



1. DEFINITIONS
1.1. In the Agreement, unless the context otherwise requires:
Act means the Communications Act 2003;
Agreement means in relation to a particular Service these Terms and Conditions and the relevant Order Form;
Applicable Anti-Bribery Law means any bribery or fraud or other similar corruption law of any relevant country, including the Bribery Act and the US Foreign Corrupt Practices Act 1977;
Associated Persons means in relation to any entity, a person who (by reference to all the relevant circumstances) performs services for or on behalf of that entity in any capacity and including, without limitation, employees, agents, subsidiaries, representatives and subcontractors;
Bribery Act means the UK Bribery Act 2010 (as amended from time to time);
Business Day means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
Charges mean all charges due to the Service Provider by You as set out on the Order Form or otherwise due to the Service Provider in accordance with the Agreement;
Confidential Information means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 2 below;
Data Controller, Data Processor, Data Subject, Process/Processing, Personal Data, Personal Data Breach and Special Categories of Personal Data will have the same meaning as given to them in the Data Protection Laws;
Data Protection Laws means applicable legislation protecting the personal data of natural persons, including in particular the Data Protection Act 1998 (and, from 25 May 2018, Regulation (EU) 2016/679 ("GDPR") and the Data Protection Act 2018), together with binding guidance and codes of practice issued from time to time by relevant supervisory authorities;
Equipment means any equipment that the Service Provider from time to time supplies to You (whether or not any Charges are made for such supply) in connection with the provision of the Service;
IPRs means any intellectual property rights of any nature including without limit any and all inventions, patents, utility models, design rights, copyright, database rights, know how, trade secrets, confidential information, trademarks, service marks, trade names and goodwill;
Law means any law, statute or regulation, guideline or code of conduct (whether or not having the force of law) in any jurisdiction to which a Party is from time to time subject;
License(s) means the License which grants You and your end users the right to use the software application in question and exists between the Service Provider or the Service Provider's manufacturer and the end user of the software application;
License Fee means the fees identified as such in the Order Form;
Order Form means the Customer Order Form, which may be in a form provided by the Service Provider or any additional order information agreed by the Parties in writing (including e-mail), accepted by the Service Provider to order the Service subject to the Agreement;
Party means each of the Service Provider and You;
Personnel means all employees, staff, officers, individual contractors, other workers, agents and consultants, of the Service Provider, its Group and/or any subcontractor who are engaged in the provision of the Services, from time to time;
Purchased Equipment means any equipment explicitly sold to You by the Service Provider in connection with the provision of the Service;
Regulatory Bodies means in each applicable jurisdiction, those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Agreement or any other affairs of the Service Provider and "Regulatory Body" will be construed accordingly;
Service(s) means the service(s) defined in the relevant Order Form;
Service Provider means Netcentrix Limited (company number 03076196);
Signed means the Agreement being physically signed by both Parties, electronically signed by both Parties, the point at which the Service Provider explicitly accepts an order in writing (including by e-mail), or the point at which the Service Provider begins to fulfill any such Order (whichever is the earlier).
Site means the site at which any Equipment and/or Purchased Equipment shall be located;
Software means any software supplied to You by the Service Provider in connection with or to enable You to use the Service;
Third Party Service Provider means a third party who the Service Provider uses to provide the License(s), to You and Your end users.
User Documentation means such brochures, pamphlets, codes of practice and other documents, materials or information, if any, in relation to the Service and/or any Equipment as the Service Provider may publish from time to time;
You/Your means the customer with whom the Service Provider makes the Agreement as set out in the Order Form, or where appropriate, any person representing You if it appears to the Service Provider that such person acts with Your authority or permission.
1.2. References in the Agreement:
1.2.1. to a statutory provision will be interpreted as a reference to such provision as amended or re-enacted from time to time;
1.2.2. to a "person" includes any company (as defined in Section 1 Companies Act 2006), firm, body corporate or corporation (as defined in Section 1173(1) Companies Act 2006) or person, partnership or organisation;
1.2.3. to a Party includes its respective successors and permitted assigns and their respective employees and agents; and
1.2.4. to any word in the singular include the plural and vice versa.
1.3. References in these Terms and Conditions to Clauses are unless otherwise stated to Clauses in these Terms and Conditions.
1.4. Headings are for convenience only and do not affect the interpretation of the Agreement.
1.5. Where in the Agreement You agree not to do any act or thing You also agree not to allow (including without limitation, taking all reasonable preventative measures) any other person to do that act or thing. Where in

the Agreement You specifically acknowledge any provision or statement, You are deemed to agree to such provision or statement.
1.6. A reference to a third person or third party is a reference to a person who is not a Party.
1.7. The words 'include', 'including', 'for example' or 'such as' are not used as, and are not to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
1.8. In the event of any conflict, ambiguity or inconsistency between these Terms and Conditions, the Order Form and any other document referred to attached, the following order of precedence shall apply:
1.8.1. the Order Form;
1.8.2. the Terms and Conditions; and
1.8.3. any other document referred to or attached.
2. ORDERING SERVICES
2.1. To order Services and/or Equipment You must complete and submit the relevant Order Form.
2.2. A binding contract shall arise when the Service Provider accepts the relevant Order Form and the Order Form is then Signed by both Parties.
3. EQUIPMENT AND INSURANCE
3.1. If you fail to take delivery of the Equipment and/or Purchased Equipment on any agreed delivery date the Service Provider may arrange for its transport and storage at Your risk and You shall be liable for the reasonable costs of such transport and storage. The Service Provider may also charge You a call out fee together with any costs incurred by the Service Provider in relation to such failure by You.
3.2. Risk in and liability for Equipment and Purchased Equipment shall pass to You on delivery of the Equipment and Purchased Equipment.
3.3. You are responsible for ensuring at all times the safe keeping and proper use of the Equipment. You must on demand indemnify and hold harmless the Service Provider from and against any and all losses, demands, claims, damages (including but not limited to lightning or electrical damage), costs, expenses and liabilities arising from Your breach of this Clause 3.3.
3.4. Title to the Purchased Equipment shall pass to You on payment in full (in cash or cleared funds) to the Service Provider for:
3.4.1. the Purchased Equipment; and
3.4.2. any other Equipment and Services that the Service Provider has supplied to You in respect of which payment has become due.
3.5. Until title to the Purchased Equipment has passed to You, You shall:
3.5.1. hold the Purchased Equipment on a fiduciary basis as the Service Provider's bailee;
3.5.2. store the Purchased Equipment separately from all other goods held by You so that they remain readily identifiable as the Service Provider's property;
3.5.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Purchased Equipment;
3.5.4. maintain the Purchased Equipment in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
3.5.5. notify the Service Provider immediately if You become insolvent; and
3.5.6. give the Service Provider such information relating to the Purchased Equipment as the Service Provider may require from time to time, but You may resell or use the Purchased Equipment in the ordinary course of its business.
3.6. If before title to the Purchased Equipment passes to You, You become insolvent, or the Service Provider reasonably believes that any such event is about to happen and notifies You accordingly, then, provided that the Purchased Equipment has not been sold, or irrevocably incorporated into another product, without limiting any other right or remedy the Service Provider may have, the Service Provider may at any time require You to deliver up the Purchased Equipment and, if You fails to do so promptly, enter any premises of Yours or of any third party in order to recover them. The Service Provider warrants that the Equipment and Purchased Equipment supplied by the Service Provider under this Agreement shall: be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and comply with all applicable statutory and regulatory requirements.
3.8. Except as set out in this Agreement, all warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law, excluded from this agreement.
4. ACCEPTANCE AND DEFECTIVE PRODUCTS
4.1. You may reject any Equipment or Purchased Equipment delivered to You that does not comply with Clause 3.7, provided that notice of rejection is given to the Service Provider containing an explanation as to the reason why the Equipment or Purchased Equipment are considered defective:
4.1.1. in the case of a defect that is apparent on visual inspection, within 3 days of delivery; and
4.1.2. in the case of a latent defect, within a reasonable time of the defect becoming apparent.
4.2. If You fail to give notice of rejection in accordance with Clause 4.1 or reasonable assistance in accordance with Clause 4.4, You shall be deemed to have accepted such Equipment or Purchased Equipment.
4.3. On receipt of a rejection notice in accordance with Clause 4.1, You acknowledge that the Service Provider will liaise with the original manufacturer of the Equipment or Purchased Equipment as to its quality. The manufacturer will carry out an investigation in relation to the quality of the Equipment or Purchased Equipment. Following such investigation, the Service Provider shall either:
4.3.1. where the manufacturer determines there to be a fault, repair or replace the rejected Equipment or Purchased Equipment or repay the price of the rejected Equipment or Purchased Equipment to You; or
4.3.2. where the manufacturer deems that there is no fault, return the Equipment or Purchased Equipment to You.
4.4. You shall provide the Service Provider and any manufacturer of the Equipment or Purchased Equipment with reasonable assistance within 5 days of the Service Provider's request for such assistance in order to assist the manufacturer with the investigation described in Clause 4.3.
4.5. Once the Service Provider has carried out its actions in accordance with Clause 4.3, it shall have no further liability to You in respect of the Equipment or Purchased Equipment.
5. CHARGES PAYMENT AND INTEREST
5.1. You shall pay the Service Provider the Charges in respect of each item of Equipment
5.1.1. **Equipment Fee**
 For Purchased Equipment You are required to pay 100% of the total order on receipt of the invoice.
5.2. The fees, charges and prices payable are exclusive of Value Added Tax and any other applicable taxes which shall be paid by You at the rate and in the manner for the time being prescribed by law.
5.3. Payment is due on receipt of the invoice by Direct Debit. If the payment which is properly due is not made within 10 business days from receiving written notice from the Service Provider specifying the invoice number and the amount due the Service Provider may suspend or cancel the Services and charge interest on all sums outstanding at a rate of 4% above the base rate of Barclays Bank Plc. The interest rate used will be that in force on the due date and will be applied from the due date to the date of actual payment.
5.4. It is Your responsibility to check the invoice for accuracy and notify the Service Provider promptly of any dispute before payment. Any claims for a credit or refund must be notified to the Service Provider within 2 days of receipt of invoice otherwise the invoice will be deemed accepted.
5.5. You shall pay all amounts due in full without any deduction or withholding other than as required by law and shall not be entitled to assert any credit, set-off or counterclaim against the Service Provider to justify withholding any payment of any such amount in whole or in part.
6. USE OF THE EQUIPMENT
6.1. You undertake to use the Equipment in accordance with such conditions and/or instructions as may be notified in writing to You by the Service Provider from time to time and in accordance with Law.
6.2. You must not use or allow anyone to use the Service:
6.2.1. to send or receive a communication which is offensive, abusive, indecent, obscene or menacing;
6.2.2. to cause annoyance, inconvenience or needless anxiety to anyone; to violate or infringe the rights of any person;
6.2.3. in any way the Service Provider considers is detrimental to the provision of Services to You or any other customer of the Service Provider;
6.2.4. in breach of the Agreement;
6.2.5. in breach of applicable Law;
6.2.6. to upload or transmit viruses;
6.2.7. if they are not authorised to use the Service.
6.3. You must on demand indemnify and hold harmless the Service Provider from and against any and all liabilities, claims, damages, costs, demands, expenses, losses and proceedings arising out of or in any way connected with any use of the Service in contravention of the Agreement or the Law.
7. INTELLECTUAL PROPERTY RIGHTS AND TECHNOLOGY
7.1. You shall not, under any circumstances acquire any right in or to any of the IPRs (including, without limitation, copyright) subsisting in, resulting from or relating to the Equipment, or any documents, drawings and/or specifications relating thereto supplied by the Service Provider to You in connection with the Products, unless otherwise expressly agreed by the Service Provider in writing. If You in any way acquire any such rights then You shall immediately inform the Service Provider and shall forthwith take such steps as may be required by the Service Provider to assign such rights or vest such title in the Service Provider.
7.2. The Service Provider shall have the right to apply any trade marks, trade names and/or service marks to the Equipment. Unless otherwise agreed, You acknowledge that no rights are granted to You by the use of You of such trade marks, trade names and/or service marks and You shall not deface, remove or obliterate any trade marks, trade names or logos applied by the Service Provider on or in relation to the Equipment.
7.3. Where the Equipment are not manufactured by the Service Provider, the Service Provider gives no assurance or guarantee that the sale or use of the Equipment will not infringe the IPRs of any third party.
7.4. You shall keep confidential and not use, without the prior written consent of the Service Provider, all or any information including without limit, those (as referred to in condition 11.1) supplied by the Service Provider or disclosed to or obtained by You pursuant to or as a result of this Agreement, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of Yours, or disclosure of the same is required by law or by any other governmental or other regulatory body provided that in such cases You notify the Service Provider 14 days prior to such disclosure to allow the Service Provider to seek injunctive relief (or such other action as the Service Provider may require) to prevent such disclosure and shall provide the Service Provider with all such reasonable assistance as the Service Provider may require in order to carry out such action.
8. LIMITATIONS OF LIABILITY
8.1. Each Party accepts unlimited liability for fraudulent misrepresentation, death or personal injury resulting from its own negligence or that of its employees while acting in the course of their employment by such Party. However, nothing in this Clause gives a Party any right or remedy which it would not otherwise have.
8.2. Except as expressly stated in the Agreement all warranties, conditions, undertakings or terms, express or implied in respect of the Service,

Equipment and Purchased Equipment are excluded to the fullest extent permitted by Law.
8.3. Nothing in the Agreement shall exclude or restrict a Party's liability for matters which cannot by Law be excluded or restricted.
8.4. Save in relation to payment of indemnities pursuant to Clauses 3.3 and 6.3 and subject to Clauses 8.1 and 8.3:
8.4.1. Subject to Clause 8.4.2, each Party's liability (including without limitation liability for negligence) under the Agreement (other than for payment of Charges) in respect of each individual claim shall be limited to the Charges paid to the Service Provider by You for the applicable Purchased Equipment or Service of which the claim relates to; and
8.4.2. each Party's total aggregate liability for all claims under the Agreement (other than for payment of Charges) shall be limited to the value of the Charges paid to the Service Provider by You for the applicable Purchased Equipment or Service of which the claim's relate to.
8.5. Notwithstanding the above neither Party shall have any liability in contract, tort or otherwise (including liability for negligence), for loss or damage, whether direct or indirect, of business, production, data, operation time, goodwill, contracts, revenue, profits, for any loss of anticipated savings, for wasted expenditure or for any indirect or consequential loss whatsoever arising out of or in connection with the performance or non-performance by the Party of its obligations under the Agreement.
8.6. Unless stated in any relevant Special Terms, Clauses 8.1 - 8.6 set out each Party's entire liability (including any liability for the acts and omissions of its employees, agents or contractors) to the other Party in tort, contract or otherwise arising in connection with the performance, contemplated performance or non-performance of the Agreement. You acknowledge that the exclusions and limitations of the Service Provider's liability in the Agreement are reasonable taking into account (amongst other matters) the likelihood that any damages awarded to You for breach of the Agreement by the Service Provider may be disproportionately greater than the Charges.
9. ASSIGNMENT
9.1. You must not assign or delegate or otherwise deal with all or any of Your rights or obligations under the Agreement without the prior written consent of the Service Provider.
9.2. The Service Provider may assign or otherwise delegate all or any of its rights or obligations under the Agreement to any person or entity.
10. FORCE MAJEURE
10.1. Neither Party shall be liable for any breach of its obligations under the Agreement (other than in relation to payment of sums due) where it is hindered or prevented from carrying out its obligations by any cause outside its reasonable control. Such causes include, but are not limited to, fire, explosion, breakdown or failure of equipment, systems or facilities, strike, lock-out, labour dispute, illness, epidemic, flood, drought, war, civil commotion or requirement of any authority, licensing or government agency.
11. NOTICES
 Unless otherwise stated in the Agreement:
11.1. Notices sent by You to the Service Provider shall be sent by hand or post to the Commercial Director at the address below or as otherwise notified to You.
 Netcentrix Limited, Dawson House, Matrix Business Park, Chorley, PR7 9NA
11.2. Notices sent by the Service Provider to You may be sent:
11.2.1. by hand or by post to Your billing address specified on the Order Form or to Your registered office; or
11.2.2. by electronic mail to Your electronic mail address specified on the Order Form or as otherwise notified to the Service Provider in writing.
11.3. Notice given by hand shall be deemed given the same day. Notice given by post shall be deemed to have been given 3 days after the date of posting. Any communication by electronic mail shall be deemed to have been made on the working day on which the notice is first stored in the other Party's electronic mail-box.
11.4. You agree to inform the Service Provider of any change to Your billing address, registered address and contact details in order that notices are able to be sent correctly by the Service Provider.
12. ENTIRE AGREEMENT
12.1. This Agreement sets out the entire agreement and understanding between the parties in respect of its subject matter and supersedes any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) given or made before the date of this Agreement by, or on behalf of, the parties and relating to its subject matter.
12.2. Each party confirms that it has not relied upon, and (subject to clause 12.4) shall have no remedy in respect of, any agreement, warranty, statement, representation, understanding or undertaking made by any party (whether or not a party to this Agreement) unless that agreement, warranty, statement, representation, understanding or undertaking is expressly set out in this Agreement.
12.3. Subject to clause 12.4, neither party shall be entitled to claim the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, understanding or undertaking whether or not it is set out in this Agreement.
12.4. Nothing in this Agreement shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.
13. TIME NOT OF THE ESSENCE
13.1. Any dates quoted by the Service Provider in connection with the provision of the Service or delivery of the Equipment and/or Purchased Equipment shall be treated as estimates only. The Service Provider accepts no liability for failure to meet such dates.
14. MISCELLANEOUS

- 14.1. No waiver by the Service Provider of any default by You under the Agreement shall operate or be construed as a waiver by the Service Provider of any future defaults, whether of a like or different character. No granting of time or other forbearance or indulgence by the Service Provider to You shall imply a waiver of its rights or shall in any way release, discharge or otherwise affect Your liability under the Agreement.
- 14.2. If any provision of the Agreement shall be prohibited or adjudged by a court of competent jurisdiction to be unlawful, void or unenforceable, such provision shall to the extent required be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement and shall not in any way affect any other circumstances or the validity or enforcement of the Agreement.
- 14.3. The provisions of the Agreement of a continuing nature shall survive termination of the Agreement for any reason whatsoever.
- 14.4. During this Agreement and for a period of twelve (12) months following the termination of the Agreement (for whatever reason) You shall not employ or engage directly or indirectly (without the prior written agreement of the Service Provider) nor make or seek to make any offer of employment or engagement to any employee of the Service Provider, who have dealt with You in the course of the performance of the Agreement.
- 14.5. The Parties do not intend that the Agreement be enforceable by any person not a party to the Agreement under the Contracts (Rights of Third Parties) Act 1999.
- 14.6. You agree that the clauses detailed in Schedule 1 of these Terms and Conditions shall govern the processing of Personal Data of Data Subjects in the context of the Services.
- 14.7. Right to Audit: You may request an audit of the Service Provider to conduct financial, quality, or other compliance audits in order to ensure Your compliance with Your own applicable standards. Such an audit will be conducted at Your own cost. The Service Provider agrees to undertake any such reasonable request, and use its reasonable efforts to facilitate, upon written notice of at least 20 business days to either complete an audit questionnaire, a due diligence questionnaire or any other such audit documentation or during regular business hours, access and conduct an inspection of the records and documentation of the Service Provider and any facilities and/or systems necessary. You must provide a detailed scope of the audit to the Service Provider in order for us to quantify the number of hours required to complete the work and the technical level of personnel necessary. The Service Provider will provide a quote for the number of consultancy hours and on acceptance by You of that quote the Service Provider will schedule the audit on an appropriate date agreed by both parties.
- 15. CONFIDENTIALITY**
- 15.1. Each Party (in this Clause "Receiving Party") undertakes to the other Party ("Disclosing Party"):
- 15.1.1. To keep confidential the Disclosing Party's information of a confidential nature obtained from the Disclosing Party in discussions leading to the Agreement and subsequently received pursuant to this Agreement ("in this Clause "Confidential Information"); and
- 15.1.2. Not to disclose the Confidential Information in whole or in part to any other person without the Disclosing Party's written consent, except to the Receiving Party's employees, agents and sub-contractors involved in the supply or use of the Services (as the case may be) on a confidential and need-to-know basis; and
- 15.1.3. To use the Confidential Information solely in connection with the supply or use of the Services (as the case may be) and not for its own or the benefit of any third party.
- 15.2. You shall not disclose the existence of this Agreement to any third party without the prior written consent of the Service Provider.
- 15.3. The confidentiality obligations in Clauses 15.1 and 15.2 will not apply if the Receiving Party is required by court, government or other regulatory body to disclose the Confidential Information, but only to the extent required by law, provided that the Receiving Party gives the Disclosing Party written notice as soon as practicable of such requirement.
- 15.4. The confidentiality obligations in Clauses 15.1 and 15.2 will not extend to the Confidential Information which the Receiving Party can prove to the Disclosing Party's reasonable satisfaction:
- 15.4.1. has ceased to be secret without default of the Receiving Party's part; or
- 15.4.2. was already in the Receiving Party's possession prior to disclosure by the Disclosing Party; or
- 15.4.3. has been received from a third party who did not acquire it in confidence.
- 15.5. Clause 15 shall survive termination of the Agreement or any part of it.
- 16. ANTI-BRIBERY**
- 16.1. You must not violate any Applicable Anti-Bribery Law.
- 16.2. You have and must at all times implement adequate procedures designed to prevent You or any Associated Person from engaging in any activity which would constitute an offence under the Bribery Act if it were carried out in the UK, or violate any Applicable Anti-Bribery Law.
- 16.3. You represent that, in connection with this Agreement, no improper financial or other advantage has been, will be or is agreed to be given to any person (whether working for or engaged by the Service Provider or any third party) by or on behalf of You or Your Associated Persons.
- 16.4. Breach of any of the provisions in this condition 26 or of any Applicable Anti-Bribery Law is a material breach of this Agreement and, without prejudice to any other right, relief or remedy, entitles the Service Provider to terminate this Agreement immediately.
- 17. THIRD PARTY RIGHTS**
- 17.1. A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Agreement. This clause does not affect any right or remedy of any person which exists, or is available, other than pursuant to that Act.
- 18. COUNTERPARTS**
- 18.1. This Agreement may be Signed in any number of counterparts, and by the parties on separate counterparts, but shall not be effective until each party has executed at least one counterpart.
- 18.2. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.
- 19. GOVERNING LAW AND ARBITRATION**
- 19.1. The Agreement shall be governed by and construed in accordance with English law and the Parties agree to submit to the exclusive jurisdiction of the English Courts
- SERVICE SPECIFIC TERMS AND CONDITIONS – ONE-OFF LICENSE(S) PURCHASES**
- 20. Specification**
- 20.1. Unless otherwise agreed, the License(s) are supplied in accordance with the manufacturer's standard specifications as these may be improved, substituted or modified.
- 20.2. The Service Provider reserves the right to increase its quoted or listed Charges/License Fee, or to invoice You accordingly in respect of any Orders accepted for License(s) of non-standard specifications and in no circumstances will the Service Provider consider cancellation of such Orders or the return of such Orders.
- 20.3. The Service Provider will not be liable in respect of any loss or damage caused by or resulting from any variation for whatsoever reason in the manufacturer's specifications or technical data of the License(s).
- 20.4. The Service Provider will not be responsible for any loss or damage resulting from curtailment or cessation of supply of License(s) following any variation as described in clause 20.3 of these Service Specific Terms and Conditions.
- 20.5. The Service Provider will use its reasonable endeavours to advise You of any such impending variation as soon as it receives any such notice thereof from the manufacturer.
- 21. Pricing, Risk & Title**
- 21.1. You are liable to pay for any transport, and insurance costs in providing You with the License(s).
- 21.2. All quoted Charges/License Fees are based on the cost to the Service Provider of supplying the License(s) to You. While the Service Provider tries to ensure that all Charges/License Fees are accurate, errors may occur, if prior to delivery of the License(s), the Service Provider discovers an error in the Charges/License Fees of the License(s) ordered, or the Charge/License Fee changes as a result of circumstances beyond the Service Provider's control, the Service Provider on prior notification to You, may change the Charges and such changes shall apply to any Order placed with the Service Provider by You.
- 21.3. All Charges for License(s) are quoted subject to (i) acceptance within any period specified and (ii) any increase which may occur as a result of factors falling outside the control of the Service Provider, which without limitation, shall include any of the following circumstances:
- 21.3.1. where you have requested (whether before or after an Order has been accepted) any variation whatsoever to the quantity, capacity, form, content, style or description of the Order or License(s), or has requested an earlier or a later delivery date to that originally requested; or
- 21.3.2. where steps are taken by the Service Provider to comply with any statutory provisions from time to time in force, and any increases in the fee charged to the Service Provider of any License(s) bought from the Service Provider's suppliers in order for the Service Provider to fulfill the Agreement; or
- 21.3.3. where the supply of the License(s) is suspended, varied or otherwise delayed by any of Your acts or omissions.
- 21.4. Until You pay all debts to the Company:
- 21.4.1. all unpaid License(s) that have been purchased by You from the Service Provider will remain the property of the Service Provider;
- 21.4.2. all License(s) that have been purchased by You from the Service Provider must be stored so that they are clearly identifiable as the property of the Service Provider;
- 21.4.3. You must properly protect and insure all such License(s) and store them separately to any and all other products/software/Licenses; and
- 21.4.4. give the Service Provider such information relating to the License(s) as the Service Provider may require from time to time, but You may use the License(s) in the ordinary course of its business.
- 21.5. Title to the License(s) (including full legal and beneficial ownership but excluding software, title of which shall never pass to You) shall not pass to You until:
- 21.5.1. the Service Provider receives payment in full for the License(s) as supplied to You; and
- 21.5.2. the Service Provider receives payment in full for all and any other debts owed by You to the Service Provider at any given time;
- 21.6. If Your right to use the License(s) in the ordinary course of business ends, You must permit the Service Provider to reclaim the License(s) that have not been paid for in full.
- 21.7. Despite the Service Provider's retention of title to unpaid License(s), the Service Provider reserves the right to take legal proceedings to recover the cost of License(s) supplied should You not make full payment by the invoice due date.
- 21.8. Risk in and liability for License(s) shall pass to You at the time they are sent to You.
- 21.9. You are responsible for ensuring at all times the safe keeping and proper use of the License. You must on demand indemnify and hold harmless the Service Provider from and against any and all losses, demands, claims, damages, costs, expenses and liabilities arising from Your breach of this Clause 21.9.
- 21.10. If before title to the License(s) passes to You, you become insolvent, or the Service Provider reasonably believes that any such event is about to happen and notifies You accordingly, then, without limiting any other right or
- remedy the Service Provider may have, the Service Provider may at any time require You to return the License(s).
- 22. Software**
- 22.1. Intellectual property rights in the Software remain the property of the Service Provider or its licensors. You agree to comply with the terms of the Agreement and any Licenses required by the owner of any intellectual property right in the Software notified to You by the Service Provider or appearing on screen as an integral part of the Service.
- 22.2. The Service Provider hereby grants You a non-exclusive revocable License to use the Software in executable object code form only.
- 22.3. The License granted to You under the Agreement is personal to You and may not be leased, sublicensed, transferred, assigned, lent or otherwise disposed of.
- 22.4. If You use the Software in any way which will result in You being in breach of the Agreement or the terms of any individual agreement provided with the Software or if You attempt to transfer, assign or otherwise dispose of Your License to use the Software that License is terminated immediately.
- 22.5. The Software is protected by copyright law. You must use the Software in accordance with the Agreement and the terms of any individual agreements provided with the Software. Unless otherwise stated in the terms of any agreements/Licenses provided with the Software or except to the extent permitted by Law You must not copy the Software, except to make a single copy for backup or archival purposes. Any such copy shall be subject to the Agreement as if it were the original and shall contain all notices regarding proprietary rights contained in the Software originally provided to You. You must not attempt to reverse engineer, decipher, decompile or disassemble the Software except to the extent permissible by Law. You must not modify the Software or create derivative works of the Software. You must not transmit or distribute the Software electronically, via the Internet or in any other way.
- 22.6. The Service Provider warrants that the media containing the Software, if provided by the Service Provider, is free from defects in material and workmanship and will so remain for ninety (90) days from the date You receive the Software.
- 22.7. Subject to Clause 22.8 below the Service Provider's sole liability for any breach of the warranties in Clause 22.6 shall be, in the sole discretion of the Service Provider:
- 22.7.1. To replace Your defective media or copy of the Software; or
- 22.7.2. To refund the fee You paid for the Software.
- 22.8. The liability of the Service Provider under Clause 22.7 shall be incurred only in the event that You:
- 22.8.1. Inform the Service Provider of the breach of warranty during the applicable warranty period;
- 22.8.2. If requested by the Service Provider return the Software; and
- 22.9. The warranties contained in Clause 22.6 are the only warranties made by the Service Provider in relation to the Software. The Service Provider makes no other express or implied warranty relating to the performance, quality or fitness for a particular purpose of the Software. No agent or employee of the Service Provider is authorised to make any modifications, extensions, or additions to this warranty.
- 22.10. The warranties contained in Clause 22.6 shall be terminated immediately if:
- 22.10.1. any modifications are made to the Software by You or any third party during the warranty period; or
- 22.10.2. the media is subjected to accident, abuse, or improper use; or
- 22.10.3. You violate the terms of the Agreement.
- 22.11. The warranties in Clause 22.6 shall not apply if the Software is used on or in conjunction with hardware or programs other than the unmodified version of hardware and programs with which the Software was designed to be used as described in the User Documentation.
- 23. Use of the License(s)**
- 23.1. You undertake to use the License(s) in accordance with such conditions and/or instructions as may be notified in writing to You by the Service Provider from time to time and in accordance with Law.
- 23.2. You must not use or allow anyone to use the License(s):
- 23.2.1. to send or receive a communication which is offensive, abusive, indecent, obscene or menacing;
- 23.2.2. to cause annoyance, inconvenience or needless anxiety to anyone;
- 23.2.3. to violate or infringe the rights of any person;
- 23.2.4. in any way the Service Provider considers is detrimental to the provision of Services to You or any other customer of the Service Provider;
- 23.2.5. in breach of the Agreement;
- 23.2.6. in breach of applicable Law;
- 23.2.7. to upload or transmit viruses;
- 23.2.8. if they are not authorised to use the License(s).
- 23.3. You must on demand indemnify and hold harmless the Service Provider from and against any and all liabilities, claims, damages, costs, demands, expenses, losses and proceedings arising out of or in any way connected with any use of the License(s) in contravention of the Agreement or the Law.
- 24. Warranties and Liabilities**
- 24.1. The Service Provider warrants that the License(s) supplied by the Service Provider under this Agreement shall: be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and comply with all applicable statutory and regulatory requirements.
- 24.2. Except as set out in this Agreement, all warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law, excluded from this agreement.
- 24.3. All License(s) supplied hereunder are supplied "as is". The sole obligation of the Service Provider in connection with the supply of License(s) is to use reasonable endeavours to obtain and supply a corrected version from the manufacturer concerned in the event that such License(s) should fail to conform to product description PROVIDED ALWAYS THAT You notify the
- Service Provider of any such non-conformity within 60 days of the date of delivery of the applicable License(s).
- 24.4. The Service Provider cannot accept any liability in relation to any losses, costs or expenses which arise through any difficulty caused over date changes.
- 24.5. If the License(s) are rejected by You as not being in accordance with the Your Order pursuant to this Clause 24.3, the Service Provider will only accept the return of such License(s) at its sole discretion. The Service Provider will not consider any claim for compensation, indemnity or refund under liability unless it has been established or agreed with the manufacturer and, where applicable, the insurance company.
- 24.6. Except as specifically set out in this clause 5, the Service Provider disclaims and excludes all other warranties, whether express or implied, by statute or otherwise, including but not limited to the warranties of description, design, satisfactory quality and fitness for a particular purpose, or arising from any previous course of dealing, usage or trade practice.
- 25. Intellectual Property Rights**
- 25.1. You shall not, under any circumstances acquire any right in or to any of the IPRs (including, without limitation, copyright) subsisting in, resulting from or relating to the License(s), or any documents, drawings and/or specifications relating thereto supplied by the Service Provider to You in connection with the License(s), unless otherwise expressly agreed by the Service Provider in writing. If You in any way acquire any such rights then You shall immediately inform the Service Provider and shall forthwith take such steps as may be required by the Service Provider to assign such rights or vest such title in the Service Provider.
- 25.2. Where the License(s) are manufactured by the Service Provider, the Service Provider gives no assurance or guarantee that the use of the License(s) will not infringe the IPRs of any third party.
- 25.3. You shall keep confidential and not use, without the prior written consent of the Service Provider, all or any information including without limit, those (as referred to in condition 25.1) supplied by the Service Provider or disclosed to or obtained by You pursuant to or as a result of this Agreement, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of Yours, or disclosure of the same is required by law or by any other governmental or other regulatory body provided that in such cases You notify the Service Provider 14 days prior to such disclosure to allow the Service Provider to seek injunctive relief (or such other action as the Service Provider may require) to prevent such disclosure and shall provide the Service Provider with all such reasonable assistance as the Service Provider may require in order to carry out such action.
- 25.4. You shall indemnify the Service Provider 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 professional costs and expenses) suffered or incurred by the Service Provider arising out of or in connection with any:
- 25.4.1. breach of the warranty OR warranties contained in this Agreement;
- 25.4.2. claim made against the Service Provider by a third party arising out of or in connection with the supply of the License(s), to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this contract by You, Your employees, agents or subcontractors;
- 25.4.3. claim made against the Service Provider by a third party for death, personal injury or damage to property arising out of or in connection with defective License(s), to the extent that the defect in the License(s) is attributable to Your acts or omissions, or the acts or omission of Your employees, agents or subcontractors;
- 25.4.4. claims made against the Service Provider by third parties which arises from any Service Provider performance or non-performance pursuant to Your instructions or Your authorised representative; and
- 25.4.5. any breach of clause 7 by You (including any liability that You have to the Service Provider by virtue of the acts or omissions of any Associated Person under clause 7). This indemnity shall apply whether or not the Service Provider has been negligent or at fault.
- 26. Miscellaneous**
- 26.1. The License(s) may be delivered in instalments. Each delivery shall constitute a separate Agreement and failure by the Service Provider to deliver any one or more of the instalments in accordance with this Agreement or any claim by You in respect of any one or more instalments shall not entitle You to treat the Agreement as a whole as repudiated. Unless otherwise agreed in writing, any request by You for cancellation of any order or for the rescheduling of any deliveries will only be considered by the Service Provider if made at least 24 hours before despatch of the License(s), and shall be subject to acceptance by the Service Provider at the Service Provider's sole discretion, and subject to a reasonable administration charge. You hereby agree to indemnify against all direct costs and expenses, incurred by the Service Provider arising out of or in connection with the Order and its cancellation or rescheduling.
- 26.3. No Order may be cancelled by You unless agreed in writing by the Service Provider if so agreed, You shall indemnify the Service Provider in full against all losses (including loss of profit), costs, damages, charges and expenses incurred by the Service Provider as a result of cancellation.
- 26.4. The Service Provider reserves the right to levy an administration charge in respect of the rotation of License(s) and returns.
- Our Third Party Service Providers will provide the License(s) to You, as appropriate, and You acknowledge that the Third Party Service Provider is a third party, which the Service Provider does not control. The Service Provider makes no representation, guarantee or warranty about the Third Party Service Provider's.
- 26.5 Right to Audit: You may request an audit of the Service Provider to conduct financial, quality, or other compliance audits in order to ensure Your compliance with Your own applicable standards. Such an audit will be conducted at Your own cost. The Service Provider agrees to undertake any

such reasonable request, and use its reasonable efforts to facilitate, upon written notice of at least 20 business days to either complete an audit questionnaire, a due diligence questionnaire or any other such audit documentation or during regular business hours, access and conduct an

inspection of the records and documentation of the Service Provider and any facilities and/or systems necessary. You must provide a detailed scope of the audit to the Service Provider in order for us to quantify the number of hours required to complete the work and the technical level of personnel necessary. The Service Provider will

provide a quote for the number of consultancy hours and on acceptance by You of that quote the Service Provider will schedule the audit on an appropriate date agreed by both parties.

Schedule 1 – GDPR compliant data protection clause BACKGROUND

- A. The Service Provider and You have entered into Agreement(s) (as defined below) which involve the processing of Personal Data (as defined below) of Data Subjects (as defined below) and such processing is subject to Data Protection Laws (as defined below).
 - B. This data Clause shall govern the processing of Personal Data of Data Subjects in the context of the Services (as defined below).
 - C. The terms set out below supersede and replace any existing privacy and data protection terms contained in the Agreement(s) pertaining to the processing of Personal Data and shall be amended to that extent. If there is any conflict between the provisions of this schedule and the data protection terms contained in the Agreements, the provisions of this schedule shall take precedence. Silence on any particular matter shall be deemed not to give rise to a conflict.
- 1. MARKETING AND DATA PROTECTION**
Within this Clause, "Act" means the Data Protection Laws.
- 1.1. The Service Provider will only store, copy or use Your Data to the extent necessary to perform the Service Provider's obligations under the Agreement.
 - 1.2. The Service Provider will follow archiving procedures for Your Data as set out in the Service Provider's Data Handling Policy.
 - 1.3. In the event that Your Data is corrupted or lost or degraded so as to be unusable, as a result of the Service Provider or its Personnel, subject to existing liability caps (as detailed in the Agreement), Your sole and exclusive remedy will be for the Service Provider to use reasonable commercial endeavours to restore or procure the restoration of Your Data that is corrupted, lost or degraded so as to be useable as soon as reasonably practicable from the latest back-up of Your Data maintained by

- 1.4. The Service Provider will not be responsible for any loss, corruption, damage, alteration or disclosure of Your Data caused by any third party (except its Personnel which are engaged by the Service Provider to perform services related to Your Data).
- 1.5. The Service Provider will in performing its obligations under the Agreement, comply with its Data Protection Policy.
- 1.6. In respect of any Personal Data that the Service Provider Processes on Your behalf when performing its obligations under the Agreement, You and the Service Provider hereby agree that You will be the Data Controller and the Service Provider will be a Data Processor and in any such case:
 - 1.6.1. The Service Provider will Process the Personal Data solely on Your documented instructions (including as set out in the Agreement), for the purposes of providing the Services.
 - 1.6.2. The Service Provider will take all measures required by Article 32 of the GDPR to ensure the security of the Personal Data.
 - 1.6.3. The Service Provider will take reasonable steps to ensure the reliability of its Personnel who may have access to the Personal Data, and their treatment of the Personal Data as Confidential Information.
 - 1.6.4. The Service Provider will promptly, and in any case within five (5) Business Days, notify You of any communication from a Data Subject regarding the Processing of their Personal Data, or any other communication (including from a Regulatory Body) of which the Service Provider is aware, relating to either party's obligations under the Data Protection Laws in respect of the Personal Data;
 - 1.6.5. The Service Provider will notify You without undue delay upon becoming aware of any Personal Data Breach;

- 1.6.6. The Service Provider will provide commercially reasonable assistance to You on request in relation to (i) any communication received under clause 1.6.4 and (ii) any Personal Data Breach, including by implementing appropriate technical and organisational measures;
- 1.6.7. You acknowledge and agree that the Service Provider is generally authorized to appoint third parties to Process the Personal Data ("Sub-Processor"), subject to notifying You about its Sub-Processors and otherwise meeting the conditions set out in Article 28 (2) and (4) of the GDPR;
- 1.6.8. You acknowledge and agree that the Personal Data may be transferred or stored outside the European Economic Area or the country where You are located in order to carry out the Services and the Service Provider's other obligations under the Agreement. The Service Provider will take such steps as are necessary to ensure the Processing is in accordance with Data Protection Laws;
- 1.6.9. The Service Provider will provide You, upon request, with all information reasonably required to demonstrate compliance with its obligations under this clause 2.6.9, including permitting you, on reasonable prior notice, and no more than on one occasion in any twenty-four (24) month period (except in the event of a Personal Data Breach), to inspect and audit the facilities used by the Service Provider to Process the Personal Data;
- 1.6.10. The Service Provider will cease Processing the Personal Data upon the termination or expiry of the Agreement and, upon Your request, either return to You (in accordance with clause 1.6.12 below or securely delete the Personal Data);
- 1.6.11. You will ensure that You are entitled to transfer the relevant Personal Data to the Service Provider so that the Service Provider

- 1.6.12. may use, Process and transfer the Personal Data in accordance with the Agreement and Applicable Law, on Your behalf; and You will ensure that all relevant Data Subjects have been informed of, and, where required, have given their consent to, such use, Processing, and transfer as required by all applicable Data Protection Legislation.
- 1.7. The table in Annex 1 describes the Personal Data Processing activities performed by the Service Provider (in so far as the Service Provider is a Data Processor) on Your behalf.
- 1.8. You acknowledge and agree that the Service Provider may from time to time monitor Your use of the Services and capture Your Data in relation to Your use of the Services, (including through the use of Google Analytics);
- 1.9. If on termination of the Agreement You require the Service Provider to return Your Data to You (including Your Data that resides on or within the Service Providers Software or the Service Providers systems), You will notify the Service Provider in writing and the Service Provider will use reasonable commercial endeavours to deliver to You, to the extent the Service Provider is able, the then most recent back-up of Your Data that is in the possession of the Service Provider, subject to You having paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination) and You and the Service Provider agreeing the reimbursement of the Service Provider's costs and reasonable expenses in relation to the retrieval and return of Your Data.

Annex 1

Subject matter of processing	Processing of Personal Data and the Services provided under this Agreement.
Duration of processing	For the duration of the Term and any subsequent Renewal Term
Purpose of processing	Data processing shall only take place which is necessary to the performance of the contract between You and the Service Provider including to provision and install the Services, to provide support and maintenance for the lifetime of those Services, to support and host Personal Data for a cloud based software solutions where that Service is supplied and to provide billing services, including service charge itemization which may contain Personal Data.
Type of personal data	Names, contact details, addresses, service details specific to a Data Subject such as a mobile number.
Categories of data subjects	Your employees, workers and contractors.