

Section 3 – General Provisions

The following terms and conditions apply to all Goods sold or to be sold and/or Software licensed or to be licensed and/or Services provided or to be provided to the Client.

1 Notices

- 1.1 These Terms may only be amended, or varied with the Supplier's Contract in writing. The parties agree that these Terms will prevail notwithstanding any conflicting or additional terms or any orders or other notifications submitted by the Client.
- 1.2 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.
- 1.3 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 1.4 This clause 1 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

2 Cumulative remedies

- a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. 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.
- b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

3 Charges and Payment

- 3.1 Unless otherwise stated in writing, quotations are valid for 14 days from the date of issue and are exclusive of VAT and any other relevant taxes which are payable by the Client in addition. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 3.2 All waiting time spent by any employees or agents of the Supplier as a result of any delay, variation or failure by the Client to comply with these Terms will be payable by the Client to the Supplier at the Supplier's hourly rate.
- 3.3 The Supplier reserves the right to:
 - a) increase its standard rates for the Charges for the Services, provided that the Supplier will give the Client written notice of any such increase 3 months before the proposed date of the increase. If such increase is not acceptable to the Client, 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 Client.
 - b) Where the Client has paid in advance for the provision of Services for an agreed term (Prepaid Term), any price increase will not apply to the Prepaid Term.
- 3.4 In respect of the Services the Client will pay the charges to the Supplier on the date(s) set out in the Specification of Services.
- 3.5 In respect of the sale of all other Goods:
 - a) Payment will be made by the Client on the date(s) agreed in writing between the Client and the Supplier at the point of order for the Goods in accordance with these Terms.
 - b) Invoices for Goods will ordinarily be issued on delivery of the Goods. If the Goods are specific to the Client or if the Client fails to take delivery when required the Supplier may invoice the Client at any time after the Goods become available.
 - c) The Supplier may require the Client at any time prior to delivery to pay a deposit or in full to secure any order or part thereof.
 - d) Any quantity discount given by the Supplier at the point of order may be removed if the order quantity is subsequently reduced.
 - e) If no payment date(s) has been agreed in writing in accordance with clauses 3 then payment by the Client will be made within 15 days after the date of the Supplier's invoice.
- 3.6 If any payments from the Client under these Terms are payable by instalments, the Client will pay such instalments in advance, by standing order, direct debit or such other method as the Supplier may agree, at the intervals agreed in writing with the Supplier.
- 3.7 If the Client fails to make any payment due to the Supplier (whether under these Terms or otherwise) on its due date then the Supplier may (without prejudice to any other remedy) cancel the Contract or suspend any further performance of any obligations to the Client or appropriate any money received from the Client against such sums as the Supplier may determine (notwithstanding any instructions from the Client).

- 3.8 The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Client against any amount payable by the Supplier to the Client.
- 3.9 The Supplier reserves the right to charge interest on the amount of any delayed payment at the rate of 4% over the base rate of Santander Bank Plc accruing on a daily basis from the Due Date until the date of actual payment.
- 3.10 In respect of Services, the Supplier shall invoice the Client monthly in advance.
- 3.11 The Client shall pay each invoice submitted by the Supplier within 15 days of the date of the invoice; and 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.
- 3.12 The price for Goods/Services shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's price list as at the date of delivery. The price of the Goods/Services is exclusive of all costs and charges of packaging, insurance, transport of the Goods.
- 3.13 The charges for Services shall be calculated in accordance with the Supplier's standard rates from time to time, as set out in its price list.
- 3.14 In respect of the purchase of Goods, the Supplier shall invoice the Client before delivery and the Supplier will not deliver the Goods until it has received payment for them and for any Services for which it has been agreed that payment will be made in advance in cleared funds.
- 3.15 The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client 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.

4. Liability **LIMITATION OF LIABILITY: THE CLIENT'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

4.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

4.2 Subject to clause 5.1:

- (a) the Supplier shall under no circumstances whatever be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of data, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) the Supplier's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the value of the Contract.

4.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

4.4 This clause 5 shall survive the termination of the Contract.

5. Intellectual Property Rights

5.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and the Services shall be owned by the Supplier. For the avoidance of doubt Intellectual Property Rights relate to all patents, right to inventions, copyright and related rights, trademarks, trade, business and domain names, right in goodwill or to sue for passing off, rights in computer software, database 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 right or forms of protection in any part of the world.

6. Confidentiality

6.1 A party (**Receiving Party**) 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 Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause shall survive termination of the Contract.

7. Force Majeure

For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to failure of a utility service, transport network or telecommunications service (such as a network provider), compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of computer systems and servers, fire, flood, storm or default of suppliers or subcontractors.

The Supplier shall not be liable to the Client as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 4 weeks, either party shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the other party.

8. Assignment & Subcontracting

The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party. The Client shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

9. Termination

- 9.1** Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 10 Business Days after receipt of notice in writing of the breach;
 - (b) the other party commits or threatens to commit or is threatened with any act of insolvency under the Insolvency Act 1986;
 - (c) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.

9.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:

- (a) by giving the Client three months' written notice;
- (b) with immediate effect by giving written notice to the Client if the Client fails to pay any amount due under this Contract on the due date for payment.
- (c) The Client may terminate the Contract by giving the Supplier not less than three months' written notice prior to the annual renewal date for the Services.
- (d) Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Services if the Client fails to make pay any amount due under this Contract on the due date for payment.

9.3 On termination of this Contract for any reason the Client will return or delete any of the Supplier's Confidential Information and return to the Supplier all property of the Supplier under the Client's possession or control. The Client acknowledges and agrees that the Supplier will be entitled to remove such software from all operating systems of the Client whether by means of remote access or otherwise. The Client will not do or omit to do anything which might prevent or hinder such removal

9.4 If the Client terminates this Contract (or the Supplier terminates by reason of any acts or omissions of the Client) then:

- (a) in respect of any Goods such termination can only be made with the Supplier's written consent and on terms that the Client will indemnify the Supplier in full against all loss (including loss of profit) costs, charges and expenses incurred by the Supplier as a result of such termination; and
- (b) in respect of the Services if the termination occurs prior to the end of the First Term, the Supplier may without prejudice to any other remedies available to it demand and receive from the Client an early termination charge. This charge will be calculated to recover such costs as the Supplier has reasonably incurred in equipping itself to deliver the Monitoring & Support Service and which have not been fully recovered by the Supplier from the Charges paid by the Client at the date of termination.

10. Consequences of Termination

On termination of the Contract for any reason:

- (a) the Client 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 yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt;
- (b) the Client shall return all of the Support Items on loan and any Goods which the Client has not bought and which were supplied on hire. If the Client fails to do so, then the Supplier may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

11. Data Protection

11.1 As the performance of the Contract and the delivery of Services implies the processing of personal data, the Data Controller and the Data Processor shall comply with the applicable data protection legislation and regulations.

- 11.2 The Data Processor shall ensure that in relation to personal data disclosed to it by, or otherwise obtained from the Data Controller, it shall act as the Data Controller's data processor in relation to such personal data and shall therefore:
- 11.2.1 from 25 May 2018, create and maintain a record of its processing activities in relation to the Contract; The Data Processor shall make a record available to the Data Controller, any auditor appointed by it and/or the supervisory authority on first request;
 - 11.2.2 implement appropriate technical and organisational measures for the fulfilment of Data Controller's obligation to respond to request by Data Subjects to exercise their rights of access, rectification or erasure, to restrict or object to processing of Personal Data, or to data portability;
 - 11.2.3 not process the personal data for any purpose other than to deliver the Services and to perform its obligations under the Contract in accordance with the documented instructions of the Data Controller; if it cannot provide such compliance, for whatever reasons, it agrees to promptly inform the Data Controller of its inability to comply;
 - 11.2.4 inform the Data Controller immediately if it believes that any instruction from the Data Controller infringes applicable data protection legislation and regulations;
 - 11.2.5 not disclose the personal data to any person other than to its personnel as necessary to perform its obligations under the Terms & Conditions and ensure that such personnel is subject to statutory or contractual confidentiality obligations;
 - 11.2.6 take appropriate technical and organisational measures against any unauthorised or unlawful processing, and to evaluate at regular intervals the adequacy of such security measures;
 - 11.2.7 ensure that access, inspection, processing and provision of the personal data shall take place only in accordance with the need-to-know principle, ie. information shall be provided only to those persons who require the personal data for their work in relation to the performance of the Services;
 - 11.2.8 promptly notify the Data Controller about (i) any legally binding request for disclosure of the personal data by a data subject, a judicial or regulatory authority unless otherwise prohibited, such as the obligation under criminal law to preserve the confidentiality of a judicial enquiry, and to assist the Data Controller with (ii) any accidental or unauthorised access, and more in the general, any unlawful processing to assist the Data Controller with;
 - 11.2.9 deal promptly and properly with all reasonable enquiries from the Data Controller relating to its processing of the personal data or in connection with the Contract;
 - 11.2.10 make available to the Data Controller all information necessary to demonstrate compliance with the applicable data protection legislation and regulations;
 - 11.2.11 at the request and costs of the Data Controller, submit its data processing facilities for audit or control of the processing activities;
 - 11.2.12 refrain from engaging another data processor without the prior written general authorisation of the Data Controller;
 - 11.2.13 assist the Data Controller, subject to reasonable additional compensation, with the Data Controller's obligation under applicable data protection laws and regulations.
- 11.3 If personal data processed under this Contract is transferred from a country within the European Economic Area to a country outside the European Economic Area, both Data Controller and Data Processor shall ensure that the personal data is adequately protected and the prior written general authorisation of the Data Controller obtained.
- 11.4 The Client acknowledges that any data transmitted over the Internet cannot be guaranteed to be free from the risk of interception even if transmitted in encrypted form and that the Supplier has no liability for the loss, corruption or interception of any such data.

12. Severance

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
 - (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 12.1 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 12.2 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.3 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.
- 12.4 Governing law and jurisdiction: This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

