



FIFOSYS LIMITED

MASTER TERMS AND CONDITIONS

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1 INTERPRETATION

1.1 In these Terms of Business (**'these Terms'**):

'Agreement' means the Contract comprising the Order Form together with these Terms;

'Applicable Laws' means all laws, rules, regulations, recommendations, guidelines and codes which impose legal, regulatory or other requirements in respect of all or any of the activities which are relevant to the supply or use of the Goods and/or Services;

'Business Day' means a day on which ordinary banks in London are open for normal business;

'Charges' means Fifosys' charges for the Goods and/or Services, as varied from time to time under clause 11.1, 11.2 or 11.4;

'Client Materials' means any Materials which the Client supplies to Fifosys for the purpose of enabling Fifosys to provide the Goods and/or Services;

'Client Resources' means all facilities, software, data, databases, materials and other resources which are reasonably required to be provided by the Client to enable Fifosys to supply the Goods and/or Services;

'Confidential Information' means, in relation to either party, any information in any form (whether or not stated to be confidential or marked as such) which that party discloses to the other, or which the other party obtains from any information disclosed to it by that party, either orally or in writing or by any other means, under or in connection with these Terms, including any trade secrets, know-how or other information relating to the business, customers, suppliers, investors, finances, operations, products or services of that party;

'Contract' means the contract between parties for the provision of the Goods and/or Services;

'Contract Period' means the period beginning on the Start Date during which the Services will be provided, as specified in the Order Form and for the term set out in the Order Form;

'Data Controller' has the meaning set out in the Data Protection Legislation in force at the time.

'Data Processor' has the meaning set out in the Data Protection Legislation.

'Data Subject' means an individual who is the subject of Personal Data.

'Data Protection Legislation' means all applicable privacy and data protection laws including the General Data Protection Legislation ((EU) 2016/679) (GDPR) and any applicable national laws, regulations and secondary legislation in England and Wales relating to the processing of Personal Data and the privacy of electronic communications, as amended, replaced or updated from time to time, including the Data Protection Act 2018, Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) (Privacy Regulations) as amended by the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2011 (SI 2011/1208), the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2015 (SI 2015/355) and the Privacy and Electronic Communications (EC Directive) (Amendment) Regulations 2016 (SI 2016/524).

'Deliverables' means any Materials which Fifosys supplies to the Client in the course of supplying the Goods and/or providing the Services, including any such Materials which are specified in the Order Form;

'Documentation' means user guide, manuals and other documents provided by Fifosys for the use of the Software;

'End-User' means each person who uses any of the Deliverables or otherwise has personal access to the Goods and/or Services;

'Equipment' means hardware, software, network facilities, telecommunications and other equipment;

'Force Majeure' means, in relation to either party, any circumstances beyond the reasonable control of that party including, without prejudice to the generality of the foregoing, any act of God, war, riot, civil commotion, fire, explosion, flood, adverse weather, epidemic or other natural physical disaster, strike, lock out, or other form of industrial action (whether or not involving that party's own staff), any form of Government or supra-national authority intervention, failure of a utility service, telecommunications or transport network, or default of suppliers or subcontractors, but (for the avoidance of doubt) excluding any general adverse financial circumstances;

'Goods' means any Equipment or other tangible items which are to be supplied by Fifosys for the Client in accordance with the Order Form;

'Implementation Plan' means the plan set out in the Schedules as to how a specific Service is to be implemented with estimated times and scope of work to be undertaken for that plan;

'Inappropriate Material' means any material that under the laws of any jurisdiction where the material can be accessed is, or may reasonably be regarded as:

- (a) indecent, obscene, pornographic, sexually explicit, defamatory, invasive of any individual's privacy, threatening, harassing, abusive, racially, ethnically or otherwise offensive, objectionable or unlawful;
- (b) constituting or encouraging a criminal offence;
- (c) contains a virus, worm, Trojan horse or other harmful code;
- (d) infringing of third party rights (of whatever nature, including any Intellectual Property rights and rights in respect of confidential information);
- (e) in breach of any applicable regulations, standards or codes of practice (notwithstanding that compliance may not be compulsory); or

'Incident' an incident experienced by the Client in relation to its IT system;

'Insolvency Event' means the happening of any of the following in relation to either party:

- (a) that party ceasing to carry on business; or
- (b) an encumbrancer taking possession of, or a receiver or administrative receiver being appointed over or takes possession of, any of the property or assets of that party; or
- (c) that party making a deed of arrangement, composition or voluntary arrangement (within the meaning of the Insolvency Act 1986) with its creditors; or
- (d) a moratorium coming into force (within the meaning of the Insolvency Act 1986) in respect of that party; or
- (e) that party entering into administration or liquidation (except for the purposes of amalgamation or reconstruction and so that the resulting company effectively agrees to be bound by or assume the obligations imposed on that other party under the Contract) or having a winding-up order made against it; or
- (f) anything similar to any of the above under the law of any jurisdiction occurring in relation to that party;

'Intellectual Property' means any patent, copyright, registered or unregistered design right, database right, or any other form of protection, any application for any such protection, any rights of confidentiality in any information, any rights of a similar nature to any of the foregoing in any part of the world, and any extension or renewal of any such protection or rights;

"ITO" means IT officer;

'Licences' means any licences, consents or authorisations required for the supply of the Goods and/or the provision of the Services or their use;

'Location' means the location where the Goods are to be supplied and/or the Services are to be provided, as specified in the Order Form;

‘Materials’ means documents, records, databases, data or other information in any format;

“Month” means a calendar month;

“Notice Period” means the notice period to terminate the Services, or any of them as set out in the Order Form, or if not separately defined in the Order Form, as per clause 19.

‘Order Form’ means Fifosys’ order form setting out the provision of the Goods and Services ordered by the Client (or any amended version of it which is made during the Contract Period) together with any Schedules and annexure to it;

‘Personal Data’ means any personal data (as defined in the Data Protection Legislation) which is disclosed by the Client to Fifosys or otherwise obtained by Fifosys in connection with the Contract;

‘Priority Level’ means the priority level for addressing a particular matter as set out in the Schedules for a particular Service;

“Project Completion Form” means a form supplied by Fifosys to the Customer following an installation of equipment or Services whereby Fifosys confirms in writing to the Customer that installation has been completed;

‘Regulatory Authority’ means any UK or EU governmental or other regulatory body having jurisdiction over the subject matter of these Terms;

‘Schedules’ means the schedules appended to the Order Form setting out, inter alia, the specific services to be provided, the standard rates for those Services and performance targets in relation to those Services;

“Service Cover” means those items that are covered by the Specifications for End User support services as set out in the relevant Schedule;

‘Service Desk’ means the contact person at Fifosys who is designated to assist the Customer but who may be such person or persons as Fifosys designates is able to assist the Customer at any given time;

‘Service Level Credits’ means any service level credits offered by Fifosys to the Company, at its discretion, in accordance with the Schedules or otherwise;

‘Service Levels’ means the service levels, standards or performance targets (if any) applicable to the Services which are set out in the Order Form;

‘Services’ means the services which are to be provided by Fifosys for the Client in accordance with the Order Form;

‘Settlement Period’ means a settlement period of twenty eight days (28) days from the Start Date or such other period as Fifosys may agree in writing to enable the Customer to become acclimated with any new services or equipment following its installation;

‘Software’ means any computer software which Fifosys is to develop or otherwise supply in accordance with the Agreement;

‘Specification’ means the specification for the Goods and/or Services to be provided pursuant to the Contract;

“SPLA” means software provider license agreement;

‘Standard Rates’ means Fifosys’ standard rates for the supply of the Goods and/or the provision of the Services at the relevant time;

‘Start Date’ means the date on which the Contract comes into effect for the relevant Goods or Services, as specified in the Order Form;

‘Supplier’ or “Fifosys” means Fifosys Limited, registered in England and Wales (04308503), whose registered office is at 7 Hampstead West, 224 Iverson Road, London NW6 2HL;

“**Support Time**” the agreed level of support time to be provided by Fifosys to the Customer as set out in the Schedule, any increase in the time required by the Customer, subject to the Terms, will be subject to Fifosys’ standard Charges.

‘**TUPE Regulations**’ means the Transfer of Undertakings (Protection of Employment) Regulations 2006.

1.2 In these Terms, unless otherwise stated:

- 1.2.1 the ‘parties’ means parties or their respective successors or permitted assignees, and a ‘party’ (or a reference to either of them by name) shall be construed accordingly;
- 1.2.2 ‘document’ includes, in addition to a document in writing, any media in or on which any data or other information of any description are contained, stored or recorded in any way;
- 1.2.3 ‘record’ includes an electronic record;
- 1.2.4 ‘writing’ or any similar expression includes fax and e-mail but not text messages;
- 1.2.5 the word ‘including’ shall not be interpreted as limiting the generality of any following words;
- 1.2.6 words denoting the singular include the plural and vice versa, words denoting one gender include the other, and words denoting persons include firms, corporations or other legal entities and vice versa; and
- 1.2.7 a reference to a statute or statutory provision includes that statute or provision as amended, extended, re-enacted or consolidated from time to time and all statutory instruments or orders made pursuant to it.

1.3 The headings in these Terms are for convenience only and do not affect their interpretation.

2 FORMATION OF CONTRACT

- 2.1 These Terms, the Order Form and any other document referred to it, including the Schedules shall form the basis of the Contract, to the exclusion of any other terms or conditions.
- 2.2 No variation of or addition to these Terms or any extension of the Contract shall be binding unless agreed in writing by the parties.
- 2.3 Any description of the Services contained in Fifosys’ current brochure, web site or other promotional literature from time to time is for general information only and does not form part of the Contract, confirmed in writing by parties.
- 2.4 Further details about the Services, and advice or recommendations about their provision or utilisation, which are not given in Fifosys’ current published literature, may be made available on written request, but do not form part of the Contract unless confirmed in writing by Fifosys.
- 2.5 Fifosys may correct any typographical or other errors or omissions in any brochure, promotional literature, quotation or other document relating to the provision of the Services without any liability to the Client.
- 2.6 In the event of any inconsistency between these Terms and the Order Form or any other document which forms part of the Contract, then except as otherwise agreed in writing by the parties, the Order Form will take precedence followed by these Terms.
- 2.7 Fifosys enters into the Contract on the basis that the Client enters into the Contract in the course of its business and the Services are to be used solely for the internal business purposes of the Client. Fifosys does not make the Services available to consumers.

3 SUPPLY OF THE GOODS AND/OR SERVICES

- 3.1 Fifosys shall supply the Goods and/or provide the Services to the Client in accordance with the Order Form, and the Client shall accept and pay for them, subject to these Terms.
- 3.2 Each Order Form and the Charges set out in it given in writing by Fifosys is subject to acceptance in writing by the Client. The Client shall confirm its acceptance of the Order Form and the Charges set out in it in writing to Fifosys within thirty (30) days after it is given, failing which the Order Form shall lapse. The Order Form shall be deemed to be accepted if Fifosys commences providing the Services to the Client and/or the Client requests the provision of any Services or Goods from Fifosys.
- 3.3 Each further Order Form (or separate Schedule if updated or included at a later date following the original Order Form) shall be deemed to constitute a separate supplemental contract for the provision of the Services specified in it and shall remain subject to these Terms.
- 3.4 Any changes or additions to the terms of any Order Form, which includes the Schedules, must be agreed in writing by parties.
- 3.5 Fifosys shall:
 - 3.5.1 provide the Services with reasonable skill, care and diligence and in accordance with all Applicable Laws;
 - 3.5.2 supply the Goods and/or provide the Services in accordance with the Specification;
 - 3.5.3 provide the Services in accordance with the Service Levels;
 - 3.5.4 provide all personnel, materials and facilities (other than the Client Resources) necessary for the proper and efficient supply of the Goods and/or provision of the Services;
 - 3.5.5 ensure that all Fifosys' personnel have the skill, qualifications and expertise necessary to carry out the supply of the Goods and/or the provision of the Services in accordance with the Contract;
 - 3.5.6 make available a sufficient number of Fifosys' personnel to supply the Goods and/or provide the Services and ensure that all Fifosys' personnel are properly supervised;
 - 3.5.7 co-operate with any other third party supplier or service provider of the Client for any purposes connected with Contract, where necessary or as expressly provided in the Order Form; and
 - 3.5.8 obtain and continue to hold all Licences which are necessary for Fifosys to hold in order to supply the Goods and/or provide the Services.
- 3.6 Fifosys shall use its reasonable endeavours to adhere to any timescale for the supply of the Goods and/or the provision of the Services set out in the Order Form, but (except as expressly provided to the contrary in any relevant Service Levels) the time for performance of the Services shall not be of the essence of the Contract, and Fifosys shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay or failure to adhere to any such timescale that are persistent and unreasonable.

4 SPECIFICATION

- 4.1 The Specification should be agreed at the time of the Order Form being agreed and details of the Specification are set out in the Schedules.
- 4.2 Fifosys reserves the right to make any change in the Specification which is necessary in order to comply with any Applicable Laws, or which do not materially affect the nature or quality of the Services, provided that Fifosys promptly informs the Client in writing of any such change that it proposes to make, together with any consequent change to the charges.

- 4.3 If the Client does not notify Fifosys in writing within a reasonable time (not exceeding thirty (30) days) that it agrees any change in the Specification or the Charges proposed by Fifosys, the amended Services or Charges in question shall cease to be subject to these Terms, and where the Services in question form all or a substantial proportion of the Services covered by these Terms, Fifosys may terminate these Terms by giving notice to the Customer.

5 SUPPLIER PERSONNEL

- 5.1 Where the Location is any place other than Fifosys' premises (or those of any supplier or subcontractor of Fifosys), the Client shall:
- 5.1.1 provide Fifosys' personnel with such reasonable access to the Location as is necessary for the provision of the Services; and
 - 5.1.2 make available to Fifosys' personnel the Client Resources.
- 5.2 Where any of Fifosys' personnel are required to attend at any Location other than Fifosys' premises for the purpose of supplying the Goods and/or providing the Services:
- 5.2.1 the Client shall ensure that Fifosys' personnel are at all times accompanied by a suitably qualified employee of other representative of the Client who is familiar with the Location, acquaint Fifosys' personnel with any health and safety, security and other regulations applicable to the Location, and take all reasonable steps to ensure the health and safety of Fifosys' personnel; and
 - 5.2.2 subject to clause 5.2.1, Fifosys shall ensure that Fifosys' personnel comply with all health and safety, security and other regulations in force from time to time at the Location.
- 5.3 Fifosys shall ensure that Fifosys' personnel keep full and accurate records of all work carried out in the supply of the Goods and/or the provision of the Services, including completing daily time sheets and otherwise accurately recording work duration and activities.
- 5.4 Fifosys will use its reasonable endeavours to oversee the work of all subcontractors or third parties (such as phone line suppliers) which it works with or utilises or is requested to work with by the Client in connection with the Services but will not be responsible for procuring those elements of work nor shall they be responsible for the work undertaken by those third parties over which Fifosys does not have control.
- 5.5 Prior to engaging any subcontractors or third parties to assist with the supply of Goods and/or Services to the Client, Fifosys shall obtain the written consent of the Client (not to be unreasonably withheld or delayed) and Fifosys shall co-operate with the Client with respect to any requests for further information it has regarding the identity or credentials of such subcontractor or third party.
- 5.6 For the purposes of this clause 5 references to "Fifosys personnel" shall be deemed to include references to personnel of any supplier or sub-contractors engaged by Fifosys to supply the Goods and/or provide the Services to the Client.

6 OWNERSHIP AND RISK

- 6.1 Ownership of any Goods supplied under the Contract (including any Goods supplied as part of the Services and any Deliverables other than Software) shall not pass to the Client until the Seller has received payment in full of the Charges for the Goods and/or Services in question.
- 6.2 Other than where data is hosted on equipment belonging to Fifosys, or other services are undertaken on equipment owned by Fifosys (or by a third party host or other provider), then to the extent that equipment is owned by the Client then ownership of the physical medium on which:
- 6.2.1 any Client Materials are recorded shall remain with the Client;
 - 6.2.2 any Software is recorded shall remain with Fifosys or its suppliers or subcontractors.

- 6.3 Risk of loss or damage to any Goods supplied under the Contract (including any Goods supplied as part of the Services and any Deliverables) shall pass to the Client on their delivery to the Client or, if the Goods or Deliverables are to be installed by Fifosys on any Equipment of the Client, when they are so installed.

7 CLIENT'S RESPONSIBILITIES

- 7.1 The Client shall at its own expense provide Fifosys with all necessary Client Materials within sufficient time to enable Fifosys to provide the Services in accordance with the Contract. The Client shall ensure the accuracy of all Client Materials.
- 7.2 The Client is responsible for ensuring that it has available all the Equipment necessary for the provision of the Services (other than any of the foregoing which are to be provided by Fifosys as part of the Services), and for ensuring that such Equipment meet with any applicable standards specifications and minimum system requirements and are otherwise technically compatible with the Services, maintained in proper working order and comply with all Applicable Laws.
- 7.3 Where Fifosys is to supply or provide any Goods in connection with the Contract :
- 7.3.1 unless otherwise expressly agreed in writing with the Client, the Goods shall remain the property of Fifosys until the Charges in respect of the Goods are paid in full, but shall remain at the risk of the Client, which shall be responsible for any damage (other than fair wear and tear) to the Goods;
 - 7.3.2 the Client shall keep the Goods separate from the property of the Client and third parties and properly identified as Fifosys' property;
 - 7.3.3 the Client shall insure the Goods for their replacement value;
 - 7.3.4 the Client shall not allow the Goods to be repaired or maintained by any third party (provided that this shall not apply to circumstances where Fifosys provides hardware equipment only, or where Fifosys provides only a hosted solution); and
 - 7.3.5 the Client shall not remove, sell, lease, lend or otherwise part with possession of or allow any charge or lien to subsist over the Goods;
- 7.4 The Client shall obtain a valid licence for all computer programs used on or required for the operation and use of the Client's computer and telecommunications system and all Equipment used together with it, except to the extent that the same are to be supplied for the Client as part of the Services, or the same are freely available without the need for a licence.
- 7.5 The Client shall ensure that any passwords issued to the Client by Fifosys in connection with the Services are kept secure from third parties.
- 7.6 The Client shall be responsible for ensuring that all Equipment used for accessing the Goods and/or Services is protected from viruses, spyware or other malicious or harmful programs, and shall fully check all Client Materials supplied to Fifosys pursuant to the Contract.
- 7.7 The Client shall ensure that no Inappropriate Material is uploaded to any website maintained or hosted by Fifosys, or otherwise Client to any computer or telecommunications system supplied or maintained by Fifosys, by the Client or any of its employees or agents.
- 7.8 The Client shall comply with all Applicable laws in relation to supply of the Goods and/or the provision of the Services and shall not, and shall ensure that none of its employees or agents shall, use any part of the Goods and/or Services, or any of the Deliverables, to engage in any illegal, abusive, or irresponsible behaviour, including:
- 7.8.1 downloading any illegal material;
 - 7.8.2 overloading the network (for example by using peer to peer or file sharing software);

- 7.8.3 unauthorised access to or use of data, services, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorisation of the owner of the system or network;
 - 7.8.4 monitoring data or traffic on any network or system without the authorisation of the owner of the system or network;
 - 7.8.5 interference with service to any user, host or network including mail bombing, flooding, deliberate attempts to overload a system or broadcast attacks;
 - 7.8.6 use of an Internet account or computer without the owner's authorisation, including Internet scanning (tricking other people into releasing their passwords), password robbery, security hole scanning, and port scanning;
 - 7.8.7 forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting; or
- 7.9 The Client shall not modify, redistribute or copy the Goods and/or Services, or permit or enable any third party to use the Services on a "service bureau" basis or otherwise.
 - 7.10 The Client shall forthwith notify Fifosys of any change in its contact details, its premises or any other circumstances which may affect the supply of the Goods and/or the provision of the Services.
 - 7.11 Where Fifosys is to provide the Services at any Location other than Fifosys' premises (or those of any supplier or subcontractor of Fifosys), the Client shall obtain all necessary consents for Fifosys to do so in accordance with the Contract.
 - 7.12 Where the Order Form contains provisions requiring the Client to undertake and observe additional responsibilities, the Client shall comply with those provisions.

8 SOFTWARE

- 8.1 Where the Deliverables include the supply of any Software:
 - 8.1.1 the Client must comply with all Applicable Laws relating to the Software; and
 - 8.1.2 where the Software is provided by a third party supplier, its use will be governed by the third party supplier's licence agreement, and the Client must comply with the terms of any such licence agreement. In the event of any discrepancy between the provisions of the third party supplier's licence agreement and those set out in clause 8.2 to 8.4, the third party supplier's licence agreement shall prevail.
- 8.2 The Client will not be entitled to have access to or to be supplied with the source code for any Software.
- 8.3 The Client may copy the Software for back-up and archival purposes only, provided that any copy contains all of the original copyright or proprietary notices of the Software.
- 8.4 The Client shall not:
 - 8.4.1 adapt, alter, modify or create any derivative works of the Software, including any translation;
 - 8.4.2 decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code for the Software (except to the extent that applicable laws specifically prohibit such a restriction);
 - 8.4.3 redistribute, publish, sell, rent, lease, lend, sub-license, part with possession of or otherwise transfer the Software to any other person, create or allow any mortgage, charge or other security to subsist over the Software, make the Software available to the public by any means, or permit any other person (except the Client's properly trained and authorised employees) to have access to or use the Software in any way;

- 8.4.4 remove or alter any trade mark, copyright or other proprietary notices, logos, legends, symbols or labels in or on the Software; or
- 8.4.5 remove, by-pass or alter any security or use restriction mechanisms implemented in the Software.
- 8.5 The Client shall ensure that each End-User executes and delivers to Fifosys, in any format (including electronic form) reasonably requested by Fifosys, an End-User Undertaking which is consistent with these Terms, including in particular clause 7 and this clause 8.
- 8.6 Subject to clause 8.7, Fifosys warrants that the Software will comply in all material respects with the Specification, when properly used in accordance with the Documentation, but all other conditions, warranties or other terms, express or implied by statute or otherwise, as to the quality, merchantability or effectiveness or of the Software or its fitness for any purpose are excluded.
- 8.7 In the case of any Equipment, Software or other Deliverable provided by any third party supplier, Fifosys' obligation is limited to using its reasonable endeavours to pass on to the Client the benefit of any warranty, condition or other term given by the supplier in question.
- 8.8 Subject to clauses 8.6 and 8.7, Fifosys does not warrant or undertake that the Software will be free from any defect or error, but will use reasonable efforts to correct any defect or error reported by the Client within 30 days after the supply of the Software.
- 8.9 Where the Client requests Fifosys to specify a third party supplier of software for any purpose, Fifosys shall use its reasonable endeavours to do so and shall act in good faith in recommending the third party supplier and identifying the software in question, but subject thereto shall have no liability to the Client in relation to the software.
- 8.10 Where any Software is provided by a third party supplier as part of the Goods and/or Services on the basis that the provision of the Software by the third party is subject to periodic renewal and payment of an additional charge upon such renewal unless a specified period of notice is given to the third party supplier, the Client shall be liable for payment of the renewal charge in accordance with clause 11.5.2 unless the Client gives Fifosys not less than the specified period of notice plus two (2) Business Days' notice that the Client does not wish to renew the Software in question. Where the Software is provided under an SPLA, and the costs by such Licensor increase or vary, Fifosys shall be entitled to charge the Client for any such increase or variation accordingly.

9 CONTRACT MANAGEMENT AND CHANGE CONTROL

- 9.1 Unless already specified in the Order Form, the parties shall nominate their respective managers in writing to the other either before or as soon as practicable after the Start Date, and shall forthwith notify the other of any change.
- 9.2 The Client's manager and Fifosys' manager shall endeavour to arrange to meet at least once every quarter to discuss matters relevant to the Goods and/or Services.
- 9.3 If either party wishes to make any other change the scope or manner of execution of the Services, it shall submit details of the requested change to the other in writing. This shall also apply if the Client wishes to change the Location.
- 9.4 If either party requests a change under clause 9.3, Fifosys shall, within a reasonable time, provide a written estimate to the Client of:
 - 9.4.1 the likely time required to implement the change;
 - 9.4.2 any variations to the Charges arising from the change;
 - 9.4.3 the likely effect of the change on any timescale for the provision of the Services; and
 - 9.4.4 any other impact of the change on these Terms.

- 9.5 Within two months after receipt of Fifosys' written estimate, the Client shall notify Fifosys whether it accepts or rejects the estimate, and if it accepts the estimate the parties will execute a variation to the Contract in accordance with clause 2.2 and Fifosys shall implement the agreed change as soon as reasonably practicable.
- 9.6 Subject to the preceding provisions, neither party shall unreasonably withhold or delay giving its consent to a change requested under clause 9.3.

10 TROUBLESHOOTING

- 10.1 Each party shall promptly notify the other as soon as practicable after it become aware of:
- 10.1.1 any failure by the other party to perform any of its obligations under the Contract;
 - 10.1.2 any circumstances of which it may become aware from time to time which may prevent Fifosys from supplying the Goods and/or providing the Services in accordance with the Contract together with recommendations as to how such circumstances can be avoided; and
 - 10.1.3 any complaint (whether written or not) or other matter which comes to its attention and which it reasonably believes might give rise to any loss or claim against the other party or which might result in any adverse publicity for the other party.
- 10.2 Without limiting clause 10, the Client shall within seven (7) days of delivery of any Goods or Deliverables notify Fifosys of any fault in the Goods or Deliverables, failing which they shall be deemed to have been accepted by the Client.
- 10.3 If the Client notifies Fifosys of any fault in respect of the Goods and/or Services or any Deliverables, Fifosys shall as soon as practicable (and in accordance with any applicable Service Levels) investigate the fault, and if Fifosys accepts that the Client is entitled to do so, Fifosys shall use its reasonable endeavours to correct the fault within a reasonable time or re-provide the Goods and/or Services in question (in accordance with any applicable Service Levels), or if it is not possible to do so within a reasonable time Fifosys shall refund the Charges in respect of the Goods and/or Services or Deliverables in question, in which case Fifosys shall not have any further liability to the Client or be deemed to be in breach of the Contract.
- 10.4 If Fifosys does not accept that there is a fault in the Goods and/or Services or the Deliverables in question, or Fifosys is unable for any reason to correct the fault, the parties shall seek to agree the dispute amicably within sixty (60) days, failing which it shall be referred to arbitration as a means of settlement where possible in accordance with clause 21.
- 10.5 If Fifosys fails to correct a material fault in the Goods and/or Services or the Deliverables which renders them ineffective and/or inoperable for the purposes required by the Customer:
- 10.5.1 the Client may give notice of that failure (a **'First Notice'**) to Fifosys allowing Fifosys a reasonable period of time (not less than one weeks (7) days in any event) to remedy that failure; and
 - 10.5.2 if the failure has not been remedied within that period, the Client may give a further notice (a **'Second Notice'**) to Fifosys allowing Fifosys a final opportunity (not less than twenty one (21) days in any event) to remedy the failure; and
 - 10.5.3 if Fifosys fails after the period of sixty (60) days commencing on Fifosys' receipt of the Second Notice to raise the standard of performance of the Goods and/or Services to a sufficient level to remedy the failure, the Client may terminate this Agreement in accordance with clause 19.6.
- 10.6 Where Fifosys spends time investigating a claim by the Client relating to an alleged fault in the Goods and/or Services and Fifosys determines in its reasonable judgement that the fault is not due to any failure by Fifosys or its service provider, or these claims arise as a result of third party suppliers over which Fifosys do not have control, as set out in clause 5.4 then Fifosys shall be entitled to discuss with the Client all reasonable costs incurred in investigating the claim. If however, this investigation relates to a fault by a third party supplier, such as a data centre, for which Fifosys has agreed under the Contract to take responsibility, then there shall be no charges by Fifosys for addressing any such claim and its resolution.

11 CHARGES

- 11.1 Subject to any special terms agreed between the parties in writing, and to the following provisions, the Client shall pay the Charges as specified in the Order Form.
- 11.2 Unless otherwise provided in the Order Form, Fifosys shall be entitled to vary the Charges and/or the Standard Rates at the anniversary of the agreement only or subject to mutual agreement and notice to the Client.
- 11.3 Where the Services are provided on a time and materials basis:
- 11.3.1 the Charges payable for the Services shall be calculated in accordance with the Standard Rates, as amended from time to time;
 - 11.3.2 Fifosys' Standard Rates for each individual person are calculated on the basis of an eight-hour day;
 - 11.3.3 Fifosys shall be entitled to charge its standard out of hours rates for any time worked by individuals whom it engages on the Services outside the hours referred to in condition 11.3.2;
 - 11.3.4 all charges quoted to the Client are exclusive of VAT which Fifosys shall add to its invoices at the appropriate rate;
 - 11.3.5 Fifosys shall ensure that every individual whom it engages on the Services completes time sheets recording time spent, and Fifosys shall use such time sheets to calculate the Charges covered by each monthly invoice.
- 11.4 Where the Charges are stated in the Order Form to be based on certain specified assumptions (such as the number of the Client's employees in respect of whom the Services are to be provided which will impact the amount of software licenses required, data used, and support time required) and there is a material change in any of those assumptions, Fifosys shall be entitled to give the Client a notice varying the Charges on a basis consistent with the calculation of the Charges in the Order Form.
- 11.5 The Charges are exclusive of the following, but must be agreed with the client in advance, for which the Client shall be additionally liable:
- 11.5.1 the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by any of Fifosys' personnel for the purposes of supplying the Goods and/or providing the Services or travelling to the Location, which shall be invoiced by Fifosys (at cost plus any administrative costs incurred by Fifosys);
 - 11.5.2 any other expenses (including software licence fees) payable to any third party as part of the Goods and/or Services, which shall be invoiced by Fifosys (at cost plus any administrative costs incurred by Fifosys); where the total amount payable in respect of any period exceeds any sum specified for that period in the Order Form, it may be so invoiced up to one month in advance of payment of the relevant sum being made by Fifosys to the third party; and
 - 11.5.3 Value Added Tax, which Fifosys shall add to its invoices at the appropriate rate.
- 11.6 Subject to clause 11.5.1, Fifosys shall be entitled to invoice the Client for the Charges following the end of each month in which the Goods and/or Services are provided, or as otherwise specified in the Order Form.
- 11.7 The Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without any set-off or other deduction) within 30 days of the date of Fifosys' invoice, or as otherwise specified in the Order Form. If the Client has been provided by Fifosys with a credit limit in respect of the amount in terms of value, of Services and Products it may utilise, then Fifosys shall be entitled to require the Customer to settle immediately on demand any amounts which exceed that credit limit, prior to agreeing to provide any further Services or Products, or continuing to supply any current Services or Products, and failure to pay such amounts by the Customer shall entitle Fifosys to terminate the Agreement in accordance with clause 19. All amounts and Charges which exceed the credit limit shall be due and payable to Fifosys on demand.
- 11.8 Time for payment shall be of the essence of the Contract.

- 11.9 If payment of the Charges or any other sums payable by the Client to Fifosys is not made within 30 days from the due date, Fifosys shall be entitled, without limiting any other rights it may have, to:
- 11.9.1 suspend or cease the supply of the Goods and/or the provision of the Services; and/or
 - 11.9.2 to charge the Client interest on the outstanding amount at 4% above the base rate of Barclays Bank from the due date until the outstanding amount is paid in full, in addition to any compensation due under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - 11.9.3 to charge the Client for the costs of any collection agency used by Fifosys to recover the sum in question, and any legal or other expenses incurred in connection therewith.
- 11.10 Fifosys may appropriate any payment received from the Client to any amount then owed by the Client to Fifosys which is then outstanding (notwithstanding any purported appropriation by the Client), and may set off any amounts to which the Client would otherwise be entitled against any sums due from the Client.

12 RIGHTS

- 12.1 The Client hereby grants to Fifosys a non-exclusive licence in respect of any Intellectual Property in any Client Materials solely for the purposes of using the Goods and/or the Services.
- 12.2 Subject to clause 12.1, all Intellectual Property in any Client Materials, shall continue to belong exclusively to the Client or any third party providing the Client Materials.
- 12.3 Any invention, copyright work, design, data, database or other item specifically produced, created or made in the course of supplying the Goods and/or providing the Services or subsisting in the Deliverables, and all Intellectual Property in respect of the foregoing, shall belong to Fifosys absolutely, but subject to payment in full of the Charges and all other sums payable to Fifosys under these Terms, Fifosys hereby to the Client an exclusive, royalty-free and (except where the Contract is terminated by Fifosys in accordance with clause 19.3 or 19.7) perpetual licence in respect of all such Intellectual Property to the extent necessary to use the Goods and/or Services and the Deliverables for the internal purposes of the Client's business.
- 12.4 Any invention, copyright work, design, data, database or other item used by Fifosys for the purpose of supplying the Goods and/or providing the Services (other than anything referred to in clause 12.3), and all Intellectual Property, shall belong exclusively to Fifosys absolutely, but subject to payment in full of the Charges and all other sums payable to Fifosys under these Terms, Fifosys hereby grants to the Client a non-exclusive, royalty-free and (except where the Contract is terminated by Fifosys in accordance with clause 19.3 or 19.7) perpetual licence in respect of all such Intellectual Property to the extent necessary to enable the Client to exercise its rights under clause 12.3.
- 12.5 Any Client Materials provided by the Client which are designated as confidential by the Client and all Deliverables provided by Fifosys which are designated as confidential by Fifosys shall be kept confidential by the Client, in accordance with clause 13.
- 12.6 If Fifosys is requested to or determines that it is necessary for the Client to acquire any domain names, to undertake any license renewals, or any other renewals or rentals on behalf of the Client in connection with the Services, it shall in advance of doing so, notify the Client of the renewal or registration that it advises is required, and shall seek the Client's confirmation that such action may be taken. If the Client has not responded within a reasonable period and Fifosys determines that it is necessary for the Client to have these renewals in order for the Client to continue to use any software or other equipment or materials that require renewal, then Fifosys shall be entitled to take such steps as it deems reasonably necessary to undertake these renewals and applications for the benefit of the Client and the Client shall be liable to reimburse Fifosys on demand for these costs.
- 12.7 The Client warrants that any Client Materials and their use by Fifosys for the purpose of supplying the Goods and/or providing the Services will not infringe the Intellectual Property of any third party, and the Client shall indemnify Fifosys against any loss, damages, costs, expenses or other claims arising from any such infringement.

- 12.8 Fifosys warrants to the Client that, subject to the Client's compliance with the warranty given under clause 12.7, any Deliverables and their use by the Client for the purposes of utilising the Goods and/or Services will not infringe the Intellectual Property of any third party and Fifosys shall indemnify the Client against any loss, damages, costs, expenses or other claims arising from any such infringement
- 12.9 In the event of any breach by Fifosys of the warranty given under clause 12.8, Fifosys may:
- 12.9.1 procure for the Client, with the Client's agreement, the right to continue using the Deliverables;
 - 12.9.2 modify the Deliverables so that they are legally compliant; and/or
 - 12.9.3 replace the infringing part of the Deliverables with other legally compliant software or other materials.

13 CONFIDENTIALITY

- 13.1 Except as provided by clause 13.2 or as authorised in writing by the other party, each party shall at all times during the Contract Period and for two years after the termination of the Contract:
- 13.1.1 keep all Confidential Information of the other party secure and confidential;
 - 13.1.2 not disclose any Confidential Information of the other party to any other person;
 - 13.1.3 not use any Confidential Information of the other party for any purpose other than as required or permitted by the Contract;
 - 13.1.4 not make any copies of, record in any way or part with possession of any Document containing or recording any Confidential Information of the other party; and
 - 13.1.5 ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that party, would be a breach of this clause 13.1.
- 13.2 Either party may:
- 13.2.1 disclose any Confidential Information of the other party to any other person who is:
 - a subcontractor or supplier of that party;
 - a Professional Advisor Regulatory Authority; or
 - any employee or officer of that party or of any of those persons;to the extent that the disclosure is required or permitted by the Contract, and subject to that party informing the person in question that the Confidential Information is confidential and (except where the disclosure is to a Regulatory Authority or any employee or officer of any such body) obtaining and submitting to the other party a written undertaking from the person in question, as nearly as practicable in the terms of this clause, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made;
 - 13.2.2 disclose any Confidential Information to the extent that the party in question is required by law to do so; and
 - 13.2.3 use any Confidential Information for any purpose, or disclose it to any other person, to the extent that:
 - it is at the date of, or at any time after that date through no fault of that party becomes, public knowledge; or
 - it was known to that party before being disclosed to or obtained by that party; or
 - it is, after being disclosed to or obtained by that party, disclosed to that party by a third party otherwise than in breach of an obligation of confidentiality.

- 13.3 On the termination of the Contract for any reason, each party shall (except to the extent referred to in clauses 13.2.2 and 13.2.3) cease to use, and forthwith deliver up to the other party (or destroy) any Document in its possession or control containing or recording, any Confidential Information in respect of which that party has any continuing obligation under clause 13.1.
- 13.4 The provisions of this clause 13 shall continue in force, notwithstanding the termination of the Contract for any reason.

14 GENERAL DATA PROTECTION LEGISLATION

- 14.1 The Customer is the Data Controller and Fifosys is the Data Processor.
- 14.2 The types of Personal Data and categories of data subject which will be processed, the nature and purpose of that processing and the duration of that processing are as set out in the **Schedules**
- 14.3 Each Party warrants and represents that it has made and undertakes that at all times during the Contract Period it will maintain, any notification and registration required under the Data Protection Legislation which relates to the performance of its obligations under these Terms.
- 14.4 Each Party undertakes that in the performance of the Contract it will comply with GDPR and shall not do anything which may cause the other party to infringe GDPR.
- 14.5 Each Party warrants to the other that it has in place and undertakes to maintain throughout the Contract Period appropriate technical and organisational measures against the accidental, unauthorised or unlawful processing, destruction, loss, damage, or disclosure of any Personal Data and adequate security programs and procedures to ensure that unauthorised persons do not have access to any equipment used to process such data, but each Party recognises that in the context of the Internet there can be no absolute guarantee that authorised or unlawful access, processing or similar will not occur.
- 14.6 To the extent that any data or information belonging to the Customer is personal data within the meaning of the GDPR:
- 14.6.1 Fifosys will process such data and information only in accordance with the Customer's instructions unless such processing is required by any law (other than contract law) to which Fifosys is subject, in which case Fifosys shall (to the extent permitted by law) inform the Customer of that legal requirement before carrying out the processing;
- 14.6.2 Fifosys will immediately notify the Customer if it considers that the Customer's instructions are in breach of the GDPR or other EU member state laws;
- 14.6.3 Fifosys will keep a written record of all such processing activities which shall include the information required to be kept under Article 30(2) of the GDPR;
- 14.6.4 Fifosys will not transmit such data and information to a country or territory outside the European Economic Area without the Customer's express consent; and
- 14.6.5 Fifosys will take such technical and organisational measures against unauthorised or unlawful processing of such data and information and against accidental loss or destruction of, or damage to, such data and information as are appropriate to the Customer as Data Controller.
- 14.7 In relation to the security and confidentiality of the Personal Data, Fifosys shall comply with its Data Security Policy (as amended) to ensure that:
- 14.7.1 Fifosys personnel who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of this Contract and all of Fifosys personnel required to access the Personal Data are informed of the confidential nature of the Personal Data, comply with the obligations and are bound by appropriate confidentiality obligations when accessing the Personal Data; and

- 14.7.2 not publish, disclose or divulge any of the Personal Data to any third party (including for the avoidance of doubt the Data Subject itself) unless directed to do so in writing by the Customer;
 - 14.7.3 not modify, amend or alter the contents of the Personal Data unless specifically authorised in writing by the Customer.
 - 14.7.4 If the Supplier becomes aware of a Personal Data breach, it shall notify the Customer without undue delay on becoming of aware of such a breach.
- 14.8 Fifosys shall not engage or authorise a Sub-Contractor to process the Personal Data unless:
- (i) it has obtained the prior written consent of the Customer (which may be granted or withheld in the Customer's sole discretion) before transferring the Personal Data to any Sub-Contractors in connection with the provision of the Services; and
 - (ii) the Sub-Contractor has either entered into a direct contract with the Customer or a contract with the Supplier which incorporates the provisions equivalent to those in this Contract in relation to confidentiality, data protection and security, and
- 14.8.1 where a Sub-contractor is appointed pursuant to this clause Fifosys shall remain liable for the acts and omissions of that Sub-Contractor as if they were Fifosys' own.
- 14.9 Fifosys shall notify the Customer within [five] business days upon receiving the following:
- 14.9.1 a request from a Data Subject to have access to that person's Personal Data; or
 - 14.9.2 a complaint or request relating to the Customer's obligations under the Data Protection Legislation; or
 - 14.9.3 any other communication relating directly or indirectly to the processing of any Personal data in connection with this Contract.
- 14.10 Fifosys shall provide the Customer with full co-operation and assistance in order to enable the Customer to comply with its obligations in the Data Protection Legislation in relation to:
- 14.10.1 responding to Data Subject requests;
 - 14.10.2 complying with the relevant timescales as set out in the Data Protection Legislation but strictly in accordance with the Customer's instructions;
 - 14.10.3 providing the Customer with any Personal Data that it holds in relation to the Data Subject making the complaint or request within the timescales are required by the Customer; and
 - 14.10.4 providing the Customer with any other information as so requested by the Customer in this regard;
- 14.10.4.1 the security of the Personal Data;
 - 14.10.4.2 notifying Personal Data breaches to the relevant supervisory authority;
 - 14.10.4.3 communicating personal data breaches to the Data Subject; and
 - 14.10.4.4 impact assessments and related consultations with supervisory authorities or regulators.
- 14.11 Following the termination or earlier expiry of the Services relating to the processing of Personal Data, Fifosys shall at the choice of the Client, delete or return all Personal Data to the Client and delete existing copies unless and to the extent it is required to retain such Personal Data pursuant to Applicable Laws.
- 14.12 Fifosys shall make available to the Client all information necessary to demonstrate its compliance with this clause 14 and shall allow for and contribute to audits, including inspections, conducted by the Client or another auditor maintained by the Client.

14.13 The Customer warrants that it has and will continue to have a lawful basis and/or all necessary and appropriate consents and notices in place to:

14.13.1 process the Customer Personal Data;

14.13.2 enable the Customer to lawfully transfer the Customer Personal Data to Fifosys and its Sub-contractors; and

14.13.3 permit Fifosys to lawfully process Personal Data in accordance with and for the purpose of this Contract.

14.14 Notwithstanding the provisions in clause 15 (Liability) each party (the “**Relevant Party**”) undertakes to indemnify the other party against and keep that party indemnified and held harmless against any loss suffered directly as a result of any claim for any loss, damage, distress suffered by any person to the extent that such claim relates to a failure by the Relevant Party and/or its other service providers (or in the case of Fifosys, its Subcontractors) to comply with the provisions of this clause 14 such indemnity to include but no limited to any fine which may be levied under the Data Protection Legislation.

15 TUPE REGULATIONS

15.1 The parties acknowledge and agree that they have entered into the Contract on the understanding that no employee, agent or subcontractor of the Client will transfer to Fifosys in connection with the Contract pursuant to the TUPE Regulations.

15.2 If notwithstanding clause 15.1 any employee, agent or subcontractor of the Client transfers to Fifosys in connection with the Contract pursuant to the TUPE Regulations, the Client shall indemnify Fifosys for all liability, loss, costs and expenses as a result of:

15.2.1 any claim arising out of or in connection with any act or omission by the Client in relation to the employment of the individual in question; or

15.2.2 the application or effect of the TUPE Regulations in relation to that individual, including any claim by reason of any decision by Fifosys not to retain that individual after the commencement of the Contract or the termination for any other reason of his employment.

15.3 Fifosys shall indemnify the Client for all liability, loss, costs and expenses as a result of:

15.3.1 any claim by any of Fifosys’ personnel arising out of or in connection with any act or omission by Fifosys in relation to the employment of the individual in question; or

15.3.2 the application or effect of the TUPE Regulations in relation to that individual, including any claim by reason of any decision by Fifosys not to retain that individual on the termination of the Contract or the termination for any other reason of his employment.

15.4 At any time after Fifosys or the Client has given notice to terminate the Contract in accordance with clause 19 for any reason, Fifosys shall comply with its obligations under the TUPE Regulations in relation to any employee of Fifosys to whom the TUPE Regulations may apply.

16 LIABILITY

16.1 Except as expressly provided to the contrary in these Terms or the Order Form, all warranties, conditions, or other terms implied by statute, common law or otherwise which relate to the supply of the Goods and/or the provision of the Services, including any warranty, condition or other term as to the quality or fitness for purpose of the Goods and/or Services or the Deliverables, that the Goods and/or Services or the Deliverables will meet the Client’s requirements, that the Software will work in combination with other hardware or software, or that the Services will be uninterrupted or error free, are excluded to the fullest extent permitted by law.

16.2 Fifosys does not seek to exclude or limit any liability for death or personal injury caused by Fifosys’ negligence, or for fraudulent misrepresentation, or any other liability that may not lawfully be excluded or restricted.

- 16.3 Fifosys shall have no liability to the Client for any loss, damage, costs, expenses or other claims for compensation arising from any Client Materials or instructions supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Client, unless it is reasonably determined that Fifosys should have clarified the Client instructions to avoid mistakes prior to the delivery of the Goods or Services.
- 16.4 Where the Order Form contains further provisions limiting or excluding the liability of Fifosys in any respect, they shall apply accordingly.
- 16.5 The liability of Fifosys for physical damage to or loss of the Client's tangible property (whether arising in contract, tort, including negligence or otherwise under or in connection with the Contract or based on any claim for indemnity or contribution) shall be limited to in respect of any one claim or series of claims to the amount of the Charges incurred by the Client in the twelve month period commencing on the Start Date set out in the Order Form for the Goods or Services to which the claim or claims relate.
- 16.6 Subject to the preceding provisions of this clause 16:
- 16.6.1 Neither party shall have any liability to the other arising out of or in connection with the supply of the Goods and/or the provision of the Services or their use by the Client, or any failure to supply the Goods and/or provide the Services, whether caused by the negligence of that party, its employees or agents or otherwise, by reason of any representation, implied warranty, condition or other term, any duty at common law, or under the express terms of the Contract, for:
- loss of profit (whether direct or indirect), loss of business, loss of bargain, loss of opportunity, loss of goodwill or loss of data; or
- wasted expenditure, wasted or additional management or administrative time; or
- any indirect, special or consequential loss, damage, costs, expenses or other claims;
- 16.6.2 save for any liability under the indemnities set out in clause 12.8, 14.14 or 15.3, the entire liability of Fifosys under or in connection with the Contract in respect of any period of six (6) months shall not exceed the amount of Fifosys' Charges for the supply of the Goods and/or the provision of the Services under the relevant Order Form during the relevant six (6) month period; and
- 16.6.3 Fifosys shall have no liability in respect of any claim under or in connection with the Contract unless the Client notifies Fifosys in writing with full details of the breach or other circumstances giving rise to the claim within six (6) months from the date when the Client became aware of the breach (or ought reasonably to have become aware).
- 16.7 If either party ('the indemnifying party') is required to indemnify the other party under the Contract in respect of any claim, the other party shall forthwith notify the indemnifying party of the claim, give the indemnifying party control of any proceedings or negotiations in connection with the claim, and take all steps reasonably requested by the indemnifying party to mitigate its loss.
- 16.8 The Client acknowledges that in all the circumstances the restrictions on the liability of Fifosys contained in this clause 16 represent a fair and reasonable allocation of risk, that the Client is in a better position than Fifosys to calculate its potential damage or loss arising out of or in the connection with the Contract, and to take out appropriate insurance, and that if Fifosys were to assume greater liability it could not perform its obligations under the Contract without a corresponding increase in the cost to the Client.

17 INSURANCE

- 17.1 Fifosys shall obtain and/or maintain in full force and effect during the Contract Period and for six years thereafter comprehensive general liability insurance in an amount not less than £2m or such other sum as may be agreed in writing between the parties) relating to the supply of the Goods and/or the provision of the Services to the Client.
- 17.2 Fifosys will be solely responsible for ensuring that its agents (including consultants, Fifosys or subcontractors) maintain separate insurance at levels no less than those required under the Contract.

17.3 The Client shall obtain and/or maintain in full force and effect during the Contract Period and for six years thereafter insurance cover in an amount not less than £2m (or such other sum as may be agreed in writing between the parties) and on terms reasonably acceptable to Fifosys relating to all foreseeable risks relating to the supply of the Goods and/or the provision of the Services on any premises of the Client or any third party where the Goods are to be delivered and/or the Services are to be provided at the request of the Client.

18 FORCE MAJEURE

18.1 If any Force Majeure occurs in relation to either party which affects or may affect the performance of any of its obligations under the Contract, it shall forthwith notify the other party as to the nature and extent of the circumstances in question.

18.2 A party affected by Force Majeure shall not be deemed to be in breach of the Contract, or otherwise be liable to the other, by reason of any delay in performance, or the non-performance, of any of its obligations under the Contract (other than an obligation to pay money), to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other party, and the time for performance of that obligation shall be extended accordingly.

18.3 If the performance by either party of any of its obligations under the Contract is prevented or delayed by Force Majeure for a continuous period in excess of one (1) months:

18.3.1 the parties shall negotiate in good faith and use their best endeavours to agree upon such amendments to the Contract or alternative arrangements as may be fair and reasonable with a view to alleviating its effects; and

18.3.2 if they do not agree upon such amendments or arrangements within a further period of thirty (30) days, the other party shall be entitled to terminate the Contract by giving notice to the party affected by the Force Majeure.

19 TERM AND TERMINATION

19.1 Unless otherwise agreed between the parties in writing, the Contract shall come into force on the Start Date and, subject to the following provisions, shall continue in force for the Contract Period.

19.2 Not used

19.3 Subject to these Terms, the Client may not cancel or terminate the Contract unless it is entitled to do so in under clause 19.5, 19.6 or 19.7.

19.4 Fifosys may (without limiting any other remedy) forthwith terminate the Contract by giving notice to the Client if any Charges or other sums payable by the Client are not paid within twenty one (21) days of the due date for payment.

19.5 The Client may (without limiting any other remedy) forthwith terminate the Contract by giving notice to Fifosys as provided in clause 10.5.

19.6 Either party may terminate the Contract by giving the other a notice pursuant to clause 18.3.2.

19.7 Either party may (without limiting any other remedy) forthwith terminate the Contract or an Order Form by giving notice to the other party if:

19.7.1 the other party commits any material breach of any of the provisions of the Contract (other than one to which clause 10.5 or clause 19.4 applies) and, if the breach is capable of remedy, fails to remedy it within thirty (30) days after being given a notice containing full particulars of the breach and requiring it to be remedied; or

19.7.2 an Insolvency Event occurs in relation to the other party; or

19.8 Each Order Form shall continue in force for the period (if any) specified in it, unless terminated early in accordance with its provisions, or in accordance with clause 19.9.1.

19.9 On termination of the Contract for any reason:

19.9.1 all Order Forms will be terminated automatically;

19.9.2 the Client shall immediately pay to Fifosys all of Fifosys' outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, Fifosys may submit an invoice, which shall be payable immediately on receipt;

19.9.3 if the Client terminates in circumstances where it is not entitled to do so or without giving the required period of notice, then without limiting any of its other rights or remedies:

Fifosys shall be entitled to submit an invoice in respect of its Charges for the balance of the Contract Period or, if shorter, for the period up to the earliest date on which the Contract could have been terminated if the required period of notice had been given; and where Fifosys has incurred an advance commitment to a third party in respect of services and facilities required for the purposes of the Contract (such as data storage), the Client shall be liable to indemnify Fifosys for any amounts payable to the third party in respect of the period specified in (a) above, except to the extent that Fifosys can reutilise the services or facilities in question;

19.9.4 the Client shall immediately cease using the Software and any equipment supplied by Fifosys under the Contract (unless title in it has passed to the Client), and shall return the Software and any such equipment to Fifosys in good condition and working order, failing which Fifosys shall be entitled to enter onto any premises of the Client to remove the Software and any such equipment without liability to the Client, and (where the Software or equipment is not returned, or Fifosys is unable to remove it, in good condition and working order) to charge the Client the cost of its repair or replacement;

19.9.5 the Client shall within seven (7) days return all of the Deliverables to Fifosys or as it may specify; and

19.9.6 subject to the Client complying with its obligations under the preceding provisions of this clause 19.9, Fifosys shall within twenty one (21) days return all of the Client Materials to the Client or as it may specify, and shall provide the Client with one copy in electronic form of the data which Fifosys holds relating to the Goods and/or Services.

19.10 Fifosys shall on the termination of the Contract and at the written request of the Client given no later seven (7) days prior to the date of termination use its reasonable endeavours to cooperate with the Client and any other supplier of services which are the same as or similar to the Services of which the Client provides written details, subject to the Client reimbursing Fifosys for its reasonable costs of doing so, for which purposes Fifosys may require payment in advance of a reasonable sum on account of its costs.

19.11 Fifosys will on termination provide the Customer (at the Customer's cost based on Fifosys' standard rates) with such further assistance as the Customer may require in connection with relocating any equipment or taking any other steps which the Customer may reasonably require and Fifosys shall, subject to having received all payments due to Fifosys up to date, provide the Customer with access to all relevant passwords, codes, and any other administrative information as the Customer may require to effect a smooth transition to any new supplier with which it may engage for services following termination.

19.12 The termination of the Contract or any Order Form shall not affect the accrued rights of either party as at termination, and the continuation in force of any provision expressly stated to survive or which by implication is intended to survive termination.

20 RESTRICTIONS

20.1 Fifosys shall not during the Contract Period or for a period of twelve (12) months following the termination of the Contract, solicit or endeavour to entice away from the Client, any of the Client's employees, except pursuant to a bona fide advertisement or other offer made available to the general public.

20.2 The Client shall not during the Contract Period or for a period of twelve (12) months following the termination of the Contract, solicit or endeavour to entice away from Fifosys any of Fifosys' personnel, except pursuant to a bona fide advertisement or other offer made available to the general public.

21 DISPUTE RESOLUTION

- 21.1 The parties shall attempt to settle any claim or dispute arising out of or relating to the Contract by negotiation.
- 21.2 If the parties cannot settle the claim or dispute by negotiation within sixty (60) days after either party has given the other a notice offering to settle the claim or dispute, the parties shall before resorting to court proceedings attempt to settle the claim or dispute by mediation in accordance with the Procedures of the Centre for Effective Dispute Resolution.
- 21.3 If the parties cannot settle the claim or dispute through mediation within sixty (60) days of starting proceedings (or such other timeframe as may be established by the parties pursuant to such proceedings):
- 21.3.1 either party may refer the matter to arbitration in London by a single arbitrator appointed by written agreement between the parties or (in default of such agreement within twenty (20) days after either party gives the other a written request) nominated on the application of either party by the President for the time being of The British Computer Society, whose decision shall be final and binding on the parties; or
 - 21.3.2 if neither party refers the matter to arbitration in accordance with clause 21.3.1, seek such legal remedies as it may determine.

22 GENERAL

- 22.1 This Agreement is personal to the Client, which shall not, without the prior written consent of Fifosys, assign, transfer, sub-license, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 22.2 Fifosys may at any time:
- 22.2.1 supply any of the Goods and/or provide any of the Services through one or more of its affiliates and or may work with sub-contractors as set out in these Terms, provided that:
 - 22.2.1.1 Fifosys shall at all times remain liable for the performance of the sub-contractors that it engages to supply any of the Goods and/or provide the Services;
 - 22.2.1.2 Fifosys shall only use sub-contractors who have the skill, qualifications and expertise necessary to carry out that portion of the supply of Goods or provision of Services for which they are engaged and are otherwise capable of meeting the service standards set out in clause 3.5;
 - 22.2.2 assign or otherwise transfer the benefit of the Contract to any person who acquires substantially all the assets of Fifosys, subject to the assignee or transferee agreeing with the other party in writing to be bound by all the applicable provisions of the Contract;
 - 22.2.3 but subject thereto shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract except as provided for in these Terms or as specifically requested by the Client.
- 22.3 Nothing in the Contract shall create, or be deemed to create, a partnership, or the relationship of principal and agent, between the parties.
- 22.4 The provisions of the Contract (together with any additional provisions set out in any Order Form) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except in writing between the parties.
- 22.5 Each party acknowledges that, in entering into the Contract and the Order Form, it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) relating to the subject matter of the Contract or the Order Form, except as expressly set out in the Contract and the Order Form, or as otherwise agreed in writing between the parties.

- 22.6 Nothing in the Contract affects the liability of either party for death or personal injury caused by negligence, or for fraudulent misrepresentation.
- 22.7 A person who is not a party to the Contract has no right under the Contract Periods (Rights of Third Parties) Act 1999 to rely upon or enforce any term of the Contract.
- 22.8 No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 22.9 If any provision of the Contract is held by any court or other competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 22.10 English law shall apply to the Contract, and subject to clause 21 the parties agree to submit to the exclusive jurisdiction of the English courts.

23 NOTICES

- 23.1 A notice relating to the Contract will be validly given only if it is in writing and delivered personally or by courier, or sent by first class post (or air mail if overseas), recorded delivery or by email, to the party in question (marked for the attention of 'The Secretary', or such other officer of that party as is notified to the other party in writing for this purpose) at the address or fax number set out in this agreement or such other address or email address as the party in question may specify by notice.
- 23.2 In the absence of evidence of earlier receipt, a notice is deemed given:
- 23.2.1 if delivered personally or by courier, when left at the relevant address;
 - 23.2.2 if sent by post, two days after posting it or if sent by air mail, six days after posting it; and
 - 23.2.3 if sent by email, two business hours after sending it.
- 23.3 If a notice is deemed under clause 23.2 to have been given on a day other than a Business Day, or if the notice is given by fax and transmission is completed after 5.30 pm on a Business Day, it shall instead be deemed to be given on the next Business Day.
- 23.4 Each party shall immediately give notice to the others of a change in its address.