



## Terms & Conditions

### iView Data Ltd (Leicester CCTV Centre)

37 Blaby Road, S.Wigston, Leicester, LE18 4PA

#### Terms and conditions of business

***These Conditions apply to any order by the Customer and the supply of the Goods and/or Services by the Supplier to the Customer.***

***The Customer's attention is particularly drawn to the provisions of clause 13 (Limitation of liability) and clause 7.7.***

#### **1. Interpretation**

The following definitions and rules of interpretation apply in these Conditions.

##### 1.1 Definitions:

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

**Commencement Date:** has the meaning given in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 17.7.

**Contract:** the contract between the Supplier and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.

**Customer:** the person or firm who purchases the Goods and/or Services from the Supplier.

**Deliverables:** the deliverables set out in the Order produced by the Supplier for the Customer.

**Delivery Location:** has the meaning given in clause 4.1.

**Force Majeure Event:** has the meaning given to it in clause 16.

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing (including on the Supplier's website) by the Customer and the Supplier.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** the Customer's order for the supply of Goods and/or Services, as set out in (i) the Customer's purchase order form, or (ii) the Customer's written acceptance of the Supplier's quotation, or (iii) in writing, or (iv) verbally in person or via telephone, or (v) via the Supplier's website or (vi) otherwise by any method accepted by the Supplier from time to time (as the case may be).

**Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Specification.

**Service Specification:** the description or specification for the Services provided in writing (including on the Supplier's website) by the Supplier to the Customer.

**Supplier:** iView Data Ltd registered in England and Wales with company number 4586542.

**Supplier Materials:** has the meaning given in clause 8.1(i).

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not

limit the sense of the words, description, definition, phrase or term preceding those terms.

(e) A reference to **writing** or **written** includes fax, email and text.

## **2. Basis of contract**

2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Conditions. After an Order is made, the Customer will receive written acknowledgement of the Order.

2.2 Notwithstanding the aforementioned written acknowledgement, the Order shall only be deemed to be accepted when:

(a) the Supplier issues written acceptance of the Order;

(b) the Supplier dispatches the Goods and/or commences the supply of the Services;

(c) the Supplier issues an invoice to the Customer in respect of the Goods and/or Services;

whichever is earlier and at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier (including on the Supplier's website) and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures (or on the Supplier's website) are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force. Images of the Goods on the Supplier's website are for illustrative purposes only and, although the Supplier has made every effort to display the Goods accurately, the Supplier cannot guarantee that any computer display accurately reflect the Goods. The Goods may vary slightly from those images.

2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.5 Any quotation given by the Supplier shall not constitute an offer and shall only be valid for a period of 30 days or such other period as is specified on the relevant quotation.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.7 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.8 The Supplier may reject the Order at any point before the Commencement Date for any reason or no reason at all and, in such circumstances, the Order shall not be processed by the Supplier. The Supplier will notify the Customer of any such rejection in writing.

2.9 All Orders are subject to the Customer's creditworthiness as determined by the Supplier (in its absolute and sole discretion). From time to time, the Customer shall provide the Supplier, upon request, with such financial and other information and documentation as the Supplier shall reasonably request in order to enable the Supplier to evaluate the financial status of the Customer. Any credit account or terms that the Supplier has granted to the Customer and which has not be utilised by the Customer for a continuous period of 6 months or more will be subject to a credit review prior to the acceptance of any further Order from the Customer being accepted.

2.10 Save for as expressly provided in the Contract, the Customer shall not be permitted to (i) cancel, revoke or amend any Order once submitted and accepted by the Supplier and/or (ii) return any Goods and/or reject any Services, without the prior written consent of the Supplier and on such terms as the Supplier shall then determine in its absolute and sole discretion. Such terms may include, without limitation, the Customer being responsible for any delivery for such returns of Goods and/or the Customer being liable for a restocking charge for any returned Goods.

### **3. Goods**

3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

3.4 The Supplier reserves the right to amend the Goods Specification as a result of any manufacturing modifications and/or if such amendments do not materially affect the nature or quality of the Goods.

#### **4. Delivery of Goods**

4.1 The Supplier shall deliver the Goods (by such method as determined by the Supplier (in its absolute and sole discretion)) to the location set out in the Order (which shall be the Customer's permanent address) or such other location as the parties may agree from time to time in writing (Delivery Location). Alternatively, if agreed between the parties, the Customer shall collect the Goods from the Supplier's premises or such other location as may be agreed with the Customer before delivery (Delivery Location) within two Business Days of the Supplier notifying the Customer that the Goods are ready.

4.2 Delivery of the Goods shall be completed on the completion of unloading or loading (as the case may be) of the Goods at the Delivery Location.

4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods including, without limitation, any delay that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 If the Supplier fails to deliver the Goods, the Customer must notify the Supplier within 3 days of the expected delivery date for the relevant Goods. If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Customer fails to take or accept (as the case may be) delivery of the Goods within 5 Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure

Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the second Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- (b) the Supplier shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

4.6 If five Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted (as the case may be) actual delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **5. Quality of Goods**

5.1 The Supplier warrants that on delivery the Goods shall:

- (a) be free from material defects in design, material and workmanship; and
- (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

This warranty is in addition to any applicable additional warranty in respect of the Goods (if applicable) which is expressly agreed in writing with the Supplier.

All of the above will form the warranty set out in clause 5.1 for the purposes of this clause 5 and the Contract generally.

5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- (a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises because the Customer failed to follow the instructions provided for the installation of external devices which results in the ingress of water causing damage;
- (d) the serial number label or security seal of the Goods is removed, damaged or tampered with in any way;
- (e) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;
- (f) the Customer alters or repairs such Goods without the written consent of the Supplier;
- (g) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (h) the Goods differ from their description or the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

5.4 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5.6 Other than as expressly stated in this clause 5, the Supplier makes no other warranty, express or implied, with respect to the Goods, their marketability, quality or fitness for any particular use or purpose.

5.7 The warranties set out in clause 5.1 are in addition to any warranty given by the manufacturer of the Goods.

## **6. Title and risk**

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of the Supplier receives payment in full (in cash or cleared funds) for the Goods (including any ancillary or related charges) in which case title to the Goods shall pass at the time of payment of all such sums.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(b) not sell, transfer or otherwise dispose of the Goods (and, if the Customer does so, the Customer shall be deemed to have done so as the Supplier's agent and any sums received by the Customer in respect of such Goods shall be held on trust for the Supplier until payment is made, in full, to the Supplier);

(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

(e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.1(b);and

(f) give the Supplier such information as the Supplier may reasonably require from time to time relating to:

(i) the Goods; and

(ii) the ongoing financial position of the Customer.

6.4 At any time before title to the Goods passes to the Customer, the Supplier may require the Customer to deliver up all Goods that have not been irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6.5 All costs and expenses of the Supplier incurred in recovering the Goods for which title has not passed to the Customer (pursuant to this clause 6) shall be payable by the Customer, on demand by the Supplier.

## **7. Supply of Services**

7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.



7.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order or the Service Specification or otherwise but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

7.3 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.

7.4 The Supplier reserves the right, for any reason, to cancel, postpone or re-arrange any date(s) or time(s) specified for the performance of any Services by providing notice to the Customer. Such cancellation, postponement or re-arrangement shall be utilised by the Supplier, without limitation to the generality of the foregoing, if performance of the Services on the specified date(s) / time(s) is not practicable for the Supplier for any reason including, without limitation, unavailability of relevant staff members.

7.5 It is acknowledged and agreed between the Supplier and the Customer that the Service Specification may be produced and/or amended after the Commencement Date but, nevertheless, any such Service Specification (once agreed) shall form the Service Specification for the purposes of the Contract.

7.6 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

7.7 The Customer acknowledges that it is the relevant installer's responsibility to ensure any Goods (or other products, goods, systems or similar) are installed correctly and fully operational following such installation to suit the Customer's requirements and that the Supplier shall have no responsibility or liability (to the Customer or otherwise) in this regard notwithstanding the provision of the Services and payment in respect thereof.

## **8. Customer's obligations**

8.1 The Customer shall:

- (a) ensure that the terms of the Order and any information it provides in the Service Specification and/or the Goods Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;

- (d) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's systems, hardware, software and other infrastructure and similar as reasonably required by the Supplier to provide the Services;
- (e) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- (f) prepare the Customer's premises for the supply of the Services;
- (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (h) comply with all applicable laws, including health and safety laws;]
- (i) keep all materials, equipment, documents and other property of the Supplier (Supplier Materials) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and
- (j) comply with any additional obligations notified to the Customer by the Supplier in writing (or as set out in the Service Specification and/or the Goods Specification).

8.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (Customer Default):

- (a) without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

## **9. Charges, payment and project support tokens**

9.1 The price for Goods:

(a) shall be the price set out in the Order or, if no price is quoted in the Order, the price agreed in writing between the Supplier and the Customer or, if not price is so agreed, the price set out in the Supplier's current published price list (including on its website) as at the date of the Order; and

(b) shall, unless otherwise stated, be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

9.2 The charges for Services shall be calculated on a time and materials basis:

(a) the charges shall be set out in, or calculated in accordance with the Supplier's hourly (or other) relevant fee rates as set out in, the Order or, if no charges or rates are quoted, the charges or rates as agreed in writing between the Supplier and the Customer or, if not such charges or rates are so agreed, the charges or rates stated in the Supplier's current published price list (including on its website) as at the date of the Order; and

(b) unless otherwise stated, the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.3 The Supplier reserves the right to:

(a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date if the Services continue beyond that point; and

(b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:

(i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

(ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; and/or

(iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods; and

(c) increase the price of the Goods (and such increased amount shall be paid by the Customer) to reflect the then current published prices of the Goods (including on the Supplier's website) in the event that payment of the price is overdue for a period of 60 days or more.

9.4 The Supplier shall invoice the Customer for the Goods and/or Services on or at any time after the date of the Order.

9.5 The Customer shall pay each invoice submitted by the Supplier (All invoices are net 30 days, unless specified in writing)

(a) as stated in the Order or as otherwise agreed in writing between the Supplier and the Customer; or

(b) in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; or

(c) if no such payment terms are stated or so agreed (and no credit terms agreed and confirmed), on or before the date that is the last Business Day in the calendar month following the date of the relevant invoice.

Any payment shall be made in full and in cleared funds to a bank account nominated in writing by the Supplier and time for payment shall be of the essence of the Contract.

9.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date (invoices shall be paid by the Customer within 30 days of receipt of invoice.), then, without limiting the Supplier's remedies under clause 14 or otherwise, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 8% a year above the Bank of England base rate from time to time, but at 8% a year for any period when that base rate is below 0%.

9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of

tax as required by law).

9.9 3 Any products the Supplier supplies will remain the Suppliers property until they have been paid for in full. Where payment is not made the Seller will have the right to take the goods back

## **10. Intellectual property rights**

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier.

10.2 The Supplier grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables [in its business.

10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.

10.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

## **11. Data protection**

11.1 The following definitions apply in this clause 11:

(a) Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

(b) Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

(c) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

11.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

11.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Supplier is the Processor.

11.4 Without prejudice to the generality of clause 11.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the Customer for the duration and purposes of the Contract.

11.5 Without prejudice to the generality of clause 11.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:

(a) process that Personal Data only on the documented written instructions of the Customer unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the Customer;

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

(d) not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:

(i) the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;

(ii) the Data Subject has enforceable rights and effective legal remedies;

- (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- (iv) the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
- (e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- (f) notify the Customer without undue delay on becoming aware of a Personal Data Breach;
- (g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- (h) maintain complete and accurate records and information to demonstrate its compliance with this clause 11.

11.6 The Customer consents to the Supplier appointing third-party processors of Personal Data under the Contract. The Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business or incorporating terms which are substantially similar to those set out in this clause 11 and in either case which the Supplier confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.6.

## **12. Confidentiality**

12.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 12.2.

12.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to

whom it discloses the other party's confidential information comply with this clause 12; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

### **13. Limitation of liability**

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

13.1 The restrictions on liability in this clause 13 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

13.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) defective products under the Consumer Protection Act 1987; and
- (e) any other liability that cannot be limited or excluded under any applicable law or regulation.

13.3 Subject to clause 13.2, the Supplier's total liability to the Customer in respect of all breaches of duty occurring shall not exceed the cap.

13.4 In clause 13.3:

- (a) **cap.** The cap is the total charges for the Goods or Services which are the subject matter of the breach/claim in question;
- (b) **total charges.** The total charges means all sums paid by the Customer and all sums payable under the Contract in respect of Goods or Services that were the subject matter of the breach/claim in question.

13.5 This clause 13.5 sets out specific heads of excluded loss:

- (a) clause 13.5(b) excludes specified types of loss.
- (b) The following types of loss are wholly excluded:
  - (i) loss of profits;



- (ii) loss of sales or business;
- (iii) loss of agreements or contracts;
- (iv) loss of anticipated savings;
- (v) loss of use or corruption of software, data or information;
- (vi) loss of or damage to goodwill; and
- (vii) indirect or consequential loss.

(c) The Supplier shall have no liability to the Customer for any loss if such loss arises out of or in connection with any missing, incorrect, inaccurate or misleading information provided (or not provided) by the Customer to the Supplier in connection with the Contract, the Goods and/or the Services.

(d) The Supplier shall have no liability to the Customer for any loss if such loss arises out of or in connection with any advice, information or services provided by the Supplier to the Customer prior to the Commencement Date.

13.6 The Supplier has given commitments as to the Goods and Services and, in view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract. Further, any other representation, condition or warranty which is or might be implied into the Contract by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, the Supplier gives no representation, warranty or condition that the Goods and/or Services are or will be suitable for any particular purpose.

13.7 This clause 13 shall survive termination of the Contract.

#### **14. Termination**

14.1 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

- (a) the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 10 days after receipt of notice in writing to do so; or
- (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose

of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

(c) the Customer's financial position deteriorates to such an extent that, in the Supplier's reasonable opinion, the Customer's ability to fulfil its obligations under the Contract are placed in jeopardy.

14.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

14.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.1(b) or the Supplier reasonably believes that the Customer is about to become subject to any of them.

## **15. Consequences of termination**

15.1 On termination of the Contract:

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

(b) the Customer shall return all of the Supplier Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

15.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## **16. Force majeure**

Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, the party not affected may terminate the Contract by giving 7 days' written notice to the affected party.

## **17. General**

### **17.1 Assignment and other dealings**

(a) The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

(b) The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

**17.2 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 17.2 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

**17.3 Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**17.4 No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

### **17.5 Entire agreement.**

(a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

(c) Nothing in this clause shall limit or exclude any liability for fraud.

**17.6 Third party rights.**

(a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

**17.7 Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

**17.8 Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

**17.9 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.