

# STANDARD TERMS AND CONDITIONS OF SUPPLY

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## 1. OVERVIEW

The Customer (defined in clause 1.1 below) is entering into a Contract (defined in clause 1.1 below) between Commercial Limited and the Customer for any or all of the following:

- The sale and purchase of products;
- The supply of services.

These Terms and Conditions are separated into Parts A – C (each individually a "Part" and collectively the "Parts"). Whether a particular Part of these Terms and Conditions apply to the Contract will depend on the following:

- Part A will apply to any and all Contracts;
- Part B will apply to any Contract which involves the sale and purchase of Products; and
- Part C will apply to any Contract which involves the supply of any Services;

If there is any inconsistency or conflict between the above-listed Parts, their terms shall apply and take precedence in the order they appear above, unless the conflicting part of the relevant Part is explicitly expressed to take precedence.

Unless specifically defined therein, all capitalised words and expressions used in the Proposal and or IT Support Services Agreement (as defined in clause 1.1) shall have the meaning given to them in these Terms and Conditions.

## PART A

### 1. INTERPRETATION

1.1 In these Terms and Conditions unless inconsistent with the context:

**"Acknowledgement of Order"** means Commercial's acknowledgement of order, referred to in clause 2.2;

**"Acceptance Tests"** means the tests on the installed Products as set out in the Proposal designed to ensure the installed Products meet the requirements set out in the Proposal, and to be performed after Commercial has notified the Customer that all the Products relevant to the Proposal have been installed;

**"Applicable Law"** means any statute, statutory instrument, bye law, order, directive, treaty, decree or law; and/or legally binding rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body industry code of conduct or guideline which relates to the Contract, and/or the Products and/or the Services;

**"Business Day"** means a day other than a Saturday, Sunday or a day which is a public or bank holiday in England;

**"Charges"** means the cost of the Products and/or Services as set out in the Proposal and/or IT Services Agreement;

**"Commercial"** means Commercial IT Services Limited (registered number 07482128) whose registered office is at Commercial House, Old Station Drive, Leckhampton, Cheltenham, Gloucestershire, GL53 0LD;

**"Confidential Information"** means all information in respect of either party's business including, without prejudice to the generality of the foregoing, any ideas; business methods; finance; prices, business, financial, marketing, development plans; customer lists or details; computer systems and software; products or services, including but not limited to know-how or other matters connected with the products or services manufactured, marketed, provided or obtained by that party and information concerning that party's relationships with actual or potential clients, customers or suppliers and the needs and requirements of either party and of such persons;

**"Contract"** means the contract between Commercial and the Customer for the sale and purchase of the Products, and/or supply of Services formed in accordance with clause 2 including these Terms and Conditions, the IT Support Service Agreement and the Proposal;

**"Customer"** means the person whose order for the Products and/or Services is accepted by Commercial in accordance with clause 2.2;

**"Customer Environment"** means the information technology infrastructure pertinent to the supply and operation of the Products;

**"Delivery Point"** means the place where delivery of the Products is to take place under each Contract, as set out in the Proposal or as otherwise agreed in writing by the parties;

**"Equipment"** means the hardware equipment which is supplied by Commercial to the Customer under the Contract;

**“Expenses”** means any cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by Commercial's employees, agents and/or sub-contractors in the provision of the Services;

**“Force Majeure Event”** means (a) act of God; (b) war, insurrection, riot, civil commotion, act or threat of terrorism; (c) lightning, earthquake, fire, flood, storm, or extreme weather condition; (d) theft, malicious damage; (e) strike, lockout, industrial dispute (whether affecting the workforce of Commercial and/or any other person); (f) breakdown or failure of plant or machinery; (g) inability

to obtain essential supplies or materials; (h) change in Applicable Law; (i) any failure or default of a supplier or sub-contractor of Commercial; or (j) any event or circumstance to the extent it is beyond the relevant party's reasonable control;

**“Insolvent”** means A party is Insolvent where it: (a) proposes or passes a resolution for its winding up (save for the purpose of a solvent reconstruction or amalgamation previously approved in writing by Commercial) or in the case of a limited liability partnership proposes or determines that it will be wound up or in the case of a partnership is subject to an application for an order or an order by a court of competent jurisdiction for its winding up; (b) is subject to an application to or order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off; (c) enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court; (d) proposes, makes or is subject to, a company voluntary arrangement, an individual voluntary arrangement or a partnership voluntary arrangement or a composition with its/his creditors generally, an application to a court of competent jurisdiction for protection from its/his creditors generally or a scheme of arrangement under Part 26 Companies Act 2006 (save in the latter case for the purpose of a solvent reconstruction or amalgamation previously approved in writing by Commercial); (e) in the case of a partnership, has a partner who proposes, makes or is subject to an individual voluntary arrangement or composition with his creditors generally, or makes an application to a court of competent jurisdiction for protection from his creditors generally (f) is subject to or has a bankruptcy petition or has a bankruptcy order made against him or in the case of a partnership has a partner against whom a bankruptcy petition is presented or a bankruptcy order is made or has partners all of whom jointly present bankruptcy petitions as contemplated by Article 11 Insolvency Partnerships Order 1994; (g) has a receiver or a provisional liquidator appointed over any of its/his assets, undertaking or income; (h) ceases to trade or appears, in the reasonable opinion of the other party, to be likely to cease to trade; (i) is unable to pay its debts within the meaning of section 123 Insolvency Act 1986 and/or sections 267 and 268 Insolvency Act 1986;(j) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction;

**“Intellectual Property Rights”** means all intellectual, confidential and other industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

**“Order”** means the Customer's order for the supply of Products and/or Services as set out in the Customer's written acceptance of Commercial's Proposal;

**“IT Support Services Agreement”** means the IT support services agreement between the Commercial and the Customer for maintenance services;

**“Products”** means any product including Equipment and/or Software supplied by Commercial to the Customer (including any part of them) under the Contract;

**“Project Plan”** means the Project Plan as defined in Part C;

**“Proposal”** means the quotation and proposal for the provision of Products and/or Services including the Project Plan and the Specification in the form provided by Commercial to the Customer from time to time;

**“Services”** means any services supplied by Commercial to the Customer (including any of them or any part of them) under the Contract;

**“Service Point”** means the place at which the Services are to be performed, as agreed in writing by the parties;

**“Software”** means software incorporated into any Equipment or supplied separately by Commercial under the Contract;

**“Specification”** means in relation to the Products and/or Services, the technical specifications of those Products and/or the description of the Services; as set out in or referred to more particularly in the Proposal; and

**“Terms and Conditions”** means these standard terms and conditions of supply together with any special terms agreed in writing between the Customer and Commercial.

Unless otherwise specified, the definitions, in clause 1.1 shall apply to Part B and Part C of these Terms and Conditions.

1.2 Unless the context otherwise requires:

1.2.1 reference to a clause is to a clause of these Terms and Conditions and reference to a Part is to a part of these Terms and Conditions;

1.2.2 reference to the singular includes the plural and vice versa, and reference to any gender includes every gender;

1.2.3 reference to a "person" includes any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having a separate legal personality).

1.3 Reference to any statute or any statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/ or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/ or replaced and in force from time to time.

1.4 Any words following the words "include", "includes", "including", "in particular" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.

1.5 The headings in these Terms and Conditions are for ease of reference only and shall not affect the construction or interpretation of these Terms and Conditions.

## 2. FORMATION AND INCORPORATION

- 2.1 Any Proposal given by Commercial to the Customer shall not constitute an offer and shall only be valid for a period of 30 days from its date of issue.
- 2.2 Each Order will constitute an offer by the Customer to purchase and/or hire (as applicable) the Products and/or Services upon these Terms and Conditions. The Contract is formed when the Order is accepted by Commercial, by way of a written Acknowledgement of Order at which point and on which date the Contract will come into existence ( the “**Commencement Date**”).
- 2.3 The Contract constitutes the entire agreement between the parties in connection with its subject matter and supersede any prior representations, negotiations, discussions, understanding and agreements between the parties and their agents or other arrangement in respect of its subject matter provided that the obligations of the parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict with the Contract.
- 2.4 The Contract is lone and conclusive evidence as to the terms and conditions as agreed between the parties (save for manifest error). Acceptance of delivery of the Products or commencement of the performance of the Services under the Contract is conclusive evidence of the Customer’s acceptance of the Contract to the exclusion of all other terms and conditions (save for manifest error).
- 2.5 The Contract also supersede all previous terms and conditions and shall replace any terms and conditions notified to the Customer by Commercial.
- 2.6 Subject to clause 2.6.5, by entering into the Contract each party agrees that:
- 2.6.1 in entering the Contract it has not relied on, and shall have no remedy in respect of, any statement, representation or warranty that is not set out in the Contract in writing, except in the case of fraud; and
- 2.6.2 it has not relied and is not relying on any statements, promises, warranties, or representations given or made (whether negligently or innocently and whether express or implied), or any acts or omissions by or on the part of any other party in relation to the subject matter of the Contract, except those expressly set out in the Contract; and
- 2.6.3 save as expressly provided in the Contract, there is no promise, representation, warranty, usage, custom or course of dealing affecting the Contract or otherwise binding upon the parties in relation to the subject matter of the Contract; and
- 2.6.4 it has no remedy with respect to any statements, warranties, or representations given or made (whether negligently or innocently and whether express or implied), or any acts or omissions by or on the part of any other party in relation to the subject matter of the Contract, except those expressly set out in the Contract and it will not enforce or pursue any rights or remedies in respect thereof and hereby waives and releases the other party in respect thereof absolutely. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in the Contract and/or made in relation to the Contract or the subject matter of the Contract prior to the date of the Contract.

- 2.6.5 Nothing in this Clause shall operate to limit or exclude any liability for fraud or affect the validity of the non-disclosure agreement referred to in clause 2.3 (if applicable) entered into between the parties provided that no party shall be liable for innocent or negligent misrepresentation based upon any statement in the Proposal;
- 2.6.6 Orders placed by Customer leading to a contract which is not expressed to be subject to these Terms and Conditions shall nevertheless be subject to them.
- 2.6.7 Details and/or specifications in brochures and price lists produced by Commercial are intended as a guide only and only give a general approximation of Products and/or Services.
- 2.7 Subject to clause 12.2 all warranties, conditions and other terms implied by law (whether by statute, common law or otherwise) are excluded from the Contract.
- 2.8 Without prejudice to clause 13, any variation to these Terms and Conditions shall have no effect unless expressly agreed in writing and signed by a director on behalf of Commercial.

### 3. PRODUCTS AND SERVICES

- 3.1 Subject to clause 5 and payment of the Charges by the Customer, Commercial will use its reasonable endeavours during the term of the Contract to supply the Products and/or the Services specified in the Contract using reasonable skill, care and diligence in accordance with good industry practice for supplying products and/or services of a similar nature as the Products and/or Services.
- 3.2 If Commercial needs to make any changes to the Products and/or Services, which:
  - 3.2.1 are necessary to comply with any safety requirements or Applicable Laws; or
  - 3.2.2 do not materially affect the nature or quality of the Products and/or Services,
 Commercial will notify the Customer of such changes in advance of their implementation and, where any such change would have a material effect on the Products and/or Services, obtain the Customer's prior approval not to be unreasonably withheld or delayed. For the avoidance of doubt, the Customer's approval shall not be required for any changes which fall under clause 3.2.1.
- 3.3 Except as otherwise agreed by the parties, any indicative volumes of Products and/or Services agreed in respect of the Contract will be binding on the Customer.

### 4. IMPLEMENTATION AND TESTING

- 4.1 If as part of the Products and/or Services to be provided under the Contract any implementation activities are to be supplied, Commercial shall deliver such implementation activities in accordance with the procedures and testing specified in the relevant Specification or Project Plan.

## 5. CUSTOMER OBLIGATIONS

- 5.1 The Customer will comply with all of its obligations in the Contract in a reasonable and timely manner.
- 5.2 Unless otherwise provided in the Contract, the Customer will at all times:
- 5.2.1 comply with all Applicable Laws;
  - 5.2.2 provide Commercial with timely and reasonable instructions and directions in respect of the delivery of the Products and/or the performance of the Services;
  - 5.2.3 respond promptly to requests for information, directions and/or recommendation which Commercial or any relevant third party requests in order to deliver the Products and/or perform the Services;
  - 5.2.4 obtain and maintain in force all memberships, licences, registrations, approvals, consents or qualifications necessary to perform its obligations under the Contract or otherwise in respect of the Products and/or Services;
  - 5.2.5 respond to and provide such documentation, data and other information as Commercial reasonably requests;
  - 5.2.6 be responsible (at its own cost) for preparing the relevant premises and Customer Environment for the supply of Products and/or Services;
  - 5.2.7 take all reasonable and usual precautions to safeguard and maintain the Customer Environment and the Products, including taking regular and useable backups, operating firewalls and virus checks and implementing effective and appropriate data security;
  - 5.2.8 provide such access for any of Commercial's employees, agents or sub-contractors to:
    - 5.2.8.1 the relevant Delivery Point and/or Service Point, to other premises, and to all parts of the Customer Environment, as may be reasonably required in connection with the delivery of the Products and/or performance of the Services; and
    - 5.2.8.2 appropriate members of the Customer's staff, as such access is reasonably requested by Commercial.
  - 5.2.9 provide free of charge all electric power, office space, lighting and heating at the Delivery Point and/or Service Point and the provision of other normal office services reasonably needed by Commercial's employees, agents or sub-contractors to deliver the Products and/or perform the Services; and
  - 5.2.10 notify Commercial of any circumstance of which the Customer or any of its employees, agents or sub-contractors' are aware, which would or could impact on Commercial's employees, agents or sub-contractors' ability to deliver the Products and/or perform the Services in accordance with the Contract.

- 5.3 The Customer acknowledges, that unless otherwise provided in the Contract, it will be responsible for the disposal of any Customer hardware, operating system or network operating system which is not supplied by Commercial as part of the provision of Products and/or Services under the Contract.
- 5.4 On the expiry or termination of the Contract, the Customer shall on reasonable notice provide Commercial with such access as Commercial reasonably requires to the relevant Delivery Point and/or Service Point and such other premises as may be reasonably required to remove any of Commercial's Equipment and/or Services, the ownership of which remains with Commercial and has not passed to the Customer as provided in clause 19.3. All such equipment shall be removed by Commercial as soon as reasonably practicable.
- 5.5 The Customer shall use its reasonable endeavours to ensure that all of its staff who will use the Products and/or Services complete the relevant training, as agreed with Commercial, to help them to become competent in the use of the Products and/or Services.
- 5.6 Except in respect of any transfer of staff pursuant to clause 42 of Part C, neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services at (or in the case of the Customer) in the receipt of the Services either whilst the Services are being provided or for a further period of 6 months after the termination of the Contract other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.

## 6. DELIVERY AND PERFORMANCE

- 6.1 Commercial will use its reasonable endeavours to deliver the Products and perform the Services by the delivery and performance dates set out in the Proposal, but any such dates will be estimates only and time will not be of the essence of the Contract. If, despite those endeavours, Commercial is unable for any reason to fulfil any delivery or performance on the specified date, Commercial will be deemed not to be in breach of this Contract, nor (for the avoidance of doubt) will Commercial have any liability to the Customer for direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss) howsoever caused (including as a result of negligence) by any delay or failure in delivery and/or performance except as set out in this clause. Subject to clause 6.7, any delay in delivery and/or performance will not entitle the Customer to cancel the order unless and until the Customer has given 21 days' written notice to Commercial after the specified date requiring the delivery and/or performance to be made and Commercial has not fulfilled the delivery and/or performance within that period. If the Customer cancels the order in accordance with this clause 6.1 then:
- 6.1.1 Commercial will refund to the Customer any sums which the Customer has paid to Commercial in respect of that order or part of the order which has been cancelled; and
- 6.1.2 the Customer will be under no liability to make any further payments under clause 7.1 in respect of that order or part of the order which has been cancelled.



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- 6.2 Unless otherwise set out in the Proposal, delivery of the Products will be made at the Delivery Point and the Services will be performed at the Service Point. The Customer acknowledges and accepts that certain Services (as more particularly referred to in Part C of these Terms and Conditions where applicable) may not be performed by Commercial at the Service Point.
  - 6.3 Where a site and/or technical survey has been required prior to installation, delivery or performance of the Products and/or Services, the Customer will ensure that any necessary actions notified in the survey report have been implemented prior to delivery.
  - 6.4 If Commercial's performance of its obligations under the Contract is hindered, prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer will be liable to pay to Commercial on demand all reasonable costs, charges or losses sustained or incurred by it (including any direct, indirect or consequential losses, loss of profit, loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Commercial confirming such costs, charges and losses to the Customer in writing.
  - 6.5 Where delivery or performance is required by the Customer outside the hours of 8am – 5.30pm on any Business Day, additional charges will apply, as will be specified in the Proposal and/or IT Support Services Agreement.
  - 6.6 Delivery of the Products shall be completed on the Products' arrival at the Delivery Point.
  - 6.7 Notwithstanding the provisions of clause 6.1, Commercial shall not be liable for delay or failure to deliver the Products which is caused by a Force Majeure Event, the Customer's failure to comply with its obligations under clause 6.3 or the Customer's failure to provide Commercial with adequate delivery instructions or any other instructions that are relevant to the supply of the Products and/or performance of the Services.

## 7. CHARGES AND PAYMENT

- 7.1 The Customer shall pay the Charges to Commercial in accordance with the Proposal and/or IT Supply Services Agreement.
- 7.2 Unless otherwise agreed in the Contract, the Charges are exclusive of packaging, insurance, carriage, and delivery costs in respect of Products and Expenses in respect of Services.
- 7.3 Unless otherwise set out in the Contract:
  - 7.3.1 Any sum payable under the Contract is exclusive of VAT (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which shall be payable in addition to that sum in the manner and at the rate prescribed by law from time to time;
  - 7.3.2 Commercial shall be entitled to invoice the Customer for the Charges for Products and/or Services delivered and/or performed prior to the 26<sup>th</sup> day of each month and any Expenses, packaging, insurance, carriage and

- delivery costs payable by the Customer in addition to the Charges, on or after the first Business Day following the 26<sup>th</sup> day of each month;
- 7.3.3 each invoice shall be payable by the Customer within 30 days following the date on which the invoice is issued;
- 7.3.4 all payments shall be made in pounds sterling in cleared funds by BACS (Bank Automated Clearing System) transfer to such bank account as Commercial may nominate from time to time.
- 7.4 Notwithstanding any purported contrary appropriation by the Customer, Commercial shall be entitled, by giving written notice to the Customer, to appropriate any payment by the Customer to any invoice issued by Commercial.
- 7.5 In relation to Support Services, Commercial may, at any time after the first 12 months of providing Support Services and no more than once in any subsequent 12 month period, increase its Support Services charges, to cover the underlying increases in IT salaries for the staff providing services. Any such increase shall be up to a maximum of 4% per annum.
- 7.6 Without prejudice to any other rights or remedies available to Commercial under the Contract, if any sum payable under the Contract is not paid on or before the due date for payment Commercial shall be entitled to charge the Customer interest on that sum at 3% per annum above the base lending rate from time to time of the Bank of England from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis.
- 7.7 If the Customer fails to make any payment due to Commercial under the Contract on or before the due date for payment Commercial shall be entitled, without prejudice to any other rights or remedies of Commercial, to:
- 7.7.1 withhold further deliveries and/or performance of Products and/or Services under the Contract until payment of all overdue sums has been made; and/or
- 7.7.2 terminate the Contract as provided in clause 14.3.
- 7.8 Save as otherwise expressly provided in the Contract or required by law, all payments to be made by the Customer to Commercial under the Contract shall be made in full and without any set-off or any deduction or withholding including on account of any counter-claim.
- 7.9 On termination of the Contract:
- 7.9.1 for any reason, all invoices issued by Commercial (including those issued in accordance with clause 7.9.2), will become immediately due and payable by the Customer; and
- 7.9.2 where Commercial terminates in accordance with clauses 14.1 or 14.2 Commercial shall be entitled to invoice all Charges and any Expenses, packaging, insurance, carriage and delivery costs incurred which have not yet been invoiced, but which had been incurred during the term of the Contract.

## 8. INTELLECTUAL PROPERTY AND LICENCE TERMS

- 8.1 Nothing in the Contract will affect the ownership of either party's Intellectual Property Rights existing prior to the Commencement Date.
- 8.2 Subject as otherwise provided for in the Contract, all Intellectual Property Rights in the Products and/or Services shall be owned by Commercial or its licensors. Subject to clause 8.3, Commercial hereby licenses all such rights in relation to the Contract to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Products and/or the Services as is envisaged by the parties. If Commercial terminates the Contract under clause 14 this licence will automatically terminate in respect of the Contract.
- 8.3 The Customer acknowledges and accepts that the Customer's use of the rights in materials (including the Software) existing prior to the Commencement Date may be conditional on Commercial obtaining a written end-user licence (or sub-licence) of such rights from the relevant licensor or licensors on such terms as will entitle Commercial to licence such rights to the Customer.

## 9. DATA PROTECTION

- 9.1 The following additional definitions apply in this Section 41:

<b>Access Requests</b>	requests made by a Data Subject to exercise any rights of Data Subjects under the Data Protection Legislation in relation to Disclosed Data;
<b>Controller</b>	has the meaning given to that term (or the term 'data controller') in the Data Protection Legislation;
<b>Customer Personal Data</b>	means Personal Data received from or on behalf of the Customer, or otherwise obtained in connection with the performance of Commercial's obligations under existing contracts;
<b>Data Protection Legislation</b>	means any applicable law relating to the processing, privacy and use of Personal Data, as applicable to either party or the Services, including: the Directive 95/46/EC (Data Protection Directive) and/or Data Protection Act 1998 or the GDPR; any laws which implement any such laws and that replace, extend, re-enact, consolidate or amend any of the foregoing; and all guidance, guidelines, codes of practice and codes of conduct issued by any relevant supervisory authority relating to such Data Protection Legislation (in each case whether or not legally binding);
<b>Data Subject</b>	has the meaning given to that term in the Data Protection Legislation;
<b>GDPR</b>	General Data Protection Regulation (EU) 2016/679;
<b>GDPR Date</b>	25 May 2018;

<b>Personal Data</b>	has the meaning given to that term in the Data Protection Legislation
<b>Personal Data Breach</b>	has the meaning given to that term in the GDPR;
<b>Processor</b>	has the meaning given to that term (or the term 'data processor') in the Data Protection Legislation; and
<b>Sub-Processor</b>	another Processor engaged by Commercial for carrying out processing activities in respect of Customer

### **Controller and Processor**

- 9.2 This Section 9 will survive termination or expiry of existing contracts
- 9.3 The parties both agree that to the extent that Commercial processes Customer Personal Data, the Customer will act as the Controller and Commercial will act as the Processor.
- 9.4 Commercial will, and will ensure that its Sub-Processors and each of its personnel will, process the Customer Personal Data:
- 9.4.1 in compliance with the obligations of Processors under the Data Protection Legislation; and
  - 9.4.2 in accordance with the terms of the existing contracts.
  - 9.4.3 Nothing within existing contracts relieves Commercial of any of its responsibilities or liabilities under Data Protection Legislation.

### **Instructions and details of processing**

- 9.5 Where Commercial processes Customer Personal Data on the Customer's behalf, Commercial will:
- 9.5.1 only process the Customer Personal Data to the extent necessary in accordance with the Customer's documented instructions (unless required to do otherwise by the Data Protection Legislation);
  - 9.5.2 immediately notify the Customer in writing if, in Commercial's opinion:
    - i. its compliance with paragraph 1.6.1 would breach a requirement of applicable law (including Data Protection Legislation), or
    - ii. an instruction from the Customer breaches a requirement of applicable law (including Data Protection Legislation); and
  - 9.5.3 take such reasonable steps as are requested by the Customer to enable the Customer to comply with its obligations under Data Protection Legislation, including by providing (at the Customer's request) such assistance to the Customer as is contemplated by Article 28(3)(e) and (f) (Processor) of the GDPR on and from the GDPR Date.

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- 9.6 Commercial's processing of Customer Personal Data will consist of:
- 9.6.1 Names and business contact details;
  - 9.6.2 relating to Customer personnel;
  - 9.6.3 which will be processed for the duration of existing contracts; and
  - 9.6.4 for the purpose of passing such Customer Personal Data to the Service Providers named in Appendix B to arrange, provide and market the Services.

### **Technical and organisational measures**

9.7 Commercial will at all times implement and maintain appropriate technical and organisational measures to protect Customer Personal Data against accidental unauthorised or unlawful destruction, loss, alteration, disclosure or access. Such technical and organisational measures shall be at least equivalent to ISO27001 standards and shall reflect the nature of the Customer Personal Data.

### **Using staff and other processors**

- 9.8 Commercial will:
- 9.8.1 not engage any Sub-Processor for carrying out any processing of Disclosed Data without the Customer's written authorisation;
  - 9.8.2 appoint Sub-Processors only under a written contract containing materially the same obligations as in this Section 9;
  - 9.8.3 remain fully liable to the Customer for all the acts and omissions of each Sub-Processor and each of the Sub-Processor's and Commercial's personnel as if they were its own; and
  - 9.8.4 as from the GDPR Date, ensure that all Commercial's personnel authorised to process Customer Personal Data are subject to binding written contractual obligations to keep the Customer Personal Data confidential (except where disclosure is required in accordance with the Data Protection Legislation).

### **Assistance with compliance and data subject rights**

- 9.9 Commercial will refer all Access Requests it receives in relation to Customer Personal Data to the Customer without undue delay (and in any event within 2 days of receipt).
- 9.10 As from the GDPR Date, Commercial will provide such reasonable assistance to the other party as the Customer reasonably requires (taking into account the nature of processing and the information available to the party) in ensuring compliance with the Customer's obligations under Data Protection Legislation, including, but not limited to:
- 9.10.1 security of processing;
  - 9.10.2 data protection impact assessments;

- 9.10.3 prior consultation with a supervisory authority regarding high-risk processing; and
- 9.10.4 notification to the supervisory authority and/or communications to Data Subjects by the Customer in response to a Personal Data Breach;
- 9.10.5 Access Requests

#### **International data transfers**

- 9.11 Commercial agrees not to transfer Customer Personal Data to any country or recipient outside the United Kingdom.

#### **Records, information and audit**

- 9.12 Commercial will, in accordance with Data Protection Legislation:
  - 9.12.1 maintain written records of all categories of processing activities carried out on behalf of the Customer; and
  - 9.12.2 make available to the Customer such information as is reasonably necessary to show Commercial's compliance with the obligations of Processors under Data Protection Legislation, and allow for and contribute to audits, including inspections, by the Customer for this purpose, subject to the Customer:
    - (i) giving Commercial reasonable prior notice of such information request, audit and/or inspection;
    - (ii) ensuring that all information obtained or generated by Commercial in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure required by applicable laws);
    - (iii) ensuring that such audit or inspection is undertaken during Commercial's normal business hours with minimal disruption to the party, or any Sub-Processor's, business; and

#### **Breach notification**

- 9.13 In respect of any Personal Data Breach involving Customer Personal Data, Commercial will promptly (and in any event within 24 hours of becoming aware of the Personal Data Breach) notify the Customer, and provide the Customer with all the details it can provide, of the Personal Data Breach, so as to enable the Customer to comply with its reporting obligations under Articles 33 and 34 of GDPR.

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### **Deletion or return of Disclosed Data**

- 9.14 Commercial will, at the Customer's written request, either delete or return all the Customer Personal Data to the Customer in such form as the Customer reasonably requests within a reasonable time after the earlier of:
- 9.14.1 the end of the performance of the relevant Services; or
  - 9.14.2 once processing by Commercial of any Customer Personal Data is no longer required, and Commercial will delete existing copies (unless storage of any data is required by applicable laws)

## **10. CONFIDENTIALITY**

- 10.1 Each party will keep confidential:
- 10.1.1 the terms of the Contract; and
  - 10.1.2 any and all Confidential Information that it may acquire in relation to the other party.
- 10.2 Neither party will use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract. Each party will ensure that its officers and employees comply with the provisions of clause 10.1.
- 10.3 The obligations on a party set out in clause 10.1 will not apply to any Confidential Information which:
- 10.3.1 either of the parties can demonstrate is in the public domain (other than as a result of a breach of this clause 10); or
  - 10.3.2 a party is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
  - 10.3.3 the receiving party can prove by documentary evidence within 28 days of disclosure was already in its possession at its free disposal prior to disclosure; or
  - 10.3.4 the receiving party proves by documentary evidence within 28 days of disclosure was developed by it without reference to any of the disclosing party's Confidential Information; or
  - 10.3.5 after the date of the Contract disclosed to the receiving party without any obligations of confidentiality by a third party who is not in breach of any duty of confidentiality in doing so.
- 10.4 Neither party shall make any public announcement, circular or other communication about or containing information about the terms, subject matter or existence of a Contract ("Announcement"), or permit any Announcement to be made, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except that each party shall be entitled to make Announcements if and to the extent required by Applicable Law; or by any court; or by any governmental, statutory or regulatory body or any other competent authority or entity in any jurisdiction having responsibility for the regulation or governance of Commercial, the

Customer, a Contract, or the Products and/or Services; or by any stock exchange or listing authority; or the panel on takeovers and mergers.

10.5 The provisions of this clause 10 will survive any termination of the Contract

## 11. WARRANTY

11.1 Unless otherwise provided for in Parts B, or C of these Terms and Conditions, Commercial will, free of charge, within a period of 3 months from the date of performance of Services which are proved to the reasonable satisfaction of Commercial to be defective due to defects in workmanship or design of Commercial (other than a design made, furnished or specified by the Customer), re-perform the Services. This obligation will not apply where:

11.1.1 any maintenance requirements relating to the Services have not been complied with; or

11.1.2 the Customer has failed to notify Commercial of any defect or suspected defect within 14 days of the performance where the defect should be apparent on reasonable inspection, or within 14 days of the same coming to the knowledge of the Customer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than 3 months from the date of performance; or

11.1.3 the Customer makes any further use of such Products after giving a notice in accordance with clause 11.1; or

11.1.4 the defect arises because the Customer failed to follow Commercial's or the manufacturer or third party provider's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice; or

11.1.5 the defect arises as a result of Commercial following any specifications or instructions provided by the Customer; or

11.1.6 the Customer alters or repairs such Products without the written consent of Commercial; or

11.1.7 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions.

11.2 Any re-performed Services will be liable to re-performance (as applicable), under the terms specified in clause 11.1, for the unexpired portion of the 3 month period from the original date of performance of the re-performed Services.

11.3 Any warranty provided to Commercial in respect of third party Products supplied under the Contract shall, where possible, be transferred to the Customer, subject to any terms or restrictions imposed by the manufacturer or the third party provider.

## 12. LIABILITY AND INDEMNITIES

12.1 In the event of any breach of Commercial's express obligations under clauses 11.1, 11.2 and 11.3, above the remedies of the Customer will be limited to damages.



- 12.2 Commercial does not exclude its liability (if any) to the Customer:
- 12.2.1 for breach of Commercial's obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
  - 12.2.2 for personal injury or death resulting from Commercial's negligence;
  - 12.2.3 under section 2(3) Consumer Protection Act 1987;
  - 12.2.4 for any matter for which it would be illegal for Commercial to exclude or to attempt to exclude its liability; or
  - 12.2.5 for fraud.
- 12.3 Except as provided in clause 14 and clauses 12.1 and 12.2, Commercial will be under no liability to the Customer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any damage or direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of business opportunity, wasted expenditure, loss or corruption of data or information, depletion of goodwill and like loss) howsoever caused arising out of or in connection with:
- 12.3.1 any of the Products and/or the Services, or the manufacture or sale or supply, or failure or delay in supply, of the Products and/or the Services by Commercial or on the part of Commercial's employees, agents or sub-contractors;
  - 12.3.2 any breach by Commercial of any of the express or implied terms of the Contract;
  - 12.3.3 any use made or resale by the Customer of any of the Products and/or the Services, or of any product incorporating any of the Products and/or the Services; or
- and Commercial hereby recommends that the Customer considers taking insurance to cover any such damage or loss.
- 12.4 Except as set out in clauses 10, 12.1 and 12.2, Commercial hereby excludes to the fullest extent permissible in law, all conditions, warranties and stipulations, express (other than those set out in these Terms and Conditions or elsewhere in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Customer.
- 12.5 Commercial's Charges to the Customer are determined on the basis of the exclusions from and limitations of liability contained in these Terms and Conditions.
- 12.6 Subject to clauses 12.2 and 12.3, Commercial's aggregate liability under each Contract whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any, damage or direct loss howsoever caused (other than caused by Commercial's and its employees' or agents' negligence) will be limited to the total Charges paid for the Products and/Services by the Customer to Commercial in the 6 months immediately preceding the date on which the claim arose.
- 12.7 Commercial shall, at its own cost, maintain in full force and effect with reputable insurers for the term of the Contract the following insurance policies:

- 12.7.1 Professional Indemnity insurance;
- 12.7.2 Employer's Liability insurance; and
- 12.7.3 any other insurances which Commercial is required by Applicable Law to maintain,(which together are referred to as the “**Required Insurances**”). Details of the Required Insurances may be provided to the Customer from time to time on reasonable request from the Customer.

### 13. CHANGE CONTROL

- 13.1 Without prejudice to Commercial's rights under clause 2.9, either party may, by giving written notice to the other at any time during the term of the Contract, request a change to the Product and/or Services.
- 13.2 Within 21 Business Days of receipt of such notice from the Customer, Commercial shall prepare for the Customer a written statement of any increase or decrease in the Charges, and any material effect that the request would have on the Contract (the "Change Statement"). Where Commercial is requesting the change, it will provide the Change Statement to the Customer at the same time as providing the written notice referred to in clause 13.1.
- 13.3 Within 14 Business Days of receipt of the Change Statement referred to in clause 13.2, the Customer will inform Commercial in writing of whether or not the Customer wishes the requested change to be made. If the change is required, Commercial will not be required to make the requested change until the parties have agreed and signed a written agreement specifying the changes to be made to the Contract.

### 14. TERMINATION

- 14.1 Either party may terminate the Contract, or any part thereof, immediately by written notice to that effect to the other party if the other party:
  - 14.1.1 becomes Insolvent; or
  - 14.1.2 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
  - 14.1.3 persistently breaches any one or more of the terms of the Contract.
- 14.2 If a party:
  - 14.2.1 commits a material breach of the Contract which cannot be remedied; or
  - 14.2.2 commits a material breach of the Contract which can be remedied but fails to remedy that breach within 30 Business Days of a written notice setting out the breach and requiring it to be remedied being given by the other party,

the other party may terminate the Contract by giving not less than 14 days' written notice to that effect to the party in breach.
- 14.3 Commercial may terminate any and all Contracts immediately by giving written notice to that effect to the Customer if the Customer fails to make any payment due to Commercial under any Contract within 30 days after the due date.

- 14.4 Commercial may, on giving the other party 6 months' prior written notice at any time, terminate without liability to the Customer, the whole or any part of the Contract without liability to the other party.
- 14.5 The rights of termination set out in these Terms and Conditions shall apply (to the maximum extent permitted by law) to the exclusion of any and all rights of termination which may exist at common law.

## 15. CONSEQUENCES OF TERMINATION

- 15.1 Following the date of termination or expiry of the Contract ("Termination Date"):
- 15.1.1 the following provisions shall continue in force: clauses 1, 2, 3.3, 5, 6.4, 7.9, 8, 10, 11, 12, 14, 15, 16, 17, 18, 19, 20, 22, 27, 42 together with any other provisions which expressly or impliedly continue to have effect; and
- 15.1.2 all other rights and obligations shall immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the Termination Date.

## 16. FORCE MAJEURE

- 16.1 A party shall not be in breach of the Contract or otherwise liable to the other party for any failure to perform or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event.
- 16.2 If a Force Majeure Event occurs, the party affected shall:
- 16.2.1 as soon as reasonably practicable after becoming aware of the Force Majeure Event give the other party written notice of the occurrence, anticipated duration and impact of the Force Majeure Event;
- 16.2.2 use reasonable endeavours, without being required to incur additional expenditure, to mitigate the effects of the Force Majeure Event, to continue to perform the affected obligations notwithstanding the occurrence of the Force Majeure Event and to ensure that the Force Majeure Event comes to an end; and
- 16.2.3 continue to perform all its obligations under the Contract the performance of which is not affected by the Force Majeure Event.
- 16.3 A party shall not be in breach of the Contract or otherwise liable to the other party for any failure to perform or delay in performing its obligations under the Contract to the extent that this is due to a Force Majeure Event affecting the other party.
- 16.4 If Commercial is the party affected by the Force Majeure Event, the Customer shall continue to pay the Charges in respect of any Products and/or Services which Commercial continues to supply notwithstanding the occurrence of the Force Majeure Event.
- 16.5 If the Customer is the party affected by the Force Majeure Event, the Customer shall continue to pay Charges in accordance with the provisions of the Contract. For the avoidance of doubt, if under the Contract, payment or Commercial's ability to invoice

the Customer for any Products and/or Services is triggered by delivery or acceptance of the Products and/or Services under the Contract, and a Force Majeure Event prevents the Customer from taking delivery of or accepting Products and/or Services from Commercial, for so long as the Customer is so prevented, Commercial's ability to invoice the Customer and/or the due date for payment shall be triggered by Commercial making the Products and/or Services ready for delivery and/or acceptance, notwithstanding that such Products and/or Services have not in fact been delivered and/or accepted.

## 17. GENERAL TERMS

17.1 If any provision of the Contract is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable or indications to that effect are received by either of the parties from any competent authority the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or, at the discretion of Commercial, the void, voidable, illegal or otherwise unenforceable term may be severed from the Contract (as applicable) and the remaining provisions of the Contract shall remain in full force and effect unless Commercial in Commercial's absolute discretion decides that the effect of such declaration is to defeat the original intention of the parties in which event Commercial shall be entitled to terminate the Contract by 30 days' notice to the Customer.

17.2 Each of the parties shall give notice to the other of the change or acquisition of any address or fax number at the earliest possible opportunity but in any event within 48 hours of such change or acquisition.

### 17.3 Notices

17.3.1 Any notice or other communication to be given under the Contract must be in writing and shall either be delivered personally or sent by first class prepaid post or by facsimile transmission to the party to be served at that party's last-known address and/ or facsimile number and in respect of Commercial, marked for the attention of the individual detailed below or such other individual as may be notified by Commercial to the Customer from time to time in accordance with this clause 17.3:

#### **Commercial**

Richard Blundell, Divisional Director of IT Services

17.3.2 Any notice shall be deemed duly served:

17.3.2.1 in the case of a notice delivered personally, at the time of delivery;

17.3.2.2 in the case of a notice sent inland by first class prepaid post, 2 Business Days after the date of dispatch;

17.3.2.3 in the case of a facsimile transmission, if sent during normal business hours then at the time of transmission and if sent outside normal business hours then on the next following Business Day provided (in each case) that a confirmatory

copy is sent by first class prepaid post or by hand by the end of the next Business Day.

- 17.4 No Contract will constitute or imply any partnership, joint venture, agency, fiduciary or other relationship between the parties other than the contractual relationship expressly provided for in the Contract.
- 17.5 All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under the Contract shall restrict or prejudice the exercise of any other right granted by the Contract or otherwise available to it.
- 17.6 A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract shall not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor shall the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default shall only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it is given and shall not constitute a waiver of any other right, remedy, breach or default.
- 17.7 The Customer shall not without the prior written consent of Commercial assign, transfer, charge, hold on trust for any person or deal in any other similar manner with the Contract or its rights or any part of them under the Contract, or purport to do any of the same.
- 17.8 The Customer shall only be entitled to sub-contract any of its obligations under the Contract if it has obtained the prior written consent of Commercial. Any sub-contracting of the Customer shall not relieve the Customer from its liabilities to Commercial under the Contract. The Customer shall be liable to Commercial for the acts and omissions of its sub-contractors in relation to the Contract.
- 17.9 Commercial shall only be entitled to sub-contract any of its obligations under the Contract if it has obtained the prior written consent of the Customer. Any sub-contracting of Commercial shall not relieve Commercial from its liabilities to the Customer under the Contract. Commercial shall be liable to the Customer for the acts and omissions of its sub-contractors in relation to the Contract. The Contract shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assignees, and references to a party to the Contract shall include its successors and assigns.
- 17.10 The parties do not intend that any term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.
- 17.11 The Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 17.12 The parties submit to the exclusive jurisdiction of the English courts, save that:
- 17.12.1 Commercial will have the right to sue to recover Charges in any jurisdiction in which the Customer is operating or has assets;
  - 17.12.2 Commercial will have the right to sue for breach of its Intellectual Property Rights and other proprietary information (whether in connection with the Contract or otherwise) in any country where it believed that infringement or

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a breach of the Contract relating to its Intellectual Property Rights and/or other proprietary information might be taking place, and agree that in respect of proceedings in England and any other jurisdiction, process may be served by either of them in the manner specified for notices in clause 17.3.

## Part B

### 18. INTERPRETATION IN THIS PART B:

- 18.1 The definition of "**Products**" in clauses 19.2, 19.3, 19.5, 19.6, and 19.9 only of this Part B, will not include Software.

### 19. SALE OF PRODUCTS

- 19.1 Where the Customer purchases Products from Commercial under the Contract, this Part B will apply.
- 19.2 Risk of damage to or loss of the Products will pass to the Customer on delivery (or deemed delivery in accordance with clause 20.1). The Customer shall have the right to possess the Products on delivery.
- 19.3 Ownership of the Products will not pass to the Customer until Commercial has received in full (in cash or cleared funds) all sums due to it in respect of:
- 19.3.1 the Products; and
  - 19.3.2 all other sums which are, or which become due to Commercial from the Customer on any account.
- 19.4 Unless otherwise set out in the Proposal, Commercial or its licensor will retain the title in and ownership of any Software supplied by Commercial.
- 19.5 Until ownership of the Products has passed to the Customer, the Customer must:
- 19.5.1 hold the Products on a fiduciary basis as Commercial's bailee; and
  - 19.5.2 store the Products (at no cost to Commercial) separately from all other Products of the Customer or any third party in such a way that they remain readily identifiable as Commercial's property; and
  - 19.5.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Products; and
  - 19.5.4 maintain the Products in satisfactory condition insured on Commercial's behalf for their full price against all risks to the reasonable satisfaction of Commercial, and will whenever requested by Commercial produce a copy of the policy of insurance; and
  - 19.5.5 notify Commercial immediately if the Customer becomes Insolvent.
- 19.6 The Customer's right to possession of the Products will terminate immediately if the Customer becomes Insolvent or if Commercial serves notice to terminate the Contract.
- 19.7 Commercial will be entitled to recover payment for the Products notwithstanding that title in any of the Products has not passed from Commercial.
- 19.8 The Customer grants Commercial, its sub-contractors, agents and employees an irrevocable licence at any time to enter any premises where the Products are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

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- 19.9 If the Customer's right to possession of the Products terminates in accordance with clause 19.6, Commercial shall be entitled to issue the Customer with a credit note for all or any part of the price of the Products together with value added tax thereon.
  - 19.10 On termination of the Contract, howsoever caused, Commercial's (but not the Customer's) rights contained in this clause 19 will remain in effect.
  - 19.11 Unless otherwise set out in the Acknowledgement of Order, Commercial is not responsible for unpacking, installing, or checking the Products, which will be the responsibility of the Customer.

## 20. DELIVERY OF PRODUCTS

- 20.1 If the Customer fails to take delivery of any of the Products when they are ready for delivery or to provide any instructions, documents, licences or authorisations required to enable the Products to be delivered and/or Services to be performed on time (except solely on account of Commercial's default), the Products and/or Services will be deemed to have been delivered or performed on the specified date as provided in clause 6.1 and (without prejudice to its other rights) Commercial may:
  - 20.1.1 store or arrange for storage of the Products until actual delivery or sale in accordance with clause 20.1.2 and will reserve the right to charge the Customer for all related costs and expenses (including storage and insurance); and/or
  - 20.1.2 following written notice to the Customer, sell any of the Products at the best price reasonably obtainable in the circumstances and charge the Customer for any shortfall below the relevant Charges or account to the Customer for any excess achieved over the relevant Charges, in both cases having taken into account any charges related to the sale.

## 21. SOFTWARE LICENCE

- 21.1 If Commercial refers to a software licence in the Proposal or IT Support Services Agreement, the price of the Products includes the licence fee for the Customer's right to use the Software.
- 21.2 If no software licence has been provided to the Customer, the Customer hereby accepts a non-exclusive, non-transferable licence to use the Software on the following conditions:
  - 21.2.1 the Customer shall not copy (except to the extent permissible under Applicable Law or for normal operation of the Products), reproduce, translate, adapt, vary or modify the Software, nor communicate it to any third party, without Commercial's prior written consent;
  - 21.2.2 the Customer shall not use the Software on any equipment other than the Products, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the Software on the medium on which it resides;
  - 21.2.3 such licence shall be terminable by either party 28 days' written notice, provided that Commercial terminates only if the continued use or



possession of the Software by the Customer infringes the developer's or a third party's rights, or Commercial is compelled to do so by law, or if the Customer has failed to comply with any term of the Contract; and

- 21.2.4 on or before the expiry of this licence, the Customer shall return to Commercial all copies of the Software in its possession.

## Part C – Supply of Services

### 22. INTERPRETATION IN THIS PART C:

"**Acceptance Tests**" means the tests of the Products and/or Services to be agreed between the parties in accordance with the Contract, any Specification and Project Plan;

"**Authorised Partner**" means; is a services partner with relevant vendor accreditations to be able to assist in carrying out the Services;

"**Call-To-Repair**" means the period during the cover period between a fault call in respect of a Products being received by Commercial and the Products being repaired and available for use (which for avoidance of doubt means that the hardware diagnostics have been passed) or replaced as specified in clause 25;

"**Consultancy**" means the various types of professional services which may be supplied by Commercial under the Acknowledgement of Order including general consultancy, scoping and design, training, implementation, installation and integration services and project management;

"**Cover Period**" means the cover period provided in the IT Support Services Agreement or as provided by Commercial from time to time;

"**Documentation**" means the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable and/or machine-readable forms supplied by Commercial as specified in the Acknowledgement of Order and/or Project Plan;

"**Effective Date**" means the effective date of the IT Support Services Agreement entered into by the Customer and Commercial;

"**Employee Liability Information**" means the information to be supplied in respect of the Employee and/or any Transferring Employees pursuant to Regulation 11 of the Employment Regulations;

"**Employment Regulations**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

"**Fault**" an error in the Supported Services that causes them to fail to operate substantially in accordance with the relevant Documentation or Specification;

"**Hardware and Maintenance Services**" the Hardware onsite services, Hardware onsite call-to-repair services, hardware offsite services, hardware support exchange services and hardware parts exchange services as more specifically defined in clauses 23 to 28;

"**Help Desk**" means the Help Desk technical support services provided under clause 35; "Hardware Products" are the Products covered under the terms of this Agreement

"**Installation Date**" means the estimated date by which Commercial shall complete installation of a specified item of Equipment or Software as set out in the Acknowledgement of Order and/or Project Plan;

"**Implementation Plan**" means the time schedule and sequence of events for the performance of the Contract as set out in the Acknowledgement of Order and/or Project Plan;

"**Maintenance Release**" means a release of Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version;

"**New Version**" means any new version of Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product;

"**Project Plan**" means the detailed plan describing and setting out the estimated timetable (including delivery dates) and responsibilities for the provision of the Services agreed in accordance with clause 28;

"**Replacement Services**" means any services which are identical or substantially similar to any of the Services and which the Customer receives in substitution for any of the Services following the termination or expiry of the Contract, whether those services are supplied by the Customer internally or by any Replacement Supplier;

"**Replacement Supplier**" means any third party supplier of Replacement Services appointed by the Customer from time to time;

"**Service Transfer**" means service transfer as provided in the Employment Regulations;

"**Service Transfer Date**" means the date on which the Services (or any part of the Services), for whatever reason, transfer from Commercial to the Customer or any Replacement Supplier;

"**Service Level Agreement**" the service level agreement set out in or referred to in the IT Support Services Agreement (if any);

"**Service Levels**" means those standards of performance to be achieved by Commercial and/or Third Party Suppliers as set out in the Acknowledgement of Order;

"Service Point" means where the Hardware Products are located;

"**Standard Support Hours**" means 8.00 am to 5.30 pm Monday to Friday, except on days which are bank holidays in England;

"**Support Services**" means the maintenance and support and additional services as described in the Acknowledgement of Order and where applicable the IT Support Services Agreement and carried out in accordance with this Contract;

"**Supported Services**" means the Services, Equipment and Software for which Commercial provides Support Services or other third party services, equipment and software and as more particularly described in the Acknowledgment of Order;

"**Supported Users**" those Customer users entitled to report Faults and utilise the Support Services;

"**Third Party Suppliers**" means the Authorised Partner and any third party supplier of software, services and equipment with whom the Customer has entered into a support or maintenance agreement;

"**Transferring Employees**" means those employees whose contract of employment will be transferred to the Customer or a Replacement Supplier pursuant to the Employment Regulations on expiry or termination of the Contract unless they are excluded from the transfer;

"**Updating Service**" the service to be supplied by Commercial to the Customer pursuant to clause 36.

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## SECTION I – GENERAL TERMS AND PROJECT PLANS

23. Commercial shall provide the Services to the Customer from the **Effective Date** with all reasonable skill and despatch, and with all reasonable skill and expertise in accordance with the Proposal and/or IT Support Services Agreement and any applicable Project Plan and Service Levels to meet the Specification in all material respects. Commercial will provide sufficient support staff and resources to fulfil its obligations under the Contract.

24. Commercial shall be responsible for the provision of Hardware and Maintenance Services to the Customer if required by the Customer and in accordance with the IT Support Services Agreement, however, such service will be delivered to the Customer by Commercial's Authorised Partner and in accordance with the Authorised Partner's terms and conditions of business.

### 25. CUSTOMER OBLIGATIONS IN RELATION TO SERVICES

25.1 The Customer shall co-operate with Commercial in any manner reasonably required by Commercial in order to carry out the Services, including but not limited to, the provision of information and data, making available suitably qualified employees and contractors of the Customer (with the necessary expertise and authority to commit the Customer), provision of a safe working environment and access to any Service Point for Commercial's employees and contractors and provision when Commercial personnel are working at the Service Point of supplies reasonably required by Commercial such as power and computer consumables.

25.2 The Customer shall 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, Commercial may adjust any Implementation Plan, timetable or delivery schedule set out in the Contract as reasonably necessary to account for such delay.

25.3 Unless otherwise agreed between the parties in writing, it shall be the Customer's sole responsibility under this Contract to ensure that it has taken all necessary steps (including implementing and running regular appropriate back up procedures, up to date anti-virus products and adopting other relevant security and maintenance procedures) to protect its data from damage or loss caused by any Products or Services provided by Commercial.

### 26. COMMERCIAL STAFF ENGAGED IN THE PROVISION OF SERVICES

26.1 Commercial undertakes that its employees and contractors, while at the Service Point or any other premises of the Customer, will comply with all reasonable and relevant rules and regulations, as laid down by the Customer for the behaviour of its own employees, and any other reasonable requirements of the Customer. The support staff shall be suitably trained and experienced in the provision, and where applicable, support and maintenance of the Services.

### 27. RECOMMENDATIONS OF THIRD PARTY PRODUCTS AND SERVICES

- 27.1 Commercial may from time to time recommend third party products and/or services. Commercial makes no representation or warranty whatsoever regarding such products and/or services. The Customer's use of any third party products and/or services including those provided by the Authorised Partner are governed by the terms of the agreement with the provider of those products and/or services, and its warranties. Use of third party equipment or software is at the Customer's sole risk. Unless otherwise provided for in the Contract or by written agreement between the parties, Commercial is not responsible in any way for any third party equipment, services or product's performance, features or failures.
- 27.2 Both parties agree that neither shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any employee employed or engaged by such other party in relation to the supply of Services either whilst the Services are being supplied or for a further period of 6 months after the termination of the Contract relating to the Services other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.
- 27.3 If either party commits a breach of clause 27.2, the breaching party shall, on demand, pay to the claiming party a sum equal to one year's basic salary or the annual fee that was payable by the claiming party to that employee, worker or independent contractor plus the recruitment costs incurred by the claiming party in replacing such person.

## 28. PROJECT PLANS

- 28.1 Where deemed appropriate by Commercial, the parties shall agree the provision of Services in a Project Plan. A Project Plan may detail, amongst other things: (a) a description of the Services to be provided; (b) any Specification; (c) the timetable and any Implementation Plan (including delivery dates) for the provision of Services; (d) agreed Acceptance Tests and acceptance criteria for the Services; (e) Service Levels for the Services; and, (f) any other relevant information or terms.

## 29. ADDITIONAL WARRANTIES IN RESPECT TO PART C

- 29.1 Commercial warrants that the Services will materially meet the requirements of the Specification in accordance with the Project Plan (if any).
- 29.2 Commercial does not warrant that any Product will be fit to operate in conjunction with any other equipment or software that are identified in the Documentation as being compatible with the Products.
- 29.3 Commercial shall have no liability for any claim of intellectual property infringement: caused by the Customer's use of the Products in combination with software or equipment not supplied or approved in writing by Commercial, resulting from any unauthorised modification of the Products, or otherwise arising from the Customer's use of the Services not approved in writing by Commercial.

## PART II – CONSULTANCY SERVICES, INSTALLATION AND ACCEPTANCE

### 30. CONSULTANCY SERVICES

30.1 The Customer shall provide Commercial with such information, co-operation, assistance and access to pertinent information, as Commercial may reasonably require or request in relation to the provision of the Consultancy Services and in preparing any Project Plan and Specification. The Customer warrants to Commercial that any information it provides to Commercial under this Contract and in relation to any Specification and Project Plan is complete and accurate in all material respects.

## 31. **INSTALLATION, INTEGRATION AND ACCEPTANCE TESTS**

31.1 Where required in the Acknowledgement of Order, Commercial shall:

31.1.1 install, integrate and carry out, in conjunction with the Customer, Acceptance Tests to integrate the Products with the Customer Environment in accordance with the Project Plan (if any) to meet the required Specification; and

31.1.2 complete installation of Products at the Services Point by the Installation Date for that Product.

31.2 If not agreed in a Project Plan, within a reasonable time after the date of the Acknowledgement of Order, the parties shall agree, where appropriate, Acceptance Tests for the Products. Acceptance Tests shall comprise such tests and use such test data as is reasonably required to show that the Products comply with any Specification and properly operates on the Customer Environment, in all material respects. Acceptance of a Product shall be deemed to have occurred on whichever is the earliest of: (a) written confirmation from the Customer that Acceptance Tests have been successfully completed; or, (b) the use of the Products by the Customer in the normal course of its business.

## 32. **DATA MIGRATION**

32.1 The Customer shall:

32.1.1 in sufficient time to permit Commercial to meet all of its obligations under the Contract identify and agree with Commercial the source, systems and processes required for the extraction and transfer of data onto and from any and all systems used by Commercial in performance of the Services and give Commercial access to all Customer data to be migrated as part of the Services; and

32.1.2 provide such assistance as Commercial reasonably requests in identifying validation criteria to facilitate successful migration of the data referred to in clause 32.1.1 onto and/or from any and all systems used by Commercial in performance of the Services.

32.2 Commercial shall use reasonable efforts to ensure the accurate migration of such Customer data but gives no warranties as to the completeness or accuracy of such migration.

32.3 The Customer shall be responsible for checking the accuracy and completeness of any migrated data and shall promptly give sufficient details to Commercial of any

inaccuracies or omissions in order to permit Commercial to correct such inaccuracy or omission.

### **PART III – SPECIFIC SUPPORT SERVICES**

33. Commercial Support Services comprise:
- 33.1 a telephone help desk during the Standard Support Hours to provide first-line technical support to users of the Supported Services;
  - 33.2 remote diagnosis and, where possible, correction of faults using software management software in accordance with specific Service Levels;
  - 33.3 second-line on-site diagnosis and correction of faults, repair or replacement of Supported Equipment in accordance with specific Service Levels;
  - 33.4 co-ordinating Support Services with any Third Party Suppliers.

If additional on-site support is required in any month it may be provided by Commercial at its option at the rates set out in the Acknowledgement of Order.

#### **34. SUPPORTED PRODUCTS**

- 34.1 Commercial shall provide maintenance and support for all Products specified in the Acknowledgement of Order as being Supported Services in accordance with any Service Level Agreements.
- 34.2 If specified in the Proposal, Commercial shall, at its sole choice, provide Support Services for software and equipment not supplied by Commercial provided that such items are approved by Commercial, are genuine, currently licensed and under a currently active vendor support contract. Should any equipment or software fail to meet these provisions they will at Commercial's sole discretion, be excluded from the Supported Services.
- 34.3 Commercial shall be entitled, on prior notice to the Customer to make changes to the Support Services, provided such changes do not have a material adverse effect on the Customer's business operations.

#### **35. HELP DESK SUPPORT**

- 35.1 Commercial shall provide the Customer with Help Desk Support Services during the Standard Support Hours (or as otherwise agreed in the Contract).

##### **Supported Users**

- 35.2 Before contacting Help Desk Support for technical Support Services, Supported Users should explore the help that is readily available to them in the Documentation provided with any Equipment or Software, any help utility which is built into any application or operating system and their peers and where available internal IT department, team or advisers. Commercial will not assist in installing, using, or troubleshooting any equipment, software or services which are not Supported Services.

- 35.3 When such local help has been exhausted and assistance is needed, the Customer shall promptly notify Commercial of any Faults in the Services. In reporting a Fault, the Customer shall supply Commercial with a detailed description of any Fault and the circumstances in which it arose and shall use best endeavours to submit sufficient material and information to enable Commercial's support staff to replicate the Fault. On notification, Commercial shall acknowledge receipt of the notification and the Supported User and Commercial support staff shall jointly determine the priority of any Fault, using one of the following priorities:
- 35.4 **Priority 1 – Emergency:** The Customer's entire business, a branch or department is unable to function, or substantially impaired, resulting in a serious impact on the Customer's business.
- 35.5 **Priority 2 – Service Affecting:** A Fault causes substantial inconvenience to more than one individual being unable to operate, resulting in a disruption to the Customer's business operations. Including, server and active network equipment failures that do not result in complete network failure.
- 35.6 **Priority 3 – Low Impact:** Any other Fault, affecting only one, or selected individuals and which does not affect the overall operation of the Customer's business.

### Response Times

Response times are provided in accordance with the level of support detailed in the Proposal and/or IT Support Services Agreement.

- 35.7 Charges for Support Services provided by Commercial are for a reasonable level of support provided for the Supported Services. If Commercial believe, in its sole opinion, that Help Desk Support or any other Support Services are being used excessively, for example as a replacement for training, Commercial reserves the right to charge for such Help Desk Support or other Support Services on an hourly basis in accordance with Commercial's then reasonably accounted for rates for such Support Services.

## 36. SOFTWARE MAINTENANCE

- 36.1 Where purchased as part of the Contract, Commercial shall, at its discretion, make Maintenance Releases of the Supported Services available as part of the Updating Service to the Customer as and when required without charge.
- 36.2 The Updating Service shall include the supply to the Customer of all revisions to the Documentation which are necessary in order to reflect any Maintenance Releases acquired by the Customer.
- 36.3 For the avoidance of doubt, the cost of the Updating Service is included in the Charges but excludes any sum payable by the Customer in respect of the licence of any New Version of any Software.
- 36.4 Commercial shall at the Customer's request install, configure and integrate any Maintenance Release at a charge to be determined by Commercial.
- 36.5 If the Customer fails to install a Maintenance Release, or allow Commercial access to a Service Point or such other premises as may be required to install a Maintenance Release within one month of Commercial notifying the Customer that such



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Maintenance Release is available for installation, Commercial shall be entitled, at its sole discretion to suspend any related Support Services by one month's written notice to the Customer.

### **37. EQUIPMENT SUPPORT SERVICES**

- 37.1 Where purchased as part of the Contract, Equipment Support Services, will consist of corrective maintenance to Equipment in accordance with the Service Level Agreement for that Equipment.
- 37.2 Following a report of a Fault in accordance with clause 35, Commercial will use reasonable endeavours to resolve any Equipment Fault in accordance with Service Levels for that Equipment. Where possible, Commercial will use its reasonable endeavours to rectify any Equipment Fault on-site.
- 37.3 Commercial cannot guarantee to be able to service Equipment that is not purchased by, or approved by, Commercial, as spares and service information may not be available at a reasonable cost. Equipment that is not purchased by, or approved by Commercial may be repaired at Commercial's discretion on a reasonable endeavours basis only and Commercial reserve the right to charge for such repairs.
- 37.4 Items of a consumable nature will not generally be covered under Equipment Support Services, unless such items have, in Commercial's sole discretion, clearly suffered undue wear as a direct result of an original manufacturing defect.

### **38. AVAILABILITY OF THIRD PARTY SUPPORT / SPARES**

- 38.1 Equipment repair services are limited due to availability of certain parts. If there is a Equipment failure Commercial will assess the problem and viability of repair. If the item is out of warranty, requires lengthy inspection, third party costs or spare parts it may, at Commercial's discretion, be written off. Commercial can only provide support for Equipment where suitable spares and manufacturers support is available.
- 38.2 Commercial reserve the right to charge for any Fault arising from the use of third party consumables not recommended or approved by Commercial or any Fault arising from non-compliance with Commercial's or the manufacturer's or vendor's or Third Party Supplier's guidance in respect to any Equipment or Software.
- 38.3 In the event that Third Party Supplier support charges are required in order to resolve any issues with Software or Equipment, these will be passed on to the Customer after first receiving the Customer's authorisation to incur them.

### **39. MAINTENANCE EVENTS**

- 39.1 Maintenance of Products or other aspects of the Services delivered to the Customer that may require interruption of the Customer's use of such Products and Services (Maintenance Events) will be performed during Standard Support Hours and Commercial may interrupt the operation of the Products and/or Services to perform maintenance during the daily window of 8am to 5:30pm UK time. If the Customer requests that Maintenance Events are undertaken outside of Standard Support Hours, such support shall be charged to the Customer at Commercial's then current rates for

such out of hours support services or as otherwise agreed between the parties. Commercial may interrupt the Products and/or Services at any time during Standard Support Hours for unscheduled maintenance, provided that it has given the Customer reasonable advance notice. Commercial shall at all times endeavour to keep any service interruptions to a minimum.

#### **40. THIRD PARTY SUPPLIERS**

40.1 The Customer agrees that the provision of a response to a Fault or service request from Third Party Suppliers will be dependent on the service levels established within the Customer's contractual arrangements with that Third Party Supplier. Commercial will liaise with other support partners and Third Party Suppliers to assist with the resolution of Faults connected to the Customer Environment in so far as it is reasonably possible, and log such support calls in accordance with clause 35 above, however, Commercial shall not be responsible for any acts or omissions of such Third Party Suppliers, disclaims all liability for, and makes no representation or warranty that any Faults or service requests dependent on a response from any third party will be fixed or that any service request will be responded to within a specified period of time by that third party.

#### **41. CUSTOMER OBLIGATIONS IN RELATION TO THE SUPPORT SERVICES**

41.1 The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Services and shall take all reasonable steps to ensure that the Supported Services are operated in a proper manner by the Customer's employees, agents, sub-contractors (or any third parties) who have access to and make use of the Supported Services.

41.2 The Customer shall co-operate with Commercial in performing the Services and provide any assistance or information as may reasonably be required by Commercial; report any Faults promptly to Commercial and keep full back-up copies of its data.

41.3 Commercial shall have no obligation to provide the Support Services (and shall be entitled to charge the Customer additional support charges at its then current rates) where Faults arise from: (a) misuse, incorrect, unauthorised use of or damage to the Supported Services; or (b) failure to maintain the necessary environmental conditions for use of the Supported Services; or (c) use of the Supported Services in combination with any equipment or software not provided by or approved by Commercial, or any fault in any such equipment or software; or (d) relocation or installation of the Supported Services or any part of them by any person other than Commercial or a person acting under Commercial's instructions; or (e) use of any Supported Services not used in accordance with guidance provided by Commercial or Third Party Supplier's or manufacturer's instructions (including any manufacturer's capacity guidelines); or, (f) any breach of the Customer's obligations under the Contract.

41.4 If Commercial investigate a request which proves in Commercial's reasonable opinion not to have been caused by a Fault or error in the Supported Services, Commercial shall be entitled to charge the Customer for the time spent on such visit on a time and materials basis at its standard rates then in force.

## 42. TRANSFER OF EMPLOYMENT

- 42.1 In the event of a Service Transfer to which TUPE applies, to the extent that any employee of Commercial invokes rights under TUPE such that he or she is a Transferring Employee:
- 42.1.1 Commercial shall be permitted to offer continuing employment to some or all of the Transferring Employees in Commercial's discretion; and
  - 42.1.2 Commercial shall comply with its obligations to provide Employee Liability Information to the Customer and/or to the Replacement Supplier including details of the Transferring Employees.
- 42.2 The Customer shall indemnify Commercial against all claims arising from the Customer's or the Replacement Supplier's failure to perform and discharge any obligation and against any Claims in respect of any Transferring Employees arising from or as a result of:
- 42.2.1 any act or omission by the Customer or the Replacement Supplier relating to a Transferring Employee occurring on or after the Service Transfer Date; and
  - 42.2.2 all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contribution and otherwise) accrued and payable after the Service Transfer Date.
- 42.3 The parties shall co-operate to ensure that any requirement to inform and consult with the employees and or employee representatives in relation to any relevant transfer as a consequence of a Service Transfer will be fulfilled.
- 42.4 The Customer shall assume (or shall procure that the Replacement Supplier shall assume) the outstanding obligations of Commercial in relation to any Transferring Employees in respect of accrued holiday entitlements and accrued holiday remuneration prior to the Service Transfer Date.
- 42.5 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by Commercial or the Customer to Commercial in this clause.