

# ACCENTRA TECHNOLOGIES LIMITED

## Standard Software Licensing Model

### I. INTERPRETATION

- I.1 The definitions and rules of interpretation in this condition apply in these Conditions.

**Authorised Users:** those employees and independent contractors of the Customer who are entitled to use the Software through the Hosting Services under the Contract, as further described in condition 2.10.2.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Confidential Information:** information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in condition 10.1.

**Configuration Services:** the configuration and related work referred to in condition 2.7 and the front sheet to these Conditions, to be performed by the Supplier to configure the Software so that the Software conforms with the Software Specification.

**Contract:** the contract for the supply of the Software and the Services to be provided by the Supplier to the Customer.

**Customer:** the customer for the Software and the Services whose details are set out on the front sheet to these Conditions.

**Customer Data:** the data inputted into the information fields of the Software by the Customer, by Authorised Users, or by the Supplier on the Customer's behalf.

**Customer Materials:** any materials provided by the Customer to the Supplier in connection with the provision of the Customisation Services by the Supplier.

**Customisation Services:** the customisation and related work referred to in in condition 2.8 and the front sheet of these Conditions, to be performed by the Supplier to customise the Software so that the Software conforms with the Software Specification.

**Data Protection Legislation:** the UK Data Protection Legislation and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) and any other directly applicable European Union regulation relating to privacy.

**Deliverables:** all products and materials developed by the Supplier in relation to the Services in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (including drafts).

**Effective Date:** the date set out on the front sheet to these Conditions.

**Fees:** the Software licence fees, Software configuration and installation fees, training fees, annual support, licence renewal fees and hosting fees set out on the front sheet to these Conditions.

**Hosting Services:** the services that the Supplier provides to allow Authorised Users to access and use the Software, including hosting set-up and ongoing services, as described in Schedule I.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Initial Contract Term:** the initial term of the Contract as set out on the front sheet to these Conditions.

**Maintenance and Support:** any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Software and Hosting Services, as well as any other support or training services provided to the Customer under the Contract, all as described in the Support Services Policy.

**Normal Business Hours:** 8.00 am to 6.00 pm local UK time, each Business Day.

**Pre-existing Materials:** materials which existed before the commencement of the Services.

**Renewal Period:** the period described in condition 13.1.

**Services:** the Configuration Services, Customisation Services, Hosting Services and/or Maintenance and Support as applicable, given the context in which the term **Services** is used.

**Software:** the Supplier's proprietary software in machine-readable object code form only as described on the front sheet to these Conditions, including any error corrections, updates, upgrades, modifications, enhancements and customisations to it provided to the Customer under the Contract.

**Software Specification:** the functionality and performance specifications for the Software, as set out in Schedule I.

**Subscription Term:** has the meaning given in condition 13.1 (being the Initial Contract Term together with any subsequent Renewal Periods).

**Supplier:** Accentra Technologies Limited, registered number 5091444, whose registered office is at Unit 2A, Unity Trading Estate, Southend Road, Woodford Green, Essex IG8 8HD.

**Support Services Policy:** the Supplier's policy for providing support in relation to the Services as made available at [www.accentra.co.uk](http://www.accentra.co.uk) or such other website address as may be notified to the Customer from time to time.

**Virus:** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**UK Data Protection Legislation:** any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.

**Year:** a period of 12 months beginning on the Effective Date or any anniversary of that date.

- 1.2 Condition headings shall not affect the interpretation of these Conditions. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular. A reference to a statute includes any amendment, variation or replacement to the same. A reference to conditions, the Schedule(s) and the front sheet are to the conditions, the Schedule(s) and front sheet of these Conditions. A reference to writing or written includes faxes but not e-mail.

## **2. BASIS OF SUPPLY**

- 2.1 The Supplier shall license the Software and supply the Services to the Customer in accordance with these Conditions.
- 2.2 These Conditions shall apply to the exclusion of any other express or implied conditions, including any terms and conditions to which the order of the Customer may purport to be subject.
- 2.3 Variations or additions to these Conditions shall apply only if agreed in writing between a director of the Supplier and an authorised representative of the Customer.
- 2.4 Subject to any variation in accordance with condition 2.3, these Conditions (together with matters referred to on the face of the Supplier's quotation and/or order confirmation) embody the entire understanding of the parties and override any prior promises, undertakings or representations. Nothing contained in these Conditions shall, however, operate to limit or exclude the liability of either party for fraud.
- 2.5 Any quotation, tender or price list in whatever form given to the Customer is subject to these Conditions and does not constitute an offer to supply.
- 2.6 The Supplier will only be bound by an order when written confirmation of the order has been given to the Customer by the Supplier.
- 2.7 The Supplier shall perform the Configuration Services in accordance with the timetable agreed with the Customer. The Supplier shall use reasonable endeavours to meet the performance dates agreed with the Customer but

- any such dates shall be estimates only, and time shall not be of the essence of the Contract.
- 2.8 The Supplier shall perform the Customisation Services in accordance with the timetable agreed with the Customer. The Supplier shall use reasonable endeavours to meet the performance dates agreed with the Customer but any such dates shall be estimates only, and time shall not be of the essence of the Contract.
- 2.9 The Supplier shall perform the Hosting Services and Maintenance and Support services with effect from the Effective Date.
- 2.10 In relation to Authorised Users:
- 2.10.1 the Customer's access to the Hosting Services shall be limited to individual Authorised Users being employees or independent contractors of the Customer;
  - 2.10.2 the Customer shall maintain a written list of current Authorised Users of the Software, and the Customer shall provide such list to the Supplier as may be reasonably requested by the Supplier from time to time;
  - 2.10.3 the Customer shall ensure that each Authorised User keeps a secure password for his use of the Software, that such password is changed no less frequently than monthly and that each Authorised User keeps his password confidential;
  - 2.10.4 the Supplier may audit the Software regarding the name and password for each Authorised User. Such audit may be conducted no more than once per quarter, at the Supplier's expense, and shall be exercised with reasonable prior notice, in a manner so as to not substantially interfere with Customer's normal conduct of business; and
  - 2.10.5 if such audit reveals that passwords have been provided to individuals who are not Authorised Users, and without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and shall not issue any new passwords to such individuals.
- 2.11 In relation to the Software:
- 2.11.1 the Supplier hereby grants to the Customer on and subject to the terms and conditions of the Contract a non-exclusive, non-transferable licence to allow Authorised Users to access the Software through the Hosting Services and to use the Software solely for the Customer's business purposes;
  - 2.11.2 the Customer shall not store, distribute or transmit any Virus, or any material through the Hosting Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities;

- 2.11.3 the rights provided under this condition 2.11 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer;
- 2.11.4 the Customer shall not:
  - 2.11.4.1 attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in the Contract or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or
  - 2.11.4.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or
  - 2.11.4.3 access all or any part of the Software or Hosting Services in order to build a product or service which competes with the Software and/or the Services;
  - 2.11.4.4 use the Software or Hosting Services to provide services to third parties; or
  - 2.11.4.5 subject to condition 16.1, transfer, temporarily or permanently, any of its rights under the Contract; or
  - 2.11.4.6 attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this condition 2.10(2.11.4; and
- 2.11.5 the Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify the Supplier promptly of any such unauthorised access or use.

### **3. SERVICES**

- 3.1 The Services, to be provided by the Supplier shall be provided in accordance with these Conditions and any description set out in the Supplier's quotation or written order confirmation. Any other descriptive material provided by the Supplier to its Customer is provided only to assist the Customer and does not form part of the Contract.
- 3.2 Where any timescales are given in the Supplier's quotation or related documentation for the performance of any Services, such timescales are given as estimates only and accordingly no liability shall accrue to the Supplier in the event that any such timescales are not met.
- 3.3 The Supplier shall, during the Term, provide the Services to the Customer on and subject to the terms of the Contract.
- 3.4 The Supplier shall use commercially reasonable endeavours to make the Services available during Normal Business Hours.

- 3.5 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

#### **4. CUSTOMER DATA**

- 4.1 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 4.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 4.3 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 4 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 4.4 The parties acknowledge that:
- 4.4.1 if the Supplier processes any personal data on the Customer's behalf when performing its obligations under the Contract, the Customer shall be the controller and the Supplier shall be a processor for the purposes of the Data Protection Legislation (with "controller" and "processor" having the same meaning as in the Data Protection Legislation);
  - 4.4.2 Schedule 2 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data (as 'personal data' is defined in the Data Protection Legislation) and categories of data subject; and
  - 4.4.3 personal data may be transferred or stored outside the EEA (in particular may be transferred to Accentra's sub-processor referred to in clause 4.8 based in India) or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under the Contract.
- 4.5 Without prejudice to the generality of clause 4.3, the Customer will ensure that it has all necessary appropriate consents, rights and notices in place to enable lawful transfer of the personal data to the Supplier for the duration

and purposes of this Contract so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.

4.6 Without prejudice to the generality of clause 4.3, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this agreement:

4.6.1 process that personal data only on the written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to process personal data (“Applicable Laws”). Where the Supplier is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;

4.6.2 not transfer any personal data outside of the European Economic Area unless the following conditions are fulfilled:

4.6.2.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

4.6.2.2 the data subject has enforceable rights and effective legal remedies;

4.6.2.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

4.6.2.4 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data.

4.6.3 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

4.6.4 notify the Customer without undue delay on becoming aware of a personal data breach;

4.6.5 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and

4.6.6 maintain complete and accurate records and information to demonstrate its compliance with this clause 4.

- 4.7 Each party shall ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, personal data appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- 4.8 The Customer consents to the Supplier appointing Accentra Technologies India Private Limited (incorporated and based in India) as a third-party processor of personal data under this agreement. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 4. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 4.
- 4.9 The Supplier may, at any time on not less than 30 days' notice, revise this clause 4 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).

## **5. THIRD PARTY PROVIDERS**

The Customer acknowledges that the Software and the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## **6. SUPPLIER'S OBLIGATIONS**



- 6.1 Subject to the provisions of condition 12, the Supplier undertakes that the Services will be performed substantially in accordance with the Software Specification with reasonable skill and care.
- 6.2 The undertaking at condition 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to the Supplier's instructions, or modification or alteration of the Software by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Software does not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in condition 6.1. Notwithstanding the foregoing, the Supplier:
- 6.2.1 does not warrant that the Customer's use of the Software and the Services will be uninterrupted or error-free; or that the Software and/or the Services and/or the information obtained by the Customer through the Software and/or the Services will meet the Customer's requirements; and
- 6.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Software and the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.3 The Contract shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.
- 6.4 The Supplier undertakes that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under the Contract.

## **7. CUSTOMER'S OBLIGATIONS**

- 7.1 The Customer shall:
- 7.1.1 provide the Supplier with:
- 7.1.1.1 all necessary co-operation in relation to the Contract; and
- 7.1.1.2 all necessary access to such information as may be required by the Supplier;
- in order to provide the Services, including but not limited to Customer Data, Customer Materials, security access information, configuration services and software interfaces to the Customer's other business applications;

- 7.1.2 provide such personnel assistance as may be reasonably requested by the Supplier from time to time;
- 7.1.3 comply with all applicable laws and regulations with respect to its activities under the Contract;
- 7.1.4 carry out all other Customer responsibilities set out in the Contract in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- 7.1.5 ensure that Authorised Users use the Software and the Services in accordance with the terms and conditions of the Contract and shall be responsible for any Authorised User's breach of the Contract;
- 7.1.6 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Contract, including without limitation the Services;
- 7.1.7 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- 7.1.8 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## **8. CHARGES AND PAYMENT**

- 8.1 The Customer shall pay the amounts set out on the front sheet to these Conditions for the Configuration Services and/ or the Customisation Services on the Effective Date.
- 8.2 The Customer shall pay the Software usage fees and Maintenance and Support fees set out on the front sheet of these Conditions and at the intervals set out on the front sheet for use and maintenance and support of the Software.
- 8.3 The Customer shall pay the initial set-up services fee and fees for the Hosting Services as set out on the front sheet to these Conditions . The Hosting set-up fee specified on the front sheet to these Conditions shall be paid on the Effective Date.
- 8.4 The Customer shall reimburse the Supplier for all actual, reasonable travel expenses including, but not limited to, airfare, hotel and meals incurred by the Supplier in performance of the Services.
- 8.5 The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact

and billing details and, if the Customer provides its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:

8.5.1 on the Effective Date for the Fees payable in respect of the Initial Contract Term; and

8.5.2 subject to condition 13.1, at least 30 days prior to each anniversary of the Effective Date for the Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 7 days after the date of such invoice.

8.6 If the Supplier has not received payment within 7 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

8.6.1 the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Software and the Services and the Supplier shall be under no obligation to provide any or all of the Software and the Services while the invoice(s) concerned remain unpaid; and

8.6.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of Royal Bank of Scotland Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

8.7 All amounts and fees stated or referred to in the Contract:

8.7.1 shall be payable in pounds sterling;

8.7.2 are non-cancellable and non-refundable;

8.7.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

8.8 The Supplier shall be entitled to increase the Fees at the start of each Renewal Period upon 90 days' prior notice to the Customer and the front sheet to these terms and conditions shall be deemed to have been amended accordingly.

## **9. PROPRIETARY RIGHTS**

9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Software and the Services. Except as expressly stated herein, the Contract does not grant the Customer any rights to, or in, patents, copyright, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, the Services or any related documentation.

9.2 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by the Supplier. The Supplier hereby licenses all such rights to the Customer subject to payment of the fees in relation to the Software and the Services and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the

Deliverables and the Services as is envisaged by the parties. If the Supplier terminates the Contract under condition 13, this licence will automatically terminate.

- 9.3 The Customer acknowledges that the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.
- 9.4 The Customer hereby grants to the Supplier on and subject to the terms and conditions of the Contract a non-exclusive, non-transferable licence to use the Customer Materials for the purposes of the Supplier providing the Services.
- 9.5 The Supplier confirms that it has all the rights in relation to the Software and the Services that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of the Contract.

## **10. CONFIDENTIALITY**

- 10.1 Each party shall keep confidential all information obtained from the other pursuant to or in contemplation of the Contract, shall use the same only for the purposes of the Contract and shall not disclose such information to any person (except to its own employees or, in the case of the Supplier, its sub-contractors and then only to those employees or sub-contractors who need to know the same) without the other's prior written consent. In addition, the Customer shall keep confidential and disclose (except as mentioned) any terms of the Contract.
- 10.2 The obligations of the parties pursuant to condition 10.1 shall not extend to any information which was rightfully in the possession of the receiving party (and at its free disposal) prior to the commencement of negotiations leading to the Contract; which is already public knowledge or becomes so at a future date otherwise than as the result of a breach of this condition 10; which is trivial or obvious; or whose disclosure is required (and to the extent that it is required) by law.
- 10.3 This condition 10 shall survive termination of the Contract, however arising.

## **11. INDEMNITY**

- 11.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Software and/or the Services and the Suppliers use of the Customer Materials in connection with the Services provided that:
  - 11.1.1 the Customer is given prompt notice of any such claim;
  - 11.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - 11.1.3 the Customer is given sole authority to defend or settle the claim.

- 11.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Software infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- 11.2.1 the Supplier is given prompt notice of any such claim;
  - 11.2.2 the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
  - 11.2.3 the Supplier is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Software, replace or modify the Software so that it becomes non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 11.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- 11.4.1 a modification of the Software by anyone other than the Supplier; or
  - 11.4.2 the Customer's use of the Software in a manner contrary to the instructions given to the Customer by the Supplier; or
  - 11.4.3 the Customer's use of the Software after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 11.5 The foregoing and condition 12.4 state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees, agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

## **12. LIMITATION OF LIABILITY**

- 12.1 This condition 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- 12.1.1 arising under or in connection with the Contract;
  - 12.1.2 in respect of any use made by the Customer of the Software and the Services or any part of them; and
  - 12.1.3 in respect of any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

- 12.2 Except as expressly and specifically provided in the Contract:
  - 12.2.1 the Customer assumes sole responsibility for results obtained from the use of the Software and the Services by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Software and the Services, or any actions taken by the Supplier at the Customer's direction;
  - 12.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and
  - 12.2.3 the Software and the Services are provided to the Customer on an "as is" basis.
- 12.3 Nothing in the Contract excludes the liability of the Supplier:
  - 12.3.1 for death or personal injury caused by the Supplier's negligence; or
  - 12.3.2 for fraud or fraudulent misrepresentation.
- 12.4 The Support Services Policy states the Customer's full and exclusive right and remedy, and the Supplier's only obligation and liability in respect of, the performance and/or availability of the Software and the Service, or their non-performance and non-availability.
- 12.5 Subject to condition 12.2, condition 12.3 and condition 12.4:
  - 12.5.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract; and
  - 12.5.2 the Supplier's total aggregate liability in contract (including in respect of the indemnity at condition 11.2), tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of these Conditions shall be limited to the total Fees paid for the Software and the Services during the 12 months immediately preceding the date on which the claim arose.

### **13. TERM AND TERMINATION**

- 13.1 The Contract shall, unless otherwise terminated as provided in this condition 13, commence on the Effective Date and shall continue for the Initial Contract Term and, thereafter, the Contract shall be automatically

renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- 13.1.1 either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Contract Term or any Renewal Period, in which case the Contract shall terminate upon the expiry of the applicable Initial Contract Term or Renewal Period; or
- 13.1.2 otherwise terminated in accordance with the provisions of the Contract;

and the Initial Contract Term together with any subsequent Renewal Periods shall constitute the **Term**.

- 13.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract without liability to the other if:
  - 13.2.1 the other party commits a breach of the Contract provided that if the breach is capable of remedy (being actual remedy as opposed to remedy by payment of damages or compensation) the notice shall only be given if the party shall not have remedied the same within 30 days of having been given notice in writing specifying the breach and requiring it to be remedied; or
  - 13.2.2 the other party has a winding up petition against it and does not make an application to set aside the same within 7 days or goes into liquidation whether compulsory or voluntarily (unless part of a bona fide scheme for amalgamation or reconstruction first approved in writing by the party not in default), becomes subject to an administration order, has a receiver or administrative receiver appointed over or encumbrancer take possession of the whole or any part of its assets, compounds with its creditors or any class of the same, ceases to carry on its business or threatens to cease the same or becomes unable to pay its debts within the meaning of s123 of the Insolvency Act 1986; or
  - 13.2.3 the other party being an individual, has a bankruptcy order made against him or, being a partnership, has a bankruptcy order made against any of the partners or a notice served by a partner for the dissolution of the partnership.
- 13.3 Termination of the Contract for any reason shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into or continuance in force of any provision of the Contract which is expressly or by implication intended to come into or continue in force or on after such termination.
- 13.4 Upon termination of the Contract for any reason all licences granted under the Contract shall immediately terminate and the Customer shall immediately cease using the Software. In addition, the Customer shall, at the Supplier's option, either return to the Supplier or destroy all copies of such Software and associated documentation.

- 13.5 Upon termination of the Contract the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of the Contract, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at the time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data.

#### **14. FORCE MAJEURE**

The Supplier shall not be liable to the Customer or be deemed to be in breach of contract by reason of any delay in performing or any failure to perform any of the Supplier's obligations under the Contract if the delay or failure was due to any cause beyond the Supplier's reasonable control including but not limited to industrial action, war, fire, prohibition or legal enactment of any kind or any act or omission of the Customer.

#### **15. NOTICES**

Notices or other documents to be given under these Conditions shall be in writing and delivered by hand or sent by registered post or facsimile to the party concerned at the address set out in the Contract and/or such address as one party may from time to time designate by written notice to the other. Any such notice or other document shall be deemed to have been received by the addressee if delivered, upon delivery; if posted, on the second Business Day following the date of posting; and if sent by facsimile, when the communication is transmitted to the recipient's fax number provided that a copy of the communication is sent by registered post or delivered by hand as soon as possible thereafter.

#### **16. GENERAL**

- 16.1 The Contract shall be binding upon and inure to the benefit of the parties and the legal successors of the Supplier but shall not be assignable by the Customer without the prior written consent of the Supplier. The Supplier may license or sub-contract all or any part of its obligations under the Contract without the consent of the Customer.
- 16.2 No waiver by the Supplier of any breach of these Conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. Any waiver must be in writing to be effective.
- 16.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.



16.4 The Contract is governed by the laws of England and the English courts shall have exclusive jurisdiction to resolve any disputes arising as a result of or in connection with it.

## **SCHEDULE I HOSTING SERVICES**

### **1. HOSTING SET-UP**

The set-up phase of the Hosting Services includes those services provided by the Supplier or its contracted third parties to design, install, configure and test the Hosting Services, as well as the hosting facility and internet connectivity.

### **2. INSTALLATION AND CONFIGURATION**

The Supplier shall procure, install and configure the hosting equipment to provide access to the Software. This includes the rack mounting of servers and related equipment, installation of system and database software components, configuration of clustering and cross-connects, installation of the Software, and loading of initial Customer Data.

### **3. FACILITY**

The hosting equipment shall be installed in a rack-mounted configuration inside a professional hosting facility designed for such use. The facility shall be equipped with access security, climate control, fire suppression, and managed power supply with UPS and generator back-up.

### **4. INTERNET CONNECTIVITY**

4.1 The Supplier shall provide internet connectivity through an internet service provider at the hosting facility. The connectivity shall include multiple, diversely routed high-speed connections, a firewall for security. The Customer shall, and shall ensure that its Authorised Users shall, make their own arrangements for internet access in order to access the Software.

4.2 The Supplier shall supply burstable bandwidth connectivity services. The connectivity shall include multiple connections and a network operations centre that monitors servers, the network platform and internet access.

### **5. CONTINUING HOSTING SERVICES**

The continuing Hosting Services provided by the Supplier or its contracted third parties, which allow for availability of the Software, include internet connectivity (as detailed in paragraph 4 above, load distribution management, security services, monitoring, back-up, release management and change control, and administration services.

### **6. SECURITY SERVICES**

The Supplier shall provide security services as follows:

- (a) facility access shall be limited to the authorised Supplier and contracted third-party personnel; and
- (b) the facility shall be monitored 24 hours a day, seven days a week through closed circuit video surveillance and shall require identification for access.

**7. MONITORING SERVICES**

The Supplier shall provide, 24 hours a day and seven days a week, monitoring of the computing, operating and networking infrastructure to detect and correct abnormalities. This includes environmental monitoring, network monitoring, web server and database monitoring, firewall monitoring, and intrusion detection.

**8. BACK-UP, ARCHIVING AND RECOVERY SERVICES**

The Supplier shall develop the back-up Schedule, perform Scheduled back-ups, provide routine and emergency data recovery, and manage the archiving process. The back-up Schedule shall include at least weekly full back-ups and daily incremental back-ups. In the event of data loss, the Supplier shall provide recovery services to try to restore the most recent back-up.

**9. RELEASE MANAGEMENT AND CHANGE CONTROL**

The Supplier shall provide release management and change control services to ensure that versions of servers, network devices, storage, operating system software and utility and application software are audited and logged, and that new releases, patch releases and other new versions are implemented as deemed necessary by the Supplier to maintain the Hosting Services.

**10. ADMINISTRATION SERVICES**

These services include the installation and administration of operating system and other software, and other resources as necessary to maintain the Hosting Services.

## **SCHEDULE 2 – PROCESSING, PERSONAL DATA AND DATA SUBJECTS**

### **1. Processing by the Supplier**

#### **1.1 Scope**

To contact the Customer to provide the Services (including support) including announcements related to product updates, releases, legislative changes and commercials.

#### **1.2 Nature and purpose of processing:**

To provide the Services to the Customer.

To register the Customer's interest through an enquiry form (or) signing-up to a trial or paid products/services from our websites. To respond to any enquiry from the Customer about our products /services. To process the Customer's license activation using our cloud services and via. a contract form should you have completed one. To store the Customer's information in our CRM and Financial software applications for the purpose of fulfilling our contract with the Customer, keeping in touch with the Customer and billing.

#### **1.3 Duration of the processing**

Minimum: Contract duration

Maximum: As per legal requirement

### **2. Types of personal data**

Name, phone number, email, business contact address

### **3. Categories of Data Subject**

- Customer/client and customer's/client's employees or other staff.
- Business contacts of the Customer