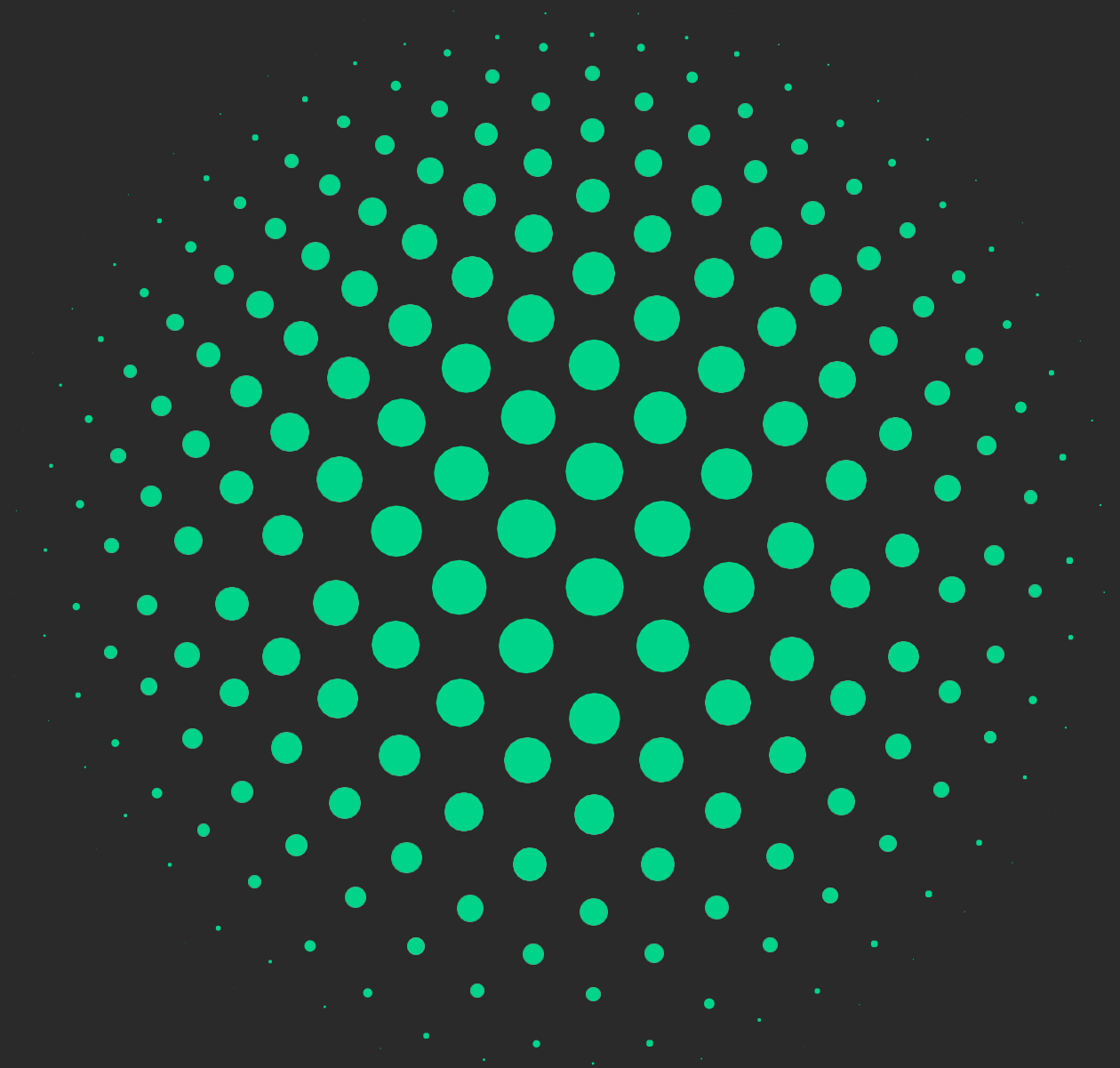


G-Cloud 14 – Cloud Support – Lot 3 Terms and Conditions.



Terms and Conditions.

The Customer's attention is particularly drawn to the provisions of clause 15 (Limitation of liability).

1. Interpretation

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

1.1 Definitions:

- **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- **Business Hours:** the period from 9.00 am to 5.00 pm on any Business Day.
- **Commencement Date:** has the meaning given in clause 2.2.
- **Terms and Conditions:** these terms and conditions as amended from time to time in accordance with clause 20.8.
- **Contract:** An Order and/or a Service Contract received from the Customer to the Supplier for the provision of Goods and/or Services in accordance with these Terms and Conditions.
- **Contract Details:** the contract details section of the Service Contract (as set out in the document entitled Service Contract).
- **Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be interpreted accordingly.
- **Customer:** the person or firm who purchases the Goods and/or Services from the Supplier and whose details are set out in the Service Contract and/or Quotation.
- **Customer's Premises:** the premises as agreed between the parties where the Good and/or Services will be delivered or performed as set out in the Service Contract or as otherwise may be agreed between the parties from time to time.
- **Data Processing Terms:** means the data processing agreement as set out in the Service Contract.
- **Deliverables:** the deliverables set out in the Quotation and / or Service Contract produced by the Supplier for the Customer.
- **Delivery Location:** has the meaning given in clause 4.1.
- **Force Majeure Event:** has the meaning given to it in clause 19.
- **Goods:** the goods and/or Products (or any part of them) set out in Quotation.
- **Goods Specification:** any specification for the Goods and/or Products, including any relevant plans, descriptions or drawings, that is agreed in writing by the Customer and the Supplier in the Quotation.
- **Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or

extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- **License Entitlement:** the Manufacturers' information or terms and conditions on the usage of the Goods. This includes, but is not limited to, information on the number of computers or devices on which you can install or use the Goods, the start and end date of the usage and/or warranty of the Goods.
- **Manufacturer:** means the third-party supplier or licensor or software/solution developer or hardware manufacturer of the Goods.
- **Order:** the Customer's order for the supply of Goods and/or Services, as set out in the Service Contract and/or the Quotation.
- **Products:** the products (or any part of them) set out in the Service Contract.
- **Quotation:** a formal statement setting out the estimated cost for particular Goods and/or Services.
- **Services:** the services, including the Deliverables, supplied by the Supplier to the Customer as set out in the Service Contract.
- **Service Contract:** the contract between the Supplier and the Customer for the supply of Services in accordance with these Terms and Conditions.
- **Service Level Terms:** means the service level agreement set out in the Service Contract.
- **Service Specification:** the description or specification for the Services provided in writing by the Supplier to the Customer in the Service Contract.
- **Subcontractor:** a subcontractor used by the Supplier to deliver any one or more of the Services.
- **Supplier:** the supplier as set out in the Quotation and/or Contract Details.
- **Supplier Materials:** have the meaning given in clause 8.1(i).

1.2 Interpretation:

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

2. Basis of contract

- 2.1 The Order constitutes an offer by the Customer to purchase Goods or Services or Goods and Services in accordance with these Terms and Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order.
- 2.3 These Terms and Conditions apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

- 2.4 Any Quotation given by the Supplier shall not constitute an offer and is only valid until the 'Expiration Date' stated in the Quotation.
- 2.5 All of these Terms and Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.6 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with, or contained in any documents of the Customer that is inconsistent with these Terms and Conditions.

3. Goods

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

4. Delivery of Goods

- 4.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (Delivery Location) at any time after the Supplier notifies the Customer that the Goods are ready.
- 4.2 Delivery of the Goods shall be completed on the completion of unloading and/or receipt of Goods at the Delivery Location.
- 4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.4 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 4.5 If the Customer fails to accept delivery of the Goods within three Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourth Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
 - (b) the Supplier shall store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If the Customer has not accepted delivery of the Goods, the parties agree that the Supplier will be entitled to charge the full amount to the Customer.
- 4.7 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality of Goods

- 5.1 The Supplier makes no warranty that on delivery, the Goods shall:
- (a) conform with the applicable Goods Specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
 - (d) be fit for any purpose held out by the Supplier.

5.2 The Supplier shall not be liable for the Goods' if:

- (a) the defect arises because the Customer failed to follow the Supplier's or Manufacturer's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (b) the defect arises as a result of the Supplier following any specification supplied by the Customer;
- (c) the Customer alters or repairs such Goods without the written consent of the Manufacturer of the relevant Goods;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
or
- (e) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.3 These Terms and Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery. If any Good (including any Product) is delivered electronically, risk of loss transfers to the Customer when the Product or Access is made available to the Customer.

6.2 Subject to third party manufacturer's (licensing) terms title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

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

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- (d) notify the Supplier immediately if it becomes subject to any of the events listed in clause 17.1(b) to clause 17.1(c); and
- (e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Customer.
- (f) if any Goods (including any Product) is delivered electronically the Customer will take all such action necessary not to breach or infringe the terms of any license connected to it.

6.4 At any time before title to the Goods passes to the Customer, the Supplier may:

- (a) by notice in writing, terminate the Customer's right to use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Supply of Services

- 7.1 The Supplier shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 The parties agree that the Supplier may supply the Services through a Subcontractor.
- 7.3 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Service Specification but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.4 The Supplier reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 7.5 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.6 Where any Services is subject to review by third party regulator or body for quality assurance the Customer agrees to the Supplier providing the relevant regulator or body with requisite information and documentation. The Supplier cannot guarantee compliance with the third party regulator or body standards and any remedial actions required, and subsequent audit requirements are excluded from the Services under this Service Contract.

8. Customer's obligations

- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and the Service Specification and the Quotation are complete and accurate;
 - (b) ensure that the terms of the Contract are complete and accurate;
 - (c) co-operate with the Supplier (and where relevant the Subcontractor) in all matters relating to the Services;
 - (d) provide the Supplier (and where relevant the Subcontractor) its employees, agents, consultants and Subcontractors, with access to the Customer's Premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
 - (e) provide the Supplier (and where relevant the Subcontractor) with such information and materials as the Supplier (and where relevant the Subcontractor) may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - (f) prepare the Customer's Premises for the supply of the Services;
 - (g) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (h) comply with all applicable laws, including health and safety laws;
 - (i) keep all materials, equipment, documents and other property of the Supplier (and where relevant the Subcontractor) (Supplier Materials) at the Customer's Premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
 - (j) co-operate with and will provide the Supplier (without material delay) any such information and documentation it may reasonably require for the purposes of Onboarding; and
 - (k) comply with any additional obligations as set out in the Service Contract.

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

9. Charges and payment

9.1 The price for Goods:

- (a) shall be the price set out in the Quotation;
- (b) shall be exclusive of all costs and charges of tax, packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

9.2 The charges for Services shall be calculated as follows:

- (a) in accordance with the Quotation and/or Service Contract; and
- (b) the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages (including the Subcontractors) in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

9.3 The Supplier reserves the right to:

- (a) increase the charges for the Services on an annual basis with effect from each anniversary of the Commencement Date in line with the percentage increase in the Retail Prices Index in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Commencement Date and shall be based on the latest available figure for the percentage increase in the Retail Prices Index;
- (b) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
 - (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods.

9.4 In respect of Goods, the Supplier shall invoice the Customer on receipt of the Order. In respect of Services, the Supplier shall invoice the Customer as per the Service Contract.

9.5 The Customer shall pay each invoice submitted by the Supplier:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- (c) time for payment shall be of the essence of the Contract.

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

9.7 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 17, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 9.7 will accrue each day at 4% a year above the Barclays Bank Base Rate base rate from time to time, but at 4% a year for any period when that base rate is below 0%.

9.8 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Intellectual property rights

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

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

11. Data protection

11.1 The parties agree to the Data Processing Terms and the Privacy Policy set out on our website.

12. Service level

12.1 The parties agree to the Service Level Terms.

13. Confidentiality

13.1 Each party undertakes that it shall not at any time during the Service Contract or License Entitlement of the Goods, and for a period of two years after termination or expiry of the Service Contract or License Entitlement of the Goods, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 13.2.

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

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Services Contract or supply of Goods. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

14. Non Solicitation

14.1 The Customer undertakes to the Supplier that it shall not during this Contract and for a period of 12 months after termination or expiry employ, solicit or endeavour (or engage others to do so) to entice away from the Supplier (or its Subcontractors) any member of its staff, employees or director involved in and/or in relation to the subject matter of this Contract.

14.2 If the Customer breaches the provisions of Clause 14.1 then, without prejudice to any other rights or remedies the Supplier may have under this Contract, Customer shall pay to the Supplier by way of liquidated damages an amount equal to 100% of the annual salary payable to the relevant staff, employee or director or Subcontractor solicited or enticed at the time the breach occurred.

15. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

15.1 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £5,000,000 per claim. The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.

15.2 The restrictions on liability in this clause 15 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

15.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

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

- (a) death or personal injury caused by negligence;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); and
- (d) defective products under the Consumer Protection Act 1987.

Notwithstanding anything else in these Terms and Conditions, the Supplier shall not be liable for any loss or claim whatsoever arising from the Customer's computer system backup(s) or failure by the Customer to provide any computer system backup(s).

Subject to clause 15.4, the Supplier's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed 150% (one hundred and fifty percent) of the total annual contract value.

15.5 This clause 15.5 sets out specific heads of excluded loss:

- (a) Subject to clause 15.3 which identifies the kinds of loss that are not excluded. Subject to that, clause 15.5(b) excludes specified types of loss.
- (b) The following types of loss are wholly excluded:
 - (i) loss of profits;
 - (ii) loss of sales or business;
 - (iii) loss of agreements or contracts;
 - (iv) loss of anticipated savings;

(v) loss of use or corruption of software, data or information;

(vi) loss of or damage to goodwill; and

(vii) indirect or consequential loss.

15.6 The Supplier has given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

15.7 The Customer hereby acknowledges and confirms that during Onboarding (before the provision and/or activation of any Services or Goods as specified in the Service Contract) the Supplier shall not be liable for any losses or damages incurred pursuant to any omission or action taken by either the Customer and/or any third party.

15.8 This clause 15 shall survive termination of the Contract.

16. Right to Cancel Goods or Services

16.1 Once an Order has been received by the Supplier, the Customer has no right to cancel any of the Goods and/or Services.

17. Termination

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

- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 60 days after receipt of notice in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

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

- (a) the Customer fails to pay any amount due on the due date for payment; or
- (b) there is a change of Control of the Customer.

17.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services or all further deliveries of Goods or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due on the due date for payment, the Customer becomes subject to any of the events listed in clause 17.1(b) to clause 17.1(c), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

18. Consequences of termination

18.1 On termination:

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

- (b) the Customer shall return all of the Supplier Materials. If the Customer fails to do so, then the Supplier may enter the Customer's Premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Service Contract or License Entitlement;
- (c) the Customer shall immediately permit the Supplier access to the Customer's systems for a reasonable time to ensure that the Supplier can remove access to any Goods and Services supplied to the Customer pursuant to the Contract but which have not been paid for by the Customer.

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

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

19. Force majeure

Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (which for the avoidance of doubt will include epidemics and pandemics) (a Force Majeure Event). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues

for 1 month, the party not affected may terminate the Contract by giving 2 months' written notice to the affected party.

20. General

20.1 Assignment and other dealings

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

20.2 Notices.

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be sent by email to the addresses set out in the Service Contract or Quotation;
- (b) Any notice shall be deemed to have been received if sent by email from the Supplier's or Customer's business email address, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20.3 Severance.

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 20.3 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

20.4 Waiver.

- (a) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- (b) A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

20.5 No partnership or agency.

Nothing in the Contract, Service Contract, Quotation or License Entitlement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

20.6 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties.
- (b) Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

20.7 Third party rights.

- (a) The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

20.8 Variation.

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

20.9 Governing law.

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

20.10 Jurisdiction.

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

Get in touch.

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