

stormid

G-Cloud 14

Terms and Conditions of Business

Details of Storm ID's Terms and Conditions of Business for G-Cloud 14 Services
April 2024

43 Constitution Street
Edinburgh
EH6 7BG

+44 (0)131 561 1250
helpdesk@stormid.com
stormid.com

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1. Agreement

between

STORM (ID) LIMITED (“the Company”), a company incorporated under the Companies Act in Scotland (Registered Number SC216070) and having its registered office at 43 Constitution Street, Edinburgh, EH6 7BG (“Storm”);

and

the individual, partnership, organisation or company purchasing Goods and/or Services from the Company (**“the Customer”**),

to

provide software, consultancy or other commercial services as may from time to time be agreed by the parties on the terms and conditions below.

Under this agreement the Company agrees to provide, and the Customer agrees to accept, the Service detailed in this Agreement (“the Service”) in accordance with the Terms of Agreement (the “Agreement”) contained herein.

It is agreed as follows:

1.1. Definitions

In this Agreement, the following words and phrases shall have the following meanings, unless the context requires otherwise:

“Agreement” means the agreement between the Company and the Customer comprising this document and any Statements of Work under it;

“Commencement Date” means the date specified in writing by the Company or the first date upon which the Company provides Services to the Customer if earlier;

“Confidential Information” means the information which has been or will be obtained by one party from the other pursuant to this Agreement which is, or has been, expressly marked as confidential or which is confidential in nature or which is confirmed in writing to be confidential within seven (7) days of its disclosure.

“Charge” means the amount payable by the Customer for the performance of the Services in accordance with this Agreement and any Statement of Work under it, excluding VAT or any other tax imposed during the course of this agreement. This will be invoiced according to the Payment Terms;

“Consultant” means the Company’s personnel who are engaged in providing the Services and whose identity shall be agreed from time to time by the parties;

“Consultant Day” means a unit of eight hours;

“Customer’s Premises” means the premises specified by the Customer and as agreed and recorded in writing by the Company;

“Deliverable” means the documents, reports, the Software, specifications, projects or any items of work and their equivalent to be supplied by the Company or the Consultant under the Agreement and to be agreed between the parties throughout the duration of the Agreement;

“Equipment” means the Customer’s computer equipment and operating system located at the Customer’s Premises;

“Intellectual Property Rights” means copyrights, patents, utility models, trade marks, service marks, design rights (whether registered or unregistered), database rights, semiconductor topography rights, proprietary information rights and all other similar proprietary rights as may exist anywhere in the world;

“Payment Terms” means the terms under which payment for the Service shall be made;

“Services” means all the services performed by and all other obligations of the Company and the Consultant hereunder, including any Services agreed to be undertaken in any Statement of Work.

“Software” means the Product(s) developed by the Company as part of the Services under the terms of this Agreement;

“Termination” means the Terms under which this Agreement may be terminated;

“**VAT**” means Value Added Tax

“**Statement of Work**” means any written document provided by the Company setting out the scope of Services to be undertaken, headed 'Statement of Work' and signed by a Director of the Company.

1.2. In this Agreement

- i. any reference to a notice is to a written notice;
- ii. headings are for convenience only and do not affect the interpretation of the Agreement;
- iii. words importing the singular include the plural and vice versa;
- iv. expressions in the masculine include the feminine and vice versa and reference to persons shall include corporations unincorporated associations and partnerships and vice versa.

2. Duration of the agreement

The Company shall provide the Services to the Customer during the term of the Agreement which shall be the period from the Commencement Date until the Agreement is terminated under clause 10.

3. Performance of Services

3.1. Services

- i. The Company shall ensure that its Consultant in the performance of the Services complies with all the terms and conditions of the Agreement.
- ii. These conditions apply to all Company provision of Services and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing signed by a Director of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not confirmed in writing by a Company Director.
- iii. Each request for Services or acceptance of a quotation or proposal for Services by the Customer from the Company shall be deemed to be an offer by the Customer to buy Services subject to these conditions. No order placed by the Customer shall be deemed to be accepted by the Company until a

written acknowledgement of order or Statement of Work (including by email) is issued by the Company or (if earlier) the Company delivers Services to the Customer. The Customer shall ensure that the terms of any order and specification of Service requirements are complete and accurate.

- iv. The Company and its Consultant shall perform the Services specified in any written Statement of Work supplied by the Company from time to time from the Commencement Date in accordance with all applicable provisions of this Agreement.

3.2. Level of Services

The Company shall procure that relevant skilled Consultants shall be provided to undertake such hours as may be agreed, a Consultants normal working week, for the purpose of this Clause means forty (37.5) hours per week during the required period in the performance of the Services, unless otherwise agreed in writing by the Company. The Company acknowledges that Consultants may be required to work outside normal business hours as may be reasonably requested by the Customer, in the absence of written agreement to the contrary the Company shall be entitled to charge the Customer for all time expended.

3.3. Standard of Services

- i. Any complaints which the Customer may have concerning the performance of Services by the Consultant should be notified as soon as reasonably practical to the Company.
- ii. Whilst working on the Customer's Premises, the Consultant will comply with the normal rules and regulations (in so far as the Consultant has been notified by the Customer of these) governing the Customer's staff, provided always that the Customer shall permit the Consultant to have access to the Customer's Premises to undertake Services.

3.4. Intellectual Property Rights

- i. Subject to Clause 3.4(ii) the Company will retain all Intellectual Property Rights arising in the course of the performance of the Services and grants the Customer a licence to use such Intellectual Property Rights to the extent required for such performance.
- ii. The provisions of Clause 3.4(i) are subject to the Customer paying the Company in full all Contract Charges, following such time the Intellectual

Property Rights shall be hold jointly. Each party will hold such rights separately from the other and each may deal with such rights independently and without the consent of the other.

4. Fees and Expenses

4.1. Charges and Payment

- i. The Customer shall pay the Company the Contract Charges at the daily rates set out in any Statement of Work plus Value Added Tax or any equivalent tax which shall be charged in addition to the Contract Charge. If any Services are commenced without a Statement of Work the Contract Charges shall be calculated on the Company's then prevailing standard rate card tariff.
- ii. Unless otherwise stated in a Work Order or as agreed between the parties, upon each anniversary of this Agreement the Company may vary the Contract Charges set out in any Statement of Work by no more than the rate of change of the Retail Prices Index for the year preceding the anniversary concerned.
- iii. In addition to the daily rates set out in Clause 4.1(i) the Customer will reimburse the Company for reasonable travel and hotel expenses incurred by any Consultants in providing the Services.
- iv. The Company will maintain accurate records of the time spent by each Consultant.
- v. The Company will invoice the Customer monthly in arrears. Each invoice shall specify the Services and any expenses. Payment shall be due thirty (30) days following receipt by the Customer of a valid VAT invoice.
- vi. The Company shall be entitled to charge interest on invoice sums outstanding for more than thirty (30) days from the date of invoice at the rate of 2.5% per month both before and after the judgement from the date of invoice until payment in full has been received by the Company in cleared funds.
- vii. Any claim or counter claim or alleged claim or counter claim shall not entitle the Customer to withhold payment.

4.2. Tax

- i. All sums due to the Company under the Agreement are exclusive of VAT, if any, which shall be charged in addition thereto in accordance with the relevant regulations in force at the time of making the relevant taxable supply

and shall be paid by the Customer against receipt from the Company of a valid Value Added Tax invoice in respect thereof.

- ii. The Company shall be responsible for and shall account for all its own tax including any income tax, National Insurance contributions and VAT to the relevant tax authorities.

5. Customer's Responsibilities

- 5.1 The Customer will provide the Company with such information as it may reasonably need concerning the Customer's operations and answers to queries, decisions and approvals which may be reasonably necessary for the Consultant to undertake the Services. The Customer is responsible for ensuring that such information and answers are accurate and complete.
- 5.2 The Customer will provide free of charge the following facilities to the Company and its Consultant throughout the Customer's normal business hours and at such other times as the Customer authorises after reasonable prior notice from the Company and/or its Consultant (such authorisation not to be unreasonably withheld or delayed):
 - 5.2.1 access to and use of the Equipment;
 - 5.2.2 access to the Customer's employees and the Customer's Premises;
 - 5.2.3 all electric power, lighting, heating and air conditioning at the Customer's Premises reasonably needed by the Consultant to perform the Services;
 - 5.2.4 to the extent the Consultant needs to work on the Customer's Premises, office space readily accessible to the Equipment which is suitable for this purpose and the provision of normal office services, including first aid, photocopying and telephone, (but excluding any secretarial support, typing and photocopying facilities needed to produce any documentation for which the Consultant is responsible) and such facilities may be used only for the purpose of the Services;
 - 5.2.5 competent operators for the Equipment.
- 5.3 The Customer will be responsible for ensuring that the Equipment is properly installed and is sufficient and suitable for its purpose and that any adjustments which may be required are carried out expeditiously. The Customer is responsible at its own expense for the prompt and continuing availability to the Consultant of the Equipment and any other computing facilities to be provided by the Customer in good working order throughout the duration of this Agreement.

- 5.4 The Customer will ensure that all software other than the Deliverables which is used on the Equipment is either the property of the Customer or legally licensed to the Customer and that the Consultant is permitted to use such software.
- 5.5 The Company may suspend Services carried out at the Customer's Premises if the Company reasonably believes conditions at the Customer's Premises represent a health or safety hazard to any of the Consultants.
- 5.6 The Customer acknowledges that if it has asked for or approved the inclusion of any third party software in the Deliverables; the Customer shall be responsible, unless the Company has otherwise specifically agreed in writing, for the cost of and for obtaining the necessary licence(s) pertaining to that third party software.

6. Skill and Care

The Company warrants that for the term of the Agreement the Services will be performed using reasonable skill and care in a timely and professional manner using appropriately skilled, qualified and experienced personnel. The Services to be provided under this Agreement shall be provided on a time and materials basis only, unless specifically agreed to the contrary in writing signed by a director of the Company. The Company shall not be responsible for providing any Deliverable unless specifically stated in a Statement of Work.

7. Hosting and Managed Services

- 7.1 For hosting or subscription services involving the Customer's or an end user's access to and/or use of a software, application or website on a server owned by the Company or one of the Company's suppliers or sub-contractors, the Company will make such services available for access or use in accordance with service levels specified in the applicable Statement of Work or as otherwise expressly agreed in writing by the parties. However, in each case, the Company's service levels cannot be more onerous on the Company than the applicable service level commitments of its applicable supplier or sub-contractor.
- 7.2 If the Services and/or Deliverables from the Company under the applicable Statement of Work involve using or incorporating a hosting, managed or other such service and/or deliverable (in each case a "Cloud Service") from a "cloud" service or platform provider (a "Cloud Service Provider"):

- 7.2.1 the use of, and access to the Services is subject to the Company continuing to have access to such Cloud Service from the Cloud Service Provider;
 - 7.2.2 a failure, fault, delay or unavailability of any kind in any Cloud Service will be treated as a Force Majeure Event for the purposes of the applicable Statement of Work;
 - 7.2.3 The Company will be recorded as Digital Partner of Record for all related Azure Subscriptions (the Company's Microsoft Partner ID (MPN ID));
 - 7.2.4 the Customer will comply with all applicable acceptable use and similar flow-down terms from the Cloud Service Provider which the Cloud Services Provider is entitled to directly enforce; and
 - 7.2.5 the Customer will provide such information and co-operation as the Company needs to comply with its obligations owed to the Cloud Service Provider.
- 7.3 The Customer will be the legal owner of the data within the hosted/managed system that is uploaded by or for the Customer.
- 7.4 On termination of the applicable Services incorporating the Cloud Service (in addition to other applicable terms in the applicable Statement of Work):
- 7.4.1 The Company will hand over the account to the Customer within 30 (thirty) days or such longer time period expressly specified in the applicable Statement of Work.
 - 7.4.2 The Company will transfer the data/account to the Customer using the method recommended by the Cloud Services Provider at the time.
- 7.5 The Customer will comply with any additional flow-down terms required by the Cloud Service Provider. These will be specified in the applicable Statement of Work or as otherwise expressly agreed in writing by the parties.

8. Limitation of liability

- 8.1 The Company shall not be liable for any Third-Party claims against the Customer for losses or damages; loss or damage to the Customer's records or data, any specific incidental or indirect damages, or for any consequential damages (including loss of earnings profits or savings) even if the Company is informed of their possibility.
- 8.2 Except in respect of injury or death of any person (for which no limit applies) the liability of the Company under this agreement in respect of each event or

series of connected events shall not exceed the value of the previous twelve (12) months of Service spend.

- 8.3 The Customer is responsible for the consequences of any use of the Deliverables. In relation to this Agreement and any obligations, Services or Deliverables the Company will not be liable for any indirect or consequential loss, damage, cost or expense of any kind whatever and however caused, whether arising under contract, tort (including negligence) or otherwise including (without limitation) loss of production loss of or corruption to data loss of profits or of contracts loss of operation time and loss of goodwill or anticipated savings, even if the Company has been advised of their possibility.
- 8.4 The Customer agrees that except as expressly provided in clauses 9, 10 and this clause 8 the Company will not be under any liability of any kind whatever and however caused arising directly or indirectly in connection with Services or Deliverables or any obligation under this Agreement. The Customer will indemnify the Company in respect of any third party claim for any injury, loss, damage or expense occasioned by or arising directly or indirectly from the Customer's possession, operation, use, modification or supply to a third party of the Deliverables and any part of them or Services provided under or in connection with this Agreement except and in so far as the Consultant is liable as expressly provided for in this Agreement.
- 8.5 The Customer acknowledges and agrees that the allocation of risk contained in this clause 8 is reflected in the Contract Charges and is also a recognition of the fact that, inter alia, any Deliverable cannot be tested in every possible combination and therefore the Company does not warrant that the operation of any Software provided (or code or work under taken on Software) will be uninterrupted or error free and it is not within the Company's control as to how and for what purpose the Deliverables are used by the Customer.

The provision of this Clause 8 shall survive termination and/or expiry of this Agreement.

9. Confidentiality

- 9.1 Each of the parties undertake to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to the entering into or the performance of this Agreement.
- 9.2 Each of the parties undertakes to the other to take all such steps as from time to time may be necessary to ensure compliance with the provisions of this Clause by its employees, agents or sub-contractors. The obligations as to confidentiality shall survive any termination of this Agreement.

- 9.3 Either party shall immediately inform the other if it becomes aware of the possession, use or knowledge of any of the Confidential Information by any unauthorised person, whether during or after the term of the Agreement and shall provide such reasonable assistance as is required to deal with such event.

10. Termination

- 10.1 The Company or the Customer may terminate this Agreement immediately by written notice if the other commits a material breach of any provision of the Agreement which breach is either incapable of remedy, or if capable of remedy, is not remedied within twenty-one (21) days of written notice being given to remedy such breach. Such notice shall be given by recorded postal delivery.
- 10.2 Either party may terminate this Agreement immediately by written notice if the other party enters into liquidation or dissolution otherwise than for the purpose of an amalgamation or reconstruction (and in the case of the Company for this purpose the Customer's prior written consent will have to be obtained (such consent not to be unreasonably withheld or obtained); or ceases to carry on business; has a receiver or administrator appointed over all or any part of its assets or undertakings; enters into any compromise or arrangement with its creditors; or takes or suffers any similar action in consequence of a debt or other liability.
- 10.3 This agreement will terminate at the end of the Contract Term. All work performed by the Company (to the extent that such work has been performed and remains unpaid) up to the date on which the Company ceases work under the terms of this Agreement shall be immediately invoiceable by the Company on a time and materials basis and the Customer expressly agrees to pay such invoice upon receipt. Any unused hours remaining at the date on which the Company ceases work will not be credited back to the Customer.
- 10.4 Upon termination the Equipment and Software detailed will be decommissioned and the Customer is required to cover the costs of decommissioning.
- 10.5 In the event that the Agreement is terminated for whatever reason, each party upon receiving a specific written request in writing from the other shall return to the other party all property belonging to the other party then in its possession. The termination of the Agreement as provided for herein shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- 10.6 If this Agreement is terminated in addition to any other remedies that may be available to the Company either under the Agreement or otherwise (and

without prejudicing such rights) the Company shall be entitled to immediately invoice for unpaid work. The Customer will pay the Company all monies properly due together with any monies incurred by the Company in the performance of the services at the date of termination of the Agreement.

11. Data protection

11.1. Definitions

In this Clause the following definitions shall apply and shall be construed accordingly:

Term	Definition
“Customer Personal Data”	means Personal Data (or any part of such Personal Data) which is: (a) transmitted by or on behalf of Customer to, or is otherwise Processed by, Company under this Agreement (and whether relating to Customer a third party); or (b) generated under this Agreement.
“Data Protection Legislation”	means: (a) the Data Protection Act 2018; and (b) the UK GDPR or any replacement legislation applicable in the United Kingdom from time to time, and in each case, where applicable, any guidance and codes of practice issued by the Supervisory Authority.
“Data Subject”	has the meaning set out in the Data Protection Legislation;
“UK GDPR”	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 written into British Law with technical amendments on 31 December 2020. The previous EU GDPR standard contractual clauses automatically became valid for restricted transfers under the UK GDPR on 31 December 2020. You are permitted to make changes to them so they make sense for restricted transfers under the UK GDPR (see Schedule 21 of the updated Data

	Protection Act 2018). In this document we have made those suggested changes for you;
“GDPR Effective Date”	if the above changes are made - this date would then be UK GDPR Effective Date and quoted as 31 December 2020;
“Personal Data”	has the meaning set out in the Data Protection Legislation;
“Personal Data Breach”	means an act or omission leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Customer Personal Data;
“Processing”	has the meaning set out in the Data Protection Legislation and “Process” and “Processed” shall be construed accordingly;
“Processor”	has the meaning given in the Data Protection Legislation;
“Sub-Contractor”	means “another processor” as defined within Article 28 of the UK GDPR;
“Supervisory Authority”	means the UK’s Information Commissioner’s Office or replacement authority responsible for the monitoring and enforcement of the Data Protection Legislation.

11.2. Effective date

- i. On and from the UK GDPR Effective Date references in Clause 3.18 (Data Protection) to specific Articles or Chapters of the UK GDPR shall be construed as references to the equivalent provisions in the UK GDPR or, if relevant, then-current Data Protection legislation.
- ii. On and from the UK GDPR Effective Date the obligations set out in Clause 3.18 (Data Protection) shall take effect.

11.3. Processing activities and status of Customer and Company

Customer and Company acknowledge that:

- i. Customer and Company will perform Processing activities in relation to Customer Personal Data as part of the Service, the subject-matter, duration, nature, type of Personal Data, categories of Data Subjects and purpose of which are described more fully in a data processing exhibit appended to the Statements of Work under the Agreement (the "Processing Activities"); and
- ii. in respect of such Processing Activities, the Customer is the Controller and the Company is the Processor for the purposes of the Service and the Data Protection Legislation.
- iii. Company shall at all times comply with the provisions of the Data Protection Legislation in connection with this Agreement and its performance of the Service (including the Processing Activities).
- iv. Company represents warrants and undertakes that:
 - a. it is not and at all times will not be in breach of any laws of the country in which Customer Personal Data will be processed which would prevent Company from processing Customer Personal Data or would give rise to a liability for Customer; and
 - b. it shall not cause any breach by Customer of any Data Protection Legislation.

11.4. Company's obligations

The Company shall:

- i. Implement and maintain appropriate technical and organisational measures in such a manner that the Processing Activities will meet the requirements of the Data Protection Legislation and ensure the protection of the rights of the relevant Data Subjects (and shall, upon Customer's requests, provide a written description of the same).
- ii. Provide Customer with details of the technical and organisational security measures that any of the Company's Sub-Contractors who process Customer Personal Data have in place to protect the Customer Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access which shall as a minimum meet the standards set by ISO IEC 27001 and ISO IEC 27002 (the "Minimum Security Standard")
- iii. Carry out regular security audits of its technical and organisational security measures and shall procure that any approved Sub-Contractors carry out the same in respect of their technical and organisational security measures to ensure that they do not fall below the Minimum Security Standard and shall, on request, provide copies of the reports of such audits to Customer. If such

audits show any non-compliance, the Company shall remedy such breaches of the Minimum Standards forthwith at its own expense.

The Company shall:

- a. process the Personal Data only in accordance with the Statement of Work and where appropriate the Customer's documented instructions from time to time (save that the Company shall not be obliged to process Personal Data where it reasonably believes carrying out such instruction would itself result in a breach of Data Protection Legislation) and only to the extent necessary to discharge its obligations under this Agreement and/or as specifically instructed in writing by Customer
- b. in relation to any persons authorised to Process (or who may otherwise have access to) Customer Personal Data on Company's behalf ensure that such persons adhere to the terms of this Agreement and ensure that its staff and any persons authorised to process the personal data have committed themselves to confidentiality through a written agreement with the Company
- c. at any time during normal office hours on reasonable prior written notice permit Customer authorised employees and auditors to have access to the records, staff and sites used in connection with this Agreement in order to carry out such audits as Customer deems appropriate. An audit may be conducted no more frequently than twice annually unless there is an event in which Customer suspects that any fraudulent activity or material breach of this Agreement has occurred (or might occur) in connection with this Agreement, or requires audit rights in order to comply with any Applicable Laws, the Company shall provide the access and audit rights described in this Clause immediately and at any time. The Company shall bear its own costs of an audit where such audit arises as a result of a breach or suspected breach of Data Protection Legislation and shall implement any remedial action an audit reasonably identifies as necessary at its own cost
- d. taking into account the nature of the Processing Activities, assist Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of Customer's obligation to respond to requests for exercising a Data Subject's rights in accordance with Chapter III (Rights of the Data Subject) of the UK GDPR
- e. at no additional cost to Customer provide all assistance, cooperation and information requested by Customer in ensuring and demonstrating compliance with the Data Protection Legislation, including without limitation obligations under the following Articles of the UK GDPR: Article 5; Article 24.1, (including without limitation in meeting any

Customer accountability obligations; Article 12; Article 25; Article 30; Article 32; Article 33; Article 34; Article 35; Article 36

- f. not engage a Sub-Contractor that will be processing Customer Personal Data without prior specific written consent from Customer. If written consent is given by Customer, the Company shall inform Customer of any intended changes concerning the addition or replacement of the Sub-Contractor: any such change will be in strict compliance with this Sub-Clause. Sub-contracting shall not relieve the Company of its responsibility for meeting its obligations in connection with this Agreement and the Company shall be liable for all acts and omissions of its sub-contractors. The Company will impose obligations on the Sub-Contractor which are no less onerous than those set out in this Clause 13.18 (Data Protection)
- g. not transfer Customer Personal Data to a third country that is outside the United Kingdom without the prior written consent of Customer
- h. at the choice and in a format acceptable to Customer permanently delete, destroy or return at its own cost, all of the Customer Personal Data to Customer following termination or expiry of this Agreement and delete existing copies of such Customer Personal Data unless (and only to the extent) the Company is required to retain copies in order to comply with applicable law; and
- i. immediately inform Customer in writing:
 - i. if, in its opinion, an instruction or request by or on behalf of Customer infringes the Data Protection Legislation or Union or Member State European Economic Area data protection provisions:
 1. in the event that it becomes aware of any breach or potential/threatened breach of the Data Protection Legislation it causes (including its sub-processors) in connection with this Agreement; and
 2. of any provisions in any local law or of any changes in the laws of the country in which Customer Personal Data is processed which does or could affect Company's ability to perform its obligations under this Clause 3.18 (Data Protection) or which does or may give rise to a liability for Customer.

11.5. Data Breach Notification

The Company shall:

- i. notify Customer without undue delay after becoming aware of a Personal Data Breach. Such notification shall:
- ii. describe the nature of the Personal Data Breach, including where possible the categories and approximate number of Data Subjects concerned and the categories and approximate number of the Customer Personal Data records concerned; and
- iii. describe the measures taken or proposed to be taken by Company to address the Personal Data Breach, including where appropriate measures to mitigate its possible adverse effects.

11.6. Indemnity

- i. The Company shall indemnify and keep indemnified and defend at its own expense Customer against all costs, claims, damages, fines or expenses (including legal fees) incurred by Customer or for which Customer may become liable arising out of any failure by Company (or its employees, contractors (including Sub-Contractors), or agents) to comply with any of its obligations under this Clause (Data Protection).
- ii. Subject to Clause 11.6.iii, each party agrees to indemnify and keep indemnified and defend at its own expense the other party against all costs, claims, damages, fines or expenses (including reasonable legal fees) incurred by the other party or for which the other party may become liable due to any failure by the first party (or its employees and contractors to comply with any of its obligations under this Clause (Data Protection)).
- iii. Nothing in this Clause (Data Protection) shall restrict or limit either party's general obligation at law to mitigate a loss it may suffer or incur as a result of an event that may give rise to a claim under this indemnity.

12. Personnel

- 12.1 Personnel provided under this agreement will remain under management of the Company.
- 12.2 The Customer shall not make any offer or employment, directly or indirectly, nor attempt to entice any employee of the Company, who has been engaged in the provision of services to the Customer, away from the employment of the Company. This obligation exists throughout the life of this contract and shall persist for period of 12 months beyond its termination. If this Clause is

breached, then damages payable to the Company shall be determined by the cost of replacement of any such employee and any loss of profit or goodwill caused by the loss of the employee.

- 12.3 The Company shall not make any offer of employment, directly or indirectly, nor attempt to entice any employee of the Customer, who has been engaged in the provision of this service, away from the employment of the Customer. This obligation exists throughout the life of this Agreement and shall persist for a period of 12 months beyond its termination. If this Clause is breached, then damages payable to the Customer shall be determined by the cost of replacement of any such employee and any loss of profit or goodwill caused by the loss of the employee.

13. Force majeure

- 13.1 Neither party shall be liable for failure to perform its obligations under this Agreement if such failure results from circumstances beyond its reasonable control.
- 13.2 In the event of either party being so delayed or prevented from performing its obligations such party shall:
- a. Give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the Commencement Date and extent of such delay or prevention, the cause thereof and its estimated duration;
 - b. Use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under this agreement; and
 - c. Resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention

14. Dispute resolution

- 14.1 If a dispute arises between the parties during the Term of this Agreement in relation to any matter which cannot be resolved by operational management, the following procedures will apply:
- i. The dispute shall be referred by either party to the following escalation procedure. "Escalation Procedure";

- ii. A dispute referred for determination to the Escalation Procedure shall be resolved by referral in the first instance to the decision of a Director of the Company and/or the named Customer contact of the Customer.
- iii. If the dispute cannot be satisfactorily resolved between such people it will be escalated accordingly, and if it remains unresolved, prior to commencing litigation the parties will, with the help of the Centre of Effective Dispute Resolution (CEDR), seek in good faith to resolve it by alternative dispute resolution. If the parties fail to agree terms of settlement within thirty (30) days of the commencement of the procedure then either party will have the option thereafter of commencing litigation and the parties hereby submit to the non-exclusive jurisdiction of the Scottish Courts, provided that the obligation to attempt to resolve a dispute by alternative dispute resolution will not prevent either part from seeking relief by interdict in the case of a breach of threatened breach of confidentiality or an infringement or threatened infringement of intellectual property rights.

15. Entire agreement

This Agreement supersedes all previous conditions, understandings, commitments, agreements or representations (other than fraudulent misrepresentations) whatsoever whether written or oral relating to the subject matter hereof and constitutes agreement between the parties relating to the subject matter hereof.

- 15.1 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 15.2 No part of this Agreement shall survive termination or expiry of this Agreement, save for clauses 1, 4 and 6-15.
- 15.3 This Agreement shall be governed, construed and shall take effect in accordance with the laws of Scotland, subject to the exclusive jurisdiction of the Scottish Courts.