
 - (b) in the case of a dispute over purely legal issues, or where disposition of the legal issues would dispose of all other issues in dispute, the matter shall be brought before the English High Court in the most expeditious manner possible, and the parties agree to co-operate in the speedy conduct of such legal proceedings; and
 - (c) in any other case, the dispute shall be determined by the English High Court and the parties submit to the exclusive jurisdiction of such court for such purposes.



41. GOVERNING LAW

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.

42. JURISDICTION

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.