

Howell Technology Group Limited Terms and Conditions of Business

The Customer's attention is particularly drawn to the provisions of clause 13.

1. Interpretation

1.1. The definitions and rules of interpretation in this condition apply in these terms and conditions

"Business Day" a day other than 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 16.1.

"Contract" the contract between HTG and the Customer for the supply of Equipment and/or Software Licences and/or Professional Services and/or Managed Services in accordance with these Conditions.

"Contract Term" the period of time for which the Contract shall remain in force as stated in the Order Confirmation.

"Customer" the person, firm or company who purchases the Equipment and/or Professional Services and/or Managed Services and/or Software Licences from HTG as named in the Order Confirmation.

"Data Protection Legislation" means: (i) to the extent the UK GDPR (as defined in the Data Protection Act 2018) applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data; and (ii) to the extent the General Data Protection Regulation ((EU) 2016/679) applies, the law of the European Union or any member state of the European Union to which HTG is subject, which relates to the protection of personal data..

"Data Controller", "Data Processor", "Data Subject" and "Personal Data" shall have the meaning as set out in the Data Protection Legislation.

"Delivery Location" has the meaning set out in clause 3.3.

"Equipment" the IT equipment, hardware and other goods (or any part of them) as set out in the Order Confirmation.

"Force Majeure Event" has the meaning given in clause 16.2.

"HTG" means Howell Technology Group Limited (CRN: 05520670) and having its registered office at Unit 6 Apollo Court, Koppers Way, Monkton Business Park South, Hebburn, Tyne And Wear, NE31 2ES

"HTG Materials" has the meaning set out in clause 7.1.5.

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

"Managed Services" the support services which HTG will provide to the Customer as set out in the Statement of Work and/or Order Confirmation.

"Normal Working Hours" means 9:00 a.m. to 5:00 p.m. on a Business Day unless stated otherwise in the Statement of Work, Quotation and/or Order Confirmation.

"Order" the Customer's order for the supply of Equipment and/or Professional Services and/or Managed Services and/or Software Licences as set out in the Customer's order form, or the Customer's acceptance of a Statement of Work or Quotation by HTG, as the case may be.

"Order Confirmation" HTG's written acceptance of the Order in accordance with clause 2.2.

"Out of Hours" means any time outside Normal Working Hours.

"Professional Services" any or all of the services consisting of IT solution design, migration of IT systems, software installation, system implementation, supplied by HTG to the Customer as set out in the Order Confirmation, but excluding the Managed Services.

"Quotation" means the description of the Equipment and/or Software Licences and/or Professional Services and/or Managed Services which may be provided by HTG to the Customer where no Statement of Work is provided.

"Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

"Service Level Agreements" means the service level agreement(s) for the Managed Services as set out in or referenced in the Statement of Work and/or Order Confirmation.

"Software Licences" the licences to use third party software, cloud based platforms and other systems set out in the Order Confirmation.

"Statement of Work" means the description or specification for the Equipment and/or Software Licences and/or Professional Services and/or Managed Services which may be provided by HTG to the Customer.

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

- 1.2. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.3. Any phrase introduced by the terms "including", "include", "in particular" or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

- 1.4. A reference to "writing" or "written" excludes fax and email.

2. **Basis of contract**

- 2.1. The Order constitutes an offer by the Customer to purchase Equipment and/or Professional

Services and/or Managed Services and/or Software Licences in accordance with these Conditions.

- 2.2. The Order shall only be deemed to be accepted when HTG issues the Order Confirmation at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.3. Any descriptive matter or advertising issued by HTG or contained on HTG's website in relation to the Equipment and/or Professional Services and/or Managed Services and/or Software Licences are issued or published for the sole purpose of giving an approximate idea of the Equipment

and/or Professional Services and/or Managed Services and/or Software Licences described in them. They shall not form part of the Contract or have any contractual force.

- 2.4. Any Quotation and/or Statement of Work given by HTG shall not constitute an offer, and is only valid for a period of 30 days from its date of issue, unless otherwise stated on the Quotation or Statement of Work as the case may be.
- 2.5. These Conditions shall apply to and be incorporated in the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, customer, practice or course of dealing.
- 2.6. Except as set out in this Contract, all warranties, conditions, terms and undertakings, express or implied, whether by statute, common law, custom, trade usage, course of dealings or otherwise (including without limitation as to quality, performance or fitness or suitability for purpose) in respect of the Equipment and/or Professional Services and/or Managed Services and/or Software Licences to be provided by HTG under this Contract are excluded to the fullest extent permitted by law.

3. **Equipment**

- 3.1. Subject to clause 3.8 and clause 13.2, the Equipment is as described in the Order Confirmation.
- 3.2. Subject to clause 3.8, HTG reserves the right to amend the Equipment ordered by a Customer if required by any applicable statutory or regulatory requirement, and HTG shall notify the Customer in any such event.
- 3.3. HTG shall deliver the Equipment to the location set out in the Order Confirmation or such other location as the parties may agree ("**Delivery Location**") at any time after HTG notifies the Customer that the Equipment is ready.
- 3.4. Delivery of the Equipment shall be completed on unloading the Equipment at the Delivery Location. Risk in the Equipment shall pass to the Customer on completion of Delivery.
- 3.5. Any dates quoted for delivery of the Equipment in the Statement of Work, Quotation and/or Order Confirmation are approximate only, and the time of delivery is not of the essence. HTG shall not be liable for any delay in delivery of the Equipment that is caused by a Force Majeure Event, manufacturer or courier lead times or the Customer's failure to provide HTG with adequate delivery instructions or any other instructions that are relevant to the supply of the Equipment. HTG shall use reasonable efforts to notify the Customer in the event of a delay.
- 3.6. If the Customer fails to take or accept delivery of the Equipment, then except where such failure or delay is caused by a Force Majeure Event, HTG may at its option:
 - 3.6.1. rearrange delivery of the Equipment, provided that HTG may charge the Customer for any

- delivery costs incurred and all related costs and expenses (including insurance) of storing the Equipment until delivery takes place; or
- 3.6.2. resell or otherwise dispose of part or all of the Equipment and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Equipment or charge the Customer for any shortfall below the price of the Equipment.
- 3.7. Title to the Equipment shall not pass to the Customer until HTG receives payment in full (in cash or cleared funds) for the Equipment.
- 3.8. If HTG cannot supply the Equipment ordered by the Customer, it reserves the right to offer alternative equipment of at least equal quality to the Equipment at no extra cost to the Customer. In such circumstances, where the Customer does not wish to accept any alternative equipment offered, it shall be entitled to cancel the Order and receive a full refund of any charges paid to HTG (including delivery costs). This remedy is intended to be the sole and exclusive remedy of the Customer in such circumstances.
4. **Supply of Professional Services**
- 4.1. HTG shall supply the Professional Services to the Customer in accordance with the Statement of Work in all material respects.
- 4.2. HTG shall use reasonable endeavours to meet any performance dates for the Professional Services specified in the Statement of Work and/or Order Confirmation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Professional Services.
- 4.3. HTG reserves the right to amend the Statement of Work 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 Professional Services and HTG shall notify the Customer in any such event.
- 4.4. HTG warrants that:
- 4.4.1. the Professional Services will be provided using reasonable care and skill;
- 4.4.2. for a period of 30 days from the Completion Date (defined below), the Professional Services shall conform in all material respects with their description as set out in the Statement of Work and shall be free from material defects.
- 4.5. Unless specified in the Statement of Work, the Professional Services shall not include any electrical, network or external communications infrastructure, cabling specification or installation.
- 4.6. Upon completion of the Professional Services, HTG will notify the Customer of the same ("**Completion Date**"). If in the reasonable opinion of the Customer, the Professional Services do not conform to the Statement of Work, the Customer shall notify HTG of such failure within 3 Business Days of the Completion Date and HTG shall re-perform or correct the Professional Services to make them compliant. If the Customer fails to give notice within 3 Business Days of completion of the Professional Services, they shall be deemed accepted by the Customer.
5. **Supply of Managed Services**
- 5.1. HTG shall supply the Managed Services to the Customer in accordance with the Statement of Work and Service Level Agreements.
- 5.2. HTG shall use reasonable endeavours to meet any performance dates for the Managed Services

specified in the Statement of Work and/or Order Confirmation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Managed Services.

- 5.3. When HTG considers that the Managed Services are ready for activation it shall so notify the Customer. Within [three Business Days] of such notification the Customer shall review the operation of the Managed Services to confirm that they function in material conformance with the Statement of Work. If the Managed Services fail in any material respect to conform with the Statement of Work, the Customer shall give HTG a detailed description of any such non-conformance ("**Error**") in writing, within such [three Business Day] review period.
- 5.4. HTG shall use reasonable endeavours to correct any Error within a reasonable time and, on completion, notify the Customer that the Managed Services are ready for activation.
- 5.5. If the Managed Services are found to conform with the Statement of Work or if the Customer does not provide any notification of Errors within the [three Business Day] review period described in clause 5.3, the Managed Services shall be deemed accepted by the Customer as from the date of the notification that the Managed Services conform or expiry of such [three Business Day] review period without notification of any Errors (in each case the "**Acceptance Date**").
- 5.6. HTG shall provide the Managed Services from the Acceptance Date [for the period specified in the Statement of Work and/or Order Confirmation] or until termination of the Contract.
- 5.7. The Service Level Agreements shall apply with effect from the start of the first complete calendar month commencing after the Acceptance Date.
- 5.8. HTG undertakes that the Managed Services will be provided to the Customer using reasonable care and skill and in accordance with the Statement of Work and Service Level Agreements in all material respects.
- 5.9. The undertaking in clause 5.8 shall not apply to the extent of any non-conformance that is caused by use of the Managed Services contrary to HTG's instructions, including as set out in the Statement of Work.
- 5.10. If the Managed Services do not conform with the undertaking in clause 5.8, HTG shall, at its expense, use reasonable endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking in clause 5.8.
- 5.11. Notwithstanding the foregoing, HTG does not warrant that the Customer's use of the Managed Services shall be uninterrupted or error-free.
- 5.12. HTG reserves the right to amend the Statement of Work and/or Service Level Agreements 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 Managed Services and HTG shall notify the Customer in any such event.

6. Software Licences

- 6.1. The Software Licences are described in the Order Confirmation.
- 6.2. HTG shall procure the provision of the Software Licences to the Customer which are provided

under the standard licence terms of the relevant third party owner of the software programme covered by the Software Licences, . copies of which shall be provided to or made available to the Customer from time to time by way of these being specified or referenced in the Contract or accepted through "click wrap" terms or other electronic notices, , and the Customer agrees to be bound to the relevant third parties by such licence terms and to indemnify HTG against any breach or non-performance of the same.

- 6.3. The Customer agrees that HTG is not responsible for the performance or non-performance of the software, data centre or hosting services provided under the terms of the Software Licences and that its sole remedy is against the providers of the same in accordance with the Software Licences.
- 6.4. The Customer agrees and acknowledges that the third party providers of Software Licences may collect and process Personal Data arising from the use by the Customer and its employees, agents and contractors, of that Software. The Customer is responsible for ensuring that it abides by all data protection obligations set out in or referred to within the third party Software Licences, and for ensuring that it obtains all required licences, permissions and consents for any processing of Personal Data by those third party providers in accordance with those third party terms.

7. **Customer's obligations**

7.1. The Customer shall:

7.1.1. ensure that the terms of the Order are complete and accurate;

7.1.2. provide in a timely manner:

- 7.1.2.1. such access to the Customer's premises during Normal Working Hours (and Out of Hours where agreed in advance) as is required by HTG to perform the Contract;
- 7.1.2.2. any other facilities and supplies, such as power and computer consumables, as is requested by HTG;
- 7.1.2.3. provide HTG with access (including by remote access) to its hardware, software, facilities and networks as required to allow HTG to provide the Managed Services;
- 7.1.2.4. such information and data as HTG may request, and ensure that such information is accurate in all material respects;

7.1.3. be responsible (at its own cost) for preparing the relevant premises for the supply of the Professional Services and/or Managed Services, including but not limited to, by:

- 7.1.3.1. ensuring that any networking, cabling and sockets are in the correct location and have been tested by the Customer;
- 7.1.3.2. ensuring that any existing equipment which is being utilised or connected by HTG is fully operational, accessible and free from any Viruses;

7.1.4. be responsible for taking reasonable measures to backup or make copies of any data or information provided to or made available to HTG prior to commencement of the Professional Services and/or Managed Services;

7.1.5. keep all materials, equipment, documents and other property of HTG ("**HTG Materials**") at the Customer's premises in safe custody at its own risk, maintain the HTG Materials in good condition until returned to HTG, and not dispose of or use the HTG Materials other than in

- accordance with HTG's written instructions or authorisation; and
- 7.1.6. ensure that any assumptions, dependencies, and obligations under these Conditions and any additional prerequisites, assumptions and obligations as set out in the Statement of Work are fulfilled or complied with as the case may be.
- 7.2. In respect of any Managed Services provided by HTG to the Customer, the Customer:
- 7.2.1. shall not store, distribute or transmit through the Managed Services any material that:
- 7.2.1.1. is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
 - 7.2.1.2. facilitates illegal activity;
 - 7.2.1.3. depicts sexually explicit images; and/or
 - 7.2.1.4. promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment, or any other illegal activity;
- 7.2.2. shall remain responsible for the use of the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer);
- 7.2.3. must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Customer by HTG in writing. This includes informing HTG promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, HTG shall work with the Customer to alleviate the situation as quickly as possible. The parties shall discuss and agree appropriate action (including suspending the Managed Services in whole or in part); and
- 7.2.4. shall not provide the Managed Services directly or indirectly to third parties.
- 7.3. If HTG's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to HTG on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct, indirect or consequential losses, loss of profit and 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 HTG confirming such costs, charges and losses to the Customer in writing.
8. **Change control**
- If either party wishes to change the scope of the Professional Services and/or Managed Services, it shall submit details of the requested change to the other in writing. HTG shall have no obligation to proceed with any change unless and until HTG has agreed in writing on the necessary variations to its charges and any other relevant terms of the Contract to take account of the change.
9. **Charges and payment**
- 9.1. The price for Equipment and/or Software Licences:
- 9.1.1. shall be the price set out in the Statement of Work, Quotation and/or Order Confirmation; and
- 9.1.2. unless stated otherwise in the Statement of Work, Quotation and/or Order Confirmation, shall be exclusive of all costs and charges of packaging, insurance, transport of the

Equipment and/or Software Licences, which shall be invoiced to the Customer.

- 9.2. The charges for Professional Services shall be calculated on a time and materials basis:
 - 9.2.1. the charges shall be calculated in accordance with HTG's daily fee rates, as set out in the Statement of Work, Quotation and/or the Order Confirmation;
 - 9.2.2. HTG's daily fee rates for each individual person are calculated on the basis of Normal Working Hours being worked;
 - 9.2.3. HTG shall be entitled to charge Out of Hours rates as set out in the Statement of Work and/or Order Confirmation for any time worked by individuals whom it engages on the Professional Services outside of Normal Working Hours; and
 - 9.2.4. HTG shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom HTG engages in connection with the Professional Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by HTG for the performance of the Professional Services, and for the cost of any materials.
- 9.3. The charges for Managed Services shall be set out in the Statement of Work, and/or Order Confirmation; and
 - 9.3.1. where a daily fee rate applies, the charges shall be calculated in accordance with HTG's daily fee rates, as set out in the Statement of Work, Quotation and/or the Order Confirmation, and the daily fee rate for each individual person shall be calculated on the basis of Normal Working Hours being worked;
 - 9.3.2. HTG shall be entitled to charge Out of Hours rates as set out in the Statement of Work and/or Order Confirmation for any time worked by individuals whom it engages on the Managed Services outside of Normal Working Hours; and
 - 9.3.3. HTG shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom HTG engages in connection with the Managed Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by HTG for the performance of the Managed Services, and for the cost of any materials.
- 9.4. HTG reserves the right to increase the price of the Professional Services, the Managed Services, the Software Licences or the Equipment (in the case of the Equipment at any time before delivery), by giving notice to the Customer , to reflect any increase in the cost of the Professional Services, the Managed Services, the Software Licences or the Equipment to HTG that is due to:
 - 9.4.1. any factor beyond the control of HTG (including increases in the amounts charged to HTG by its third party suppliers, foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 9.4.2. any request by the Customer to change the delivery date(s), quantities or types of the Professional Services, the Managed Services, the Software Licences or Equipment ordered, or the Statement of Work; or
 - 9.4.3. any delay caused by any instructions of the Customer in respect of the Professional Services, the Managed Services, the Equipment or the Software Licences or failure of the Customer to give HTG adequate or accurate information or instructions in respect of the

Professional Services, the Managed Services, the Software Licences or Equipment.

- 9.5. HTG shall invoice the Customer on the date(s) as set out in the Statement of Work and/or Order Confirmation, or if none are specified:
 - 9.5.1. in respect of Software Licences, on the issue of the Order Confirmation;
 - 9.5.2. in respect of Equipment, on shipment;
 - 9.5.3. in respect of Professional Services, monthly in arrears;
 - 9.5.4. in respect of Managed Services, monthly in advance.
- 9.6. The Customer shall pay each invoice submitted by HTG:
 - 9.6.1. within 30 days of the date of the invoice unless stated otherwise in the Statement of Work and/or Order Confirmation;
 - 9.6.2. in full and in cleared funds to a bank account nominated in writing by HTG; and
 - 9.6.3. time for payment shall be of the essence of the Contract.
- 9.7. 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 HTG to the Customer, the Customer shall, on receipt of a valid VAT invoice from HTG, pay to HTG such additional amounts in respect of VAT as are chargeable on the supply of the Professional Services, Managed Services, Software Licences or Equipment at the same time as payment is due for the supply of the Professional Services, Managed Services, Software Licences or Equipment.
- 9.8. If the Customer fails to make a payment due to HTG under the Contract by the due date, then, without limiting HTG's remedies under clause 14, HTG shall have the right to charge the Customer interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.8 will accrue each day at 3% a year above the Bank of England's base rate from time to time, but at 3% a year for any period when that base rate is below 0%.
- 9.9. 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).

10. Intellectual Property Rights

- 10.1. All Intellectual Property Rights and all other rights in or arising out of or in connection with the Professional Services and/or Managed Services shall be owned HTG.
- 10.2. HTG hereby licenses all such rights to the Customer free of charge and on a non-exclusive, non-transferable and worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Services as is envisaged by the parties.
- 10.3. In so far as HTG provides any third party assets to the Customer in connection with the provision by HTG of any Equipment and/or Software Licences and/or Professional Services and/or Managed Services, any Intellectual Property Rights in such third party assets shall vest in the third party provider and the Customer's rights in relation to such Intellectual Property Rights shall be as set out in the relevant third party's terms, copies of which shall be provided to the Customer, and the Customer agrees to be bound by such third party terms and to indemnify HTG against any

breach or non-performance of the same.

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

11. **Confidentiality**

- 11.1. Each party may be given access to confidential information from the other party concerning the business, affairs, customers, clients or suppliers of the other party in order to perform its obligations under the Contract. A party's confidential information shall not be deemed to include information that:

- 11.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
- 11.1.2. was in the other party's lawful possession before the disclosure;
- 11.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- 11.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.

- 11.2. Subject to clause 11.3, each party shall hold the other's confidential information in confidence and not make the other's confidential information available to any third party, or use the other's confidential information for any purpose other than to perform its obligations under this Contract.

- 11.3. Each party may disclose the other party's confidential information:

- 11.3.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
- 11.3.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12. **Data protection and data processing**

- 12.1. Both parties will comply with all applicable requirements of the Data Protection Legislation.

This clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

- 12.2. The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and HTG is the Data Processor. The Statement of Work and/or Order Confirmation, together with any Service Level Agreement sets out the scope, nature and purpose of processing by HTG, the duration of the processing and the types of Personal Data and categories of Data Subject.

- 12.3. Without prejudice to the generality of clause 12.1, the Customer will ensure that it has all

necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to HTG for the duration and purposes of this Contract.

12.4. Without prejudice to the generality of clause 12.1, HTG shall, in relation to any Personal Data processed in connection with the performance by HTG of its obligations under this Contract:

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

12.4.2. ensure that it has in place appropriate technical and organisational measures, 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); and

12.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential.

12.4.4. 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;

12.4.5. notify the Customer without undue delay on becoming aware of a Personal Data breach;

12.4.6. at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the Personal Data; and

12.4.7. maintain complete and accurate records and information to demonstrate its compliance with this clause 12.

12.5. The Customer hereby provides its prior, general authorisation for HTG to:

12.5.1. appoint processors to process the Customer Personal Data, provided that HTG:

12.5.1.1. shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws;

12.5.1.2. shall remain responsible for the acts and omission of any such processor as if

they were the acts and omissions of HTG; and

- 12.5.1.3. shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to HTG's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify HTG for any losses, damages, costs (including legal fees) and expenses suffered by HTG in accommodating the objection.
- 12.5.2. transfer Customer Personal Data outside of the UK and the EEA as required for the purposes for which the Personal Data is processed by HTG, provided that HTG shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of HTG, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the Commissioner from time to time (where the UK GDPR applies to the transfer).
- 12.6. HTG may, at any time on not less than 30 days' notice, revise this clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).
- 12.7. The Customer's attention is drawn to clause 6.4 which refers to the processing of Personal Data under third party Software Licences.
- 13. Limitation of liability**
 - 13.1. The following provisions set out the entire liability of HTG (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer.
 - 13.2. Notwithstanding anything else contained in the Contract, the Customer acknowledges and agrees that HTG was not the manufacturer of any Equipment and did not develop any software which is provided under the Software Licences and the Customer hereby irrevocably agrees that HTG does not itself give any warranty, guarantee, indemnity, condition or other assurance (whether express or implied) in respect of any such Equipment or software, including any warranty or guarantee or indemnity or condition or assurance that the same are free from defects, of satisfactory quality, or fit for any particular purpose or non-infringing. Notwithstanding the foregoing, where reasonably required by the Customer, HTG shall use its reasonable endeavours to pass on to the Customer the benefit of any warranties, guarantees, indemnities, condition or other assurance as may be given by the applicable third party manufacturer or supplier of any such Equipment or software.
 - 13.3. Where applicable, if service credits are payable under any Service Level Agreement for a failure on the part of HTG, then subject to clause 13.5, these represent the Customer's entire remedy for such failure, and the payment of the same represents the full and final settlement by HTG of its liability in relation to the event giving rise to the service credit claim.
 - 13.4. All warranties, conditions and other terms implied by statute or common law are, to the fullest

extent permitted by law, excluded from the Contract.

13.5. Nothing in these conditions excludes the liability of HTG:

13.5.1. for death or personal injury caused by HTG's negligence;

13.5.2. for fraud or fraudulent misrepresentation.

13.6. Subject to clause 13.5:

13.6.1. HTG shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:

13.6.1.1. loss of profits;

13.6.1.2. loss of sales or business;

13.6.1.3. loss of agreements or contracts;

13.6.1.4. loss of anticipated savings;

13.6.1.5. loss of use or corruption of software, data or information;

13.6.1.6. loss of or damage to goodwill; or

13.6.1.7. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

13.6.2. HTG's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total charges paid under the Contract.

13.7. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.8. This clause 13 shall survive termination of the Contract.

14. **Termination**

14.1. The Contract shall commence on the Commencement Date and remain in force for the Contract Term, unless terminated earlier in accordance with clause 14.2 or 14.3 or unless extended by agreement in writing between the parties.

14.2. Without limiting the other rights or remedies available to it under this Contract, HTG may terminate the Contract with immediate effect by giving written notice to the Customer if:

14.2.1. the Customer commits a material breach of any term of this Contract and (if such a breach is remediable) fail to remedy that breach within 30 (thirty) days of being notified in writing of the breach;

14.2.2. the Customer takes any step or action in connection with entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), a person becomes entitled to appoint a receiver over its assets or a receiver is appointed to any of its assets or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure

- in the relevant jurisdiction;
- 14.2.3. the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - 14.2.4. the Customer's financial position deteriorates to such an extent that in HTG's reasonable opinion, the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 14.3. Without prejudice to any other rights or remedies to which HTG may be entitled, HTG may suspend the provision of any Professional Services, Managed Services and/or Software Licences and/or suspend the Customer's access to any third party platforms where the Customer fails to pay any amount due under this Contract on the due date for payment. If the Customer remains in default for more than 7(seven) days after being notified in writing by HTG to make such payment, HTG may terminate the Contract without any liability to the Customer.
- 14.4. On termination of the Contract and/or any licence under the Contract:
- 14.4.1. the Customer shall immediately pay to HTG all of HTG's outstanding unpaid invoices and interest and, in respect of Professional Services, Managed Services and Equipment supplied but for which no invoice has been submitted, HTG shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 14.4.2. the Customer shall return all of HTG's Materials and any Equipment which has not been fully paid for. 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 the Contract.
- 14.5. Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 14.6. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.
- 15. TUPE**
- 15.1. The Customer warrants, undertakes and represents that none of its employees, nor any employees of any "Customer Party" meaning any of the Customer's group companies, contractors, or suppliers will transfer to HTG pursuant to the Regulations on commencement of the Contract or on commencement of the provision of any of the Services hereunder.
- 15.2. If any contract of employment of any person employed by a Customer Party transfers, or is alleged to have transferred, to HTG, under the Regulations, then HTG shall be entitled to terminate the employment of any such employees, and the Customer shall indemnify HTG in full for and against all claims, costs, expenses or liabilities whatsoever arising incurred or suffered by HTG including all damages, notice pay and compensation, and all legal expenses and other professional fees and VAT thereon, arising from:
- 15.2.1. HTG's termination of employment of those employees;
 - 15.2.2. anything done or omitted to be done in respect of those employees which is deemed to have been done by HTG by virtue of the Regulations;
 - 15.2.3. anything done or omitted to be done by HTG in respect of any of those

employees whether before or after their alleged transfer date to HTG.

16. **General**

- 16.1. **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).
- 16.2. **Force Majeure Event:** HTG shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control.
- 16.3. **Waiver:** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:
 - 16.3.1. waive that or any other right or remedy; or
 - 16.3.2. prevent or restrict the further exercise of that or any other right or remedy.
- 16.4. **Severance:** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 16.5. **Entire agreement:**
 - 16.5.1. This 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.
 - 16.5.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract.
 - 16.5.3. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract.
- 16.6. **Assignment:** HTG may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of our rights under the Contract and may subcontract or delegate in any manner any or all of our obligations under the Contract to any third party or agent. The Customer shall not, without HTG's prior written consent, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- 16.7. **Third party rights:** No one other than a party to this Contract shall have any right to enforce any of its terms.
- 16.8. **Notices:**
 - 16.8.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with

this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, or commercial courier.

- 16.8.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.8.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 16.8.3. The provisions of this clause 16.8 shall not apply to the service of any proceedings or other documents in any legal action.
- 16.8.4. For the purposes of this clause, "writing" shall not include email.
- 16.9. **Non-solicitation.** The Customer shall not (unless with the written consent of HTG) at any time from the date of the Contract, nor within 12 (twelve) months after the termination of the Contract, make direct or indirect unsolicited offers of employment to an employee of HTG who has been engaged in a managerial or technical capacity in connection with the Contract.
- 16.10. **Governing law:** The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales. 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.

