

**1. INTERPRETATION**

1.1 The following definitions shall apply in these Terms of Business:

**Acceptance Tests:** the acceptance tests to be performed by the Supplier for the purpose of confirming that in the opinion of the parties (acting reasonably) the Solution is operating correctly in all material respects.

**Core Hours:** 0830hrs–1730hrs Monday to Friday excluding bank & public holidays in England.

**Contract:** the contract entered into on the date of the Order Form by and between the Supplier and the Customer and constituted by the Order Form and these Terms of Business, for either the supply of the Products (including but not limited to a Lease Hire Arrangement) and/or the licensing of any Software and/or the provision of the Support Services.

**Customer:** the person, firm or company (details of which are set out in the Order Form) who directly purchases Products and/or Support Services from the Supplier.

**Default Event:** means any of the events described in clauses 15.1.1 - 15.1.7.

**Delivery / Delivered:** means actual delivery of the Products.

**Delivery Point:** the Customer's address or such other address as specified in the Order Form where Delivery shall take place.

**Handover Date:** the date as specified by the Supplier for the handover of the Products and the Solution.

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

**Lease Hire Arrangement:** the agreement between the Supplier and the Customer in terms of which the Supplier shall, subject to these Terms of Business, lease and the Customer shall hire the Products as specified on the Order Form.

**Licence Term:** the term or duration of the Customer's right to use the Products or component parts thereof as set out in clause 11.

**Order Form:** the confirmed order for Products and/or Services issued by the Supplier, which sets out full details of either the Products and/or the Services to be supplied pursuant to a Contract.

**party/ies:** the Customer and the Supplier.

**Price:** the price(s) to be charged by the Supplier and to be paid by the Customer for the sale or lease / hire of the Products, and / or the licensing of the Software including any annual licensing renewal fee, and / or the provision of the Support Services (as applicable) including any annual renewal fee for the Support Services as set out in the Order Form.

**Products:** the hardware and/or software to be supplied, leased / hired or licenced by the Supplier to the Customer for installation and / or use at the Customer's premises (as relevant) for the Solution as more fully set out in the Order Form.

**Response Times:** the period of time that the Supplier shall take to respond to a case as more fully set out in the Order Form.

**Service Delivery Point:** the Customer's address or such other address as specified in the Order Form where the Services are to be provided.

**Software:** the Supplier's Software and / or the Third Party Software together with any related documentation

**Software Update(s):** means new or replacement software, patches, updates or upgrades thereto which may be released from time to time at the discretion of the Supplier.

**Solution:** the description of the purpose and features of the solution being purchased by the Customer as set out in the Order Form.

**Substantiated Claim:** a claim in respect of which liability is admitted by the Supplier or which has been adjudicated on by a Court of competent jurisdiction and no right of appeal lies in respect of such adjudication, or the parties are debarred by passage of time or otherwise from making an appeal.

**Supplier:** the supplier of the Products and / or Services, being Ibcos Computers Limited, a company registered in England and Wales with number 01444873 whose registered office is at Abacus House, Acorn Business Park, Tower Park, Poole, Dorset, BH12 4NZ.

**Supplier's Software:** the proprietary software of the Supplier to be supplied by the Supplier to the Customer together with all Software Updates.

**Support Services:** the post-delivery support services to be supplied as more fully described in the Order Form.

**Terms of Business:** these terms of business.

**Third Party Software:** Software supplied to the Customer for the purposes of the Solution other than the Supplier's Software as listed in the Order Form, including all patches, updates and upgrades thereto.

**Third Party EULA:** the end user software licence terms relevant to the Third Party Software, copies of which may where appropriate be provided to the Customer.

**User(s):** the person(s) who use the Software.

**VAT:** value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and vice versa.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Clause headings do not affect the interpretation of these Terms of Business.

1.6 A reference to "writing" or "written" includes faxes and email.

**2. CONTRACTING PROCESS & APPLICATION OF THESE TERMS OF BUSINESS AND THE ORDER FORM**

2.1 The Contract shall be subject only to the provisions of these Terms of Business as read with the Order Form to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document, whether communicated to the Supplier before or after the date on which the Customer executes the Order Form).

2.2 By signing the Order Form, the Customer shall be taken to have offered to purchase, lease / hire or licence (as the case may be) the Products and / or the Support Services on these Terms of Business and the Order Form.

2.3 If the content of these Terms of Business conflicts with that of the Order Form, then the conflicting provision of the Order Form shall prevail.

2.4 The Supplier shall communicate acceptance of the Customer's offer referred to in clause 2.2 above by signing and delivering a copy of

- the Order Form to the Customer. Until the Supplier has communicated such acceptance to the Customer no Contract shall be taken to have come into being.
- 2.5 If a Customer accepts Delivery of the Products and/or the provision of the Support Services or uses the Products and/or the Support Services, then the Customer shall be bound by the provisions of these Terms of Business and the Order Form applicable to those Products and/or Support Services.
- 2.6 Where the Supplier has communicated acceptance of the Customer's offer in accordance with clause 2.4 above then, the Customer shall remain bound by the Contract notwithstanding the fact that it may be required, due to the Customer's internal administrative protocols, to issue a purchase order for the purchase of the Products and/or Support Services.
- 2.7 Any variation to these Terms of Business and any representations made in respect of the Products and/or Support Services shall have no effect unless expressly agreed in writing and signed by an authorised representative of each Party.
- 2.8 The Supplier's obligations under the Contract shall be as set out in these Terms of Business and the Order Form only. The Customer agrees that it has not relied on and that the Supplier shall not be liable for any statement, promise or representation not set out in the Contract (including but not limited to those made or given by or on behalf of the Supplier such as sales proposals, quotations, statements, representations, descriptions, illustrations or specifications contained in its sales and marketing material, catalogues and publicity material produced by the Supplier, all of which are only intended to convey a general idea of the Products and Services mentioned). Nothing in this clause shall exclude or limit the Supplier's liability for fraudulent misrepresentation.
- 2.9 Any typographical, clerical or other error or omission in any Contract shall be subject to correction at the sole discretion of the Supplier without any liability on the part of the Supplier.
- 3. SUPPLY OF THE PRODUCTS**
- 3.1 The quantity, description, price and component parts of the Products shall be as set out in the Order Form.
- 3.2 **Delivery:**
- 3.2.1 Delivery shall take place during Core Hours at the Delivery Point.
- 3.2.2 Any dates specified by the Supplier for Delivery are an estimate only and any attempt to make the time of Delivery the essence of the Contract by notice to that effect shall be invalid.
- 3.3 **Risk/Title:**
- 3.3.1 Risk in the Products shall pass to the Customer at the point of Delivery.
- 3.3.2 Title to the Products shall not pass to the Customer until:
- the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of the Products; and
  - the Customer has fulfilled its obligation under clause 3.4.
- 3.3.3 No title to the Products shall pass to the Customer in the case where such Products are the subject of a Lease Hire Arrangement.
- 3.3.4 Where title to the Products has not yet passed to the Customer (including but not limited to a Lease Hire Arrangement) then the Customer's right to possession of the Products shall terminate immediately upon:
- the occurrence of a Default Event; and/or
  - the end of the term of the Lease Hire Arrangement and the Customer shall immediately return or caused to be returned to the Supplier the Products.
- 3.4 **Lease Hire Arrangement:**
- 3.4.1 Where Products are supplied on a Lease Hire Arrangement basis, then the term of that Lease Hire Agreement shall commence on Delivery and either Party shall be entitled to end that term by serving on the other not less than less than sixty (60) calendar days notice in writing.
- 3.5.1 The Customer shall be required to comprehensively insure for their full replacement value the Products against all perils which a reasonable owner of such Products would insure against.
- 3.5 **Third Party EULA:**  
The Customer agrees to be bound by the Third Party EULA and the Customer shall, if requested by the Supplier, execute and deliver to the Supplier a duly executed Third Party EULA before using the Third Party Software.
- 3.6 **Implementation:**  
Upon fulfilment of Delivery the Supplier shall notify the Customer of the Handover Date. In the absence of the Customer confirming
- otherwise in writing within 60 days of the Handover Date, the Customer shall be deemed to have accepted that the Product is operating correctly.
- 4. THE SUPPORT SERVICES**
- 4.1. The Support Services shall be provided to the Customer and as confirmed in the Order Form.
- 4.2. Any dates for the provision of the Support Services shall be estimates only and the time for the provision of the Support Services shall not be of the essence.
- 4.3 The Customer shall provide or otherwise procure that:
- the Supplier on reasonable notice is granted access to the premises, equipment, infrastructure (including but not limited to databases, data interfaces, integration services and telephony equipment), support infrastructure and staff of the Customer as may be reasonably required for the purposes of performing the Acceptance Tests;
  - the relevant premises and infrastructure on which the Solution is to be installed are prepared and maintained in such a manner as to facilitate the performance by the Supplier of its obligations under these Terms of Business;
  - the Supplier is informed of all health and safety rules and regulations and any other reasonable security requirements applicable to the Supplier in the performance of its obligations under these Terms of Business at the Customer's premises; and
  - it complies with the reasonable instructions of the Supplier as may be relevant to the Support Services.
- 4.4 The Supplier reserves the right to engage any approved sub-contractor to fulfil the Support Services on the Supplier's behalf. The Supplier shall have the sole discretion to approve a sub-contractor.
- 4.5 Unless otherwise agreed in writing the Support Services shall be performed online and / or at the Service Delivery Point only.
- 4.6 The Supplier shall supply the Support Services for the initial term of one (1) year unless otherwise stipulated in the Order Form to commence on a date to be agreed by the Customer and the Supplier, but in any event not later than 60 calendar days following the date of Delivery (the "Initial Support Services Term").
- 4.7 At the end of the Initial Support Services Term, the Contract for the provision of the Support Services shall automatically renew on the same terms as specified in these Terms of Business and the Order Form unless either Party gives not less than 180 days' notice to terminate the Contract to the other Party, such notice to expire at the end of the Initial Support Services Term ("the Renewed Support Services Term").
- 4.8 At the end of each subsequent Renewed Support Services Term the Contract for the Support Services shall renew in accordance with and subject to clause 4.7.
- 4.9 Software Updates will generally be issued on non-returnable media, if alternative transfer media is required this must be provided by the Customer and the Customer must ensure this is compatible with the Customer's computer system. The Supplier shall not be liable for the cost of extra hardware which may be required to run the Software Updates.
- 5. SUPPORT SERVICE LEVELS AND AVAILABILITY**
- 5.1 The Supplier shall use its reasonable endeavours to ensure the Support Services are available during the Core Hours and are provided within the Response Times. The time for the provision of the Support Services shall not be of the essence.
- 5.2 The Customer shall provide such information and assistance as the Supplier may reasonably request in order for the Supplier to provide the Support Services, failing which the Supplier shall have no obligation to provide the Support Services.
- 5.3 The Customer shall permit the Supplier or the Supplier's sub-contractor on reasonable notice and in a timely manner reasonable access to the Products and/or the premises, equipment, infrastructure, supporting infrastructure and staff of the Customer as may be reasonably required for the purposes of performing the Support Services.
- 6. SUPPORT SERVICE EXCLUSIONS**
- 6.1 The Supplier shall be under no obligation to provide the Support Services where the fault arises from:
- a commissioning, modification, customisation or configuration of the Solution, which is carried out by any person other than the Supplier or its approved sub-contractor;
  - the use of computer hardware, operating systems or other supporting software not supplied by the Supplier;

- 6.1.3 unreasonable environmental causes including but not limited to extreme temperature, dust, humidity, submersion in water or physical or electrical stress;
- 6.1.4 negligence or misuse by the Customer or a third party;
- 6.1.5 data supplied by the Customer or a third party or the absence of any required data or the inability to access such data;
- 6.1.6 a request for service or support which is not made by an authorised and properly qualified and trained individual; or
- 6.1.7 the Customer's failure to comply with clause 7 below (Price & Payment).

**7. PRICE & PAYMENT**

- 7.1 All sums payable under the Contract are exclusive of any VAT chargeable on the supplies.
- 7.2 All taxes, charges, levies, assessments and other fees of any kind imposed on the purchase of the Products and/or Support Services under the Contract shall be the responsibility of, and for the account of, the Customer.
- 7.3 The Price shall be paid without deduction, set off, counterclaim, discount, abatement or withholding whatsoever in currency specified in the Supplier's invoice. The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
- 7.4 Hardware Products Fee:
  - 7.4.1 The Price for Hardware Products shall be paid by way of a 30% deposit with order and the balance shall be payable not later than seven (7) days of the date of the Supplier's invoice following Delivery.
  - 7.4.2 In the case of a Lease Hire Arrangement, the rental fee for the Products shall be invoiced either monthly, quarterly or annually in advance and shall be payable not later than seven (7) days of the date of the Supplier's invoice for the same.
- 7.5 Software Products & Support Services Fee:
  - 7.5.1 The Price for Software Licence and / or the Support Services shall comprise an initial fee which will be invoiced on supply of the software and an annual licence fee which shall be invoiced quarterly or annually in advance of the provision of the Software Licence and / or the Support Services and shall be payable not later than seven (7) days of the date of the Supplier's invoice for the same.
  - 7.5.2 The Supplier reserves the right to charge the Customer for out of pocket expenses reasonably incurred in the provision of the Support Services to cover but not be limited to accommodation, travelling expenses and subsistence but provided that a valid receipt is furnished to the Customer.
  - 7.5.3 The Supplier reserves the right to increase the Price charged for the Software Licence, the Support Services and/or the rental for Products subject to a Lease Hire Arrangement:
    - (a) annually upon one months prior written notice from the supplier.
    - (b) to reasonably reflect any increase in procurement costs where such increase is beyond the reasonable control of the Supplier.
  - 7.5.4 If the Customer requests any variation to the Support Services or the Solution then the Supplier reserves the right to increase the Price and the Supplier shall be entitled to raise a further invoice for such additional / increased Price.
  - 7.5.5 The Supplier reserves the right to cancel or at its election to suspend the provision of the Software Licence and / or the Support Services if the Customer fails to pay any amount owed by it to the Supplier as and when such amount falls due for payment and upon such cancellation or suspension the full unpaid balance owing to the Supplier shall immediately fall due for payment.
- 7.6 All invoices shall be addressed to the Customer's address as set out in the Order Form or such other address as the Customer may elect in writing.
- 7.7 Time for payment of the Price shall be of the essence under these Terms of Business.
- 7.10 Interest on late payments shall be charged by the Supplier at the rate of 8% above the base lending rate from time to time of the Bank of England, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgement.
- 7.11 For the avoidance of doubt the Price referred to in clause 7.5.1 shall be exclusive of:
  - 7.11.1 the cost of any update(s) to the Software requested by the Customer. The cost of such update(s) shall be charged by the Supplier at a rate to be agreed between the parties; and
  - 7.11.2 the costs incurred by the Customer (if any) in calling any telephone number provided by the Supplier in respect of any

Support Services to be provided to the Customer under the Contract. Any such costs shall be payable by the Customer.

**8. WARRANTY**

- 8.1 Subject to clauses 8.2 and 9 below, the Supplier warrants that the Solution will perform substantially in accordance with the specification and functionality as set out in the Order Form and that all Support Services will be carried out with reasonable care and skill by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated.
- 8.2 The Supplier does not warrant that the Solution or its operation will be entirely error free or that all program defects (if any) will be capable of correction or improvement. The Customer acknowledges that it is the Customer's responsibility to ensure that the specification and function of the Solution as set out in the Order Form meet the Customer's requirements.
- 8.3 No warranty whatsoever is given in respect of any Third Party Software.
- 8.4 All warranties, conditions and other terms implied by statute or common law in respect of the sale of Products (save for the conditions implied by section 12 of the Sale of Products Act 1979) and the provision of the Services are, to the fullest extent permitted by law, excluded from the Contract.

**9. LIMITATION OF LIABILITY**

**THE CUSTOMER'S ATTENTION IS SPECIFICALLY DRAWN TO THE PROVISIONS OF THIS CLAUSE 9.**

- 9.1 This clause 9 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 arising out of the Contract including but not limited to:
    - 9.1.1 any breach by the Supplier of the Contract;
    - 9.1.2 any use made by the Customer of the Products, Software and/or Support Services and/or any part of them;
    - 9.1.3 the use of any Products subject to a Lease Hire Arrangement; and
    - 9.1.4 any representation, statement or tortious act or omission (including negligence) arising under or in connection with a Contract.
  - 9.2 Nothing in these Terms of Business shall be construed as limiting or excluding the liability of the Supplier:
    - 9.2.1 for death or personal injury resulting from negligence; or
    - 9.2.2 for any damage or liability incurred by the Customer as a result of fraud (including a fraudulent misrepresentation by the Supplier); or
    - 9.2.3 for any liability incurred by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Products and Services Act 1982.
  - 9.3 Subject to clause 9.2, the Supplier shall not in any circumstances be liable to the Customer whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
    - 9.3.1 any loss (whether direct or indirect) of profits, business, goodwill, anticipated savings, contract or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses;
    - 9.3.2 any loss or corruption (whether direct or indirect) of data or information; or
    - 9.3.3 any loss or damage suffered by the Customer where such loss or damage is suffered in consequence of any unavailability or failure or interruption of the Solution arising from any of the Customer's equipment or any third party equipment.
  - 9.4 The Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract shall be for direct costs and damages only (whether in the form of the additional cost of remedial services or otherwise) and shall be limited to a sum equivalent to the Price paid to the Supplier by the Customer during the 12 months preceding the claim for the Products, Software or Support Services that are the subject of the claim.
- 10. CUSTOMER'S FAIR DEALING WARRANTY**
- 10.1 The Customer warrants that:
    - 10.1.1 it shall not use the Products and/or the Support Services for any improper or unlawful purpose or in a manner which is offensive or knowingly allow others to do so;
    - 10.1.2 it shall comply in all material respects with all applicable laws, regulations and codes of conduct (whether statutory or otherwise) of the United Kingdom; and

- 10.1.3 it has acquired and holds all necessary licences, permissions and consents required for the carrying on of its business.
- 11. SOFTWARE LICENCE & INTELLECTUAL PROPERTY RIGHTS**
- 11.1 The Customer acknowledges and agrees that all Intellectual Property Rights in the Solution (to include all component Products, the Support Services and Software comprising the Solution, including all Third Party Software) are vested in and are the exclusive property of the Supplier or its licensor / third party supplier and shall remain the property of the Supplier or its licensor / third party supplier (as appropriate).
- 11.2 To the extent that the Supplier owns the Intellectual Property Rights in the Products, and for the duration of the Licence Term only (as defined in 11.3 below), the Supplier shall subject to the payment by the Customer of the Price, grant to the Customer a non-exclusive, non-transferable licence ("**Software Licence**") for the such number of the Customer's concurrent Users as agreed in the Order Form to download, install and to use the Software (including all associated media, printed materials and online or electronic documentation) for the purpose of the Solution and for the Customer's own internal business purposes only and in keeping with these Terms of Business.
- 11.3 The **Licence Term** shall be an initial term of one (1) year unless otherwise stipulated in the Order Form to commence on a date to be agreed by the Customer and the Supplier, but in any event not later than 60 calendar days following the date of Delivery.
- 11.4 At the end of the Licence Term, the Software Licence shall automatically renew on the same terms as specified in these Terms of Business and the Order Form unless either Party gives not less than 180 days' notice to terminate the Software Licence to the other Party, such notice to expire at the end of the Licence Term ("the Renewed Licence Term").
- 11.5 At the end of each subsequent Renewed Licence Term the Software Licence shall renew in accordance with and subject to clause 11.4.
- 11.6 Where the Product comprises Third Party Software then the Intellectual Property Rights in that Third Party Software shall vest only in the third party supplier of that Third Party Software but the Supplier shall, subject to payment by the Customer of the Price, procure the right for such number of the Customer's concurrent Users as agreed in the Order Form to download, install and to use the Third Party Software for the duration of the Licence Term only on a non-exclusive, non-transferable basis and only for the purpose of ensuring that the Solution may be used in keeping with the terms of the Contract, for the Customer's own internal business purposes and in compliance with any specific Third Party EULA which the Customer may be required to execute in addition to this agreement.
- 11.7 The proprietary rights to all Products or Support Services created by the Supplier shall, in the absence of any specific provision to the contrary in the Order Form, vest in the Supplier.
- 11.8 Subject always to the limitation of liability set out in clause 9, the Supplier shall indemnify and hold the Customer harmless against its reasonable losses (not including loss of profit), liabilities and damages directly arising from any Substantiated Claim that the Product or Services infringe or misappropriate the intellectual property rights of a third party but providing always that, in order to rely on this indemnity the Customer shall first be required to comply with the provisions of clauses 11.9 to 11.11 below.
- 11.9 The Customer shall promptly give notice in writing to the Supplier if it becomes aware of:
- 11.9.1 any infringement or suspected infringement by a third party of the Intellectual Property Rights relating to the Solution; and/or
- 11.9.2 any claim that any Product or part of the Solution infringes the rights of any third party.
- 11.10 In respect of any matter that falls within clause 11.9.1, then:
- 11.10.1 the Supplier shall in its absolute discretion, decide what action to take in respect of the matter (if any);
- 11.10.2 the Customer shall at the Supplier's cost provide the Supplier with such reasonable assistance that the Supplier may reasonably request and which may be required by the Supplier for the purpose of prosecuting the infringement (including the use of its name in, or being joined as a party to, proceedings) provided that the Supplier shall hold the Customer indemnified against any losses, costs and expenses it may incur as a result of or in connection with providing such assistance;
- 11.10.3 the Supplier shall conduct and have sole control over any consequent action that it deems necessary; and
- 11.10.4 the Supplier shall be entitled to all damages and other sums that may be paid or awarded as a result of that action.
- 11.11 In respect of any matter that falls within clause 11.10.2 the Customer shall provide such assistance and shall take such steps or actions as the Supplier may consider reasonable or appropriate to prevent or to terminate the infringement and / or to defend the claim (including the use of its name in, or being joined as a party to, proceedings) provided that that the Supplier will hold the Customer indemnified against any losses, costs and expenses it may incur as a result of or in connection with providing such assistance.
- 11.12 The Customer shall indemnify the Supplier from and against all costs, claims, damages and expenses arising out of or in connection with the Customers' failure or the failure of its Users, employees, agents, consultants or sub-contractors to observe the terms of the Third Party EULA.
- 11.13 Except as expressly set out in these Terms of Business or as permitted by any local law, the Customer irrevocably undertakes:
- 11.13.1 not to copy the Software except where such copying is incidental to normal use of the Software or where it is necessary for the purpose of back-up or operational security;
- 11.13.2 not to rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the Software;
- 11.13.3 not to make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated in, any other programs;
- 11.13.4 not to disassemble, decompile, reverse engineer or create derivative works or source code based on the whole, or any part of the Software or any object code or executable programs or any other documents made available to the Customer, nor attempt to do any such things except to the extent that (by virtue of section 50B of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by the Customer during such activities is:
- (a) used only for the purpose of achieving inter-operability of the Software with another software program;
- (b) not disclosed or communicated to any third party without the Supplier's prior written consent; and
- (c) not used to create any software which is substantially similar to the Software;
- 11.13.5 to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software; and
- 11.13.6 to supervise and control use of the Software and ensure that the Customer's employees and representatives use the Software in accordance with these Terms of Business.
- 12. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**
- 12.1 Each Party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and which have been disclosed by one Party (the "Disclosing Party") to the other (the "Receiving Party"), its employees, agents or sub-contractors and any other confidential information concerning the Disclosing Party's business, the Solution, the Products and the Services which the Receiving Party may obtain as a result of such disclosure. Each Party shall restrict disclosure of such confidential material to such of the Receiving Party's employees, agents or sub-contractors as may need to know the same for the purpose of discharging the Receiving Party's obligations to the Disclosing Party under the Contract, and shall ensure that its employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the parties to the Contract.
- 12.2 All materials, equipment, drawings, specifications and data supplied by the Disclosing Party under or in accordance with the Contract shall, at all times, be and remain as between the Disclosing Party and the Receiving Party the exclusive property of the Disclosing Party and shall be held by the Receiving Party in safe custody at its own risk and maintained and kept in good condition until returned to the Disclosing Party, and shall not be disposed of or used other than in accordance with the Disclosing Party's written instructions or authorisation.
- 12.3 The rights and obligations under this clause 12 shall survive termination of the Contract, however arising.
- 13. DEFAULT BY CUSTOMER**
- 13.1 If the Supplier's performance of its obligations under a Contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors or employees, the Supplier shall not be

liable for any costs, charges or loss sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

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

**14. DATA PROTECTION**

14.1 Each Party shall comply with its respective obligations under the provisions of the Data Protection Act 1988 (the "Act").

14.2 The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency and that the Customer shall remain responsible as the 'data controller' as defined in the Act in relation to any personal data it uses in connection with the Solution or the Services.

**15. TERMINATION**

15.1 Without prejudice to any other rights or remedies it may have, the Supplier may terminate or suspend a Contract without liability to the Customer immediately on giving written notice to the Customer if:

15.1.1 the Customer commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing of the breach; or

15.1.2 an order is made or a resolution is passed for the winding up of the Customer, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order of the Customer; or

15.1.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the Customer, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the Customer, or notice of intention to appoint an administrator is given by the Customer or the directors of the Customer or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

15.1.4 a receiver is appointed of any of the Customer's assets or undertaking, or circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the Customer, or if any other person takes possession of or sells the Customer's assets; or

15.1.5 the Customer makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

15.1.6 the Customer ceases, or threatens to cease, to trade; or

15.2.7 the Customer takes or suffers any similar or analogous action in any jurisdiction in consequence of debt; or

15.1.8 there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Customer; or

15.1.9 the Customer breaches the terms of the Third Party EULA.

15.2 The Customer may terminate a Contract without liability to the Supplier immediately on giving written notice to the Supplier if the Supplier commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of the Supplier being notified in writing of the breach

15.3 On termination of the Contract for any reason:

15.3.1 the Customer (as relevant) shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Support Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;

15.3.2 the Customer (as relevant) shall, within a reasonable time, return all equipment owned by the Supplier. If the Customer (as relevant) fails to do so, then the Supplier may enter the Customer's premises and take possession of such equipment. Until such equipment has been returned or repossessed, the Customer (as relevant) shall be solely responsible for its safe keeping;

15.3.3 all rights including but not limited to any licence granted under these Terms of Business which the Customer may have to use the Software shall terminate with immediate effect and the Customer must immediately delete or remove the Software from

all computer equipment in its possession or under its control and immediately destroy or return to the Supplier (at the Supplier's sole option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so and the Supplier shall be entitled to withhold any software access keys, which the Customer may otherwise require for continued use of the Software; and

15.3.4 the accrued rights of the Supplier shall, notwithstanding any specific provision of the Contract, survive the termination (however arising) of the Contract.

**16. FORCE MAJEURE**

Neither Party shall have any liability to the other under a Contract if it is prevented from or delayed in performing its obligations under a Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of the relevant Party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

**17. COMMUNICATIONS**

Any notice or communications about a Contract must be in writing and must be personally delivered or sent by expedited delivery service or certified or registered mail, return receipt requested, first-class postage prepaid, or sent by email (provided that the sender confirms the email by sending an original confirmation copy by certified or registered mail or expedited delivery service within 3 business days after transmission) to the recipient Party at its registered office or such changed address as shall be notified by on party to the other for the purposes of this clause. Any notice shall be deemed to have been given at the time of personal delivery, or in the case of email upon transmission provided confirmation is sent as described above, or in the case of expedited delivery service or registered or certified mail 3 business days after the date and time of mailing.

**18. ASSIGNMENT**

18.1 The Supplier may assign any benefit under the Contract or any part of it to any person, firm or company.

18.2 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

**19. GENERAL**

19.1 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.

19.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

19.3 Failure or delay by the Supplier in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

19.4 Any waiver by the Supplier of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

19.5 The Contract is made only in the English language. If there is any conflict in the meaning between the English language version of the Contract and any version or translation of it in any other language, the English language version shall prevail.

19.6 The parties to a Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

19.7 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts, provided that for the sole benefit and at the sole discretion of the Supplier, the Supplier may elect to apply the jurisdiction of any foreign court applicable to the Customer.