TABS FM LIMITED
STANDARD CONDITIONS OF SOFTWARE SUPPLY

THESE CONDITIONS APPLY TO THE LICENSING OR PROVISION OF THE SOFTWARE, AND PROVISION OF RELATED SERVICES, BY TFM TO CUSTOMER.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, the terms set out in the Schedule shall have the meaning defined therein; and the following words and phrases shall have the following meanings:

"Acceptable Use Policy" means the acceptable use policy provided through the Hosted Service, as revised by TFM from time to time;

"**Agreement"** means the Schedule and these Conditions together;

"Confidential Information" means all information disclosed by or on behalf of a party (in whatever medium including in written, oral, visual or electronic form and whether before or after the date of this Agreement) including all business, financial, commercial, technical, operational, organisational, legal, management and marketing information;

"Consultancy Services" means all customisation, configuration, development, implementation, testing and other professional consultancy services provided by TFM in relation to the TFM Materials or Hosted Service (as the case may be), but excluding Support Services and excluding all training services;

"Contract Year" means a 12 month period commencing on the Effective Date or an anniversary of the Effective Date that falls wholly within the Term and, in the event of termination of this Agreement before expiry of any such 12 month period, such portion of the 12 month period then current as falls within the Term;

"Customer Systems" means the Customer's computer equipment and networks used for or with the Software, including servers, desktop and laptop computers, Pocket PCs and related operating systems;

"Documentation" means the user guide and instruction manual documentation generally published or made available by TFM for use by its customers, as revised from time to time by TFM;

"Group Company" means, with respect to a party, any direct or indirect subsidiary or holding company of that party or direct or indirect subsidiary of any such holding company, for which purposes "subsidiary" and "holding company" shall mean as set out in s.1159 Companies Act 2006;

"Intellectual Property Rights" means all inventions (whether patentable or not), patents, utility models, designs (both registered and unregistered and including rights in semiconductor topographies), copyright, database rights, trade and service marks (both registered and unregistered) together with all applications for (and associated rights to claim priority), rights to the grant of and extensions of the same, and all other intellectual and industrial property including but not limited to all similar or analogous rights throughout the world, in each case for the full term of the relevant right;

"Licensed Users" means individuals authorised by Customer or Customer Affiliates to use or have the benefit of the Software or Hosted Service (as the case may be), for whom all related Software Fees have been paid in full;

"Logo" mean the logo of customer.

"New Release" means a major new version of the TFM Software or Hosted Service (as the case may be) [as designated by 1.X or X.1 numbering];

"Software" means collectively the TFM Software and the Third Party Software;

"Software Fees" means the Initial Fee, the Annual Fees and any additional fees or payments payable for additional modules pursuant to clause 2.8.

"Support Services" means the maintenance and support services provided by TFM pursuant to clause 5.3;

"Term" means the Initial Term together with all extensions thereof under clause 12.1 or as otherwise agreed between the parties;

"TFM Materials" means the TFM Software and the Documentation;

"TFM Software" means the object code versions of (a) TFM's proprietary software applications listed as "TFM Software" in the Schedule, (b) all New Releases and Updates supplied to Customer under this Agreement, (c) all new software modules developed by TFM and supplied to Customer for use with the Software under this Agreement, and (d) all modifications, replacements or additions thereto created or developed in the course of the Support Services or Consultancy Services and supplied to Customer under this Agreement;

"Third Party Software" means the object code versions of the third party software applications described as such in the Schedule;

"Update" means any modifications, updates or upgrades to existing modules or functionality of the Software [that do not affect Software version numbers or which only change the third level version number (namely 1.1.x)], excluding New Releases, and excluding new functionality in respect of any future software modules developed by TFM for use with the Software or via the Hosted Service (as the case may be);

"Working Day" means Monday to Friday excluding UK bank and national holidays;

"Working Hours" means [9.00 am to 5.00 pm] (GMT) on Working Days;

1.2 In the event of conflict between the terms of these conditions and the Schedule, the terms of the Schedule shall prevail. The clause headings in this Agreement are for reference only and shall not affect its construction or interpretation. Words importing the singular only shall include the plural and vice versa and words importing the whole shall be treated as including a reference to any part. Any phrase in this Agreement introduced by the term "include", "including", "in particular" or similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.

2 LICENCE OF SOFTWARE

2.1 This clause 2 shall apply in respect of TFM Software which is supplied to Customer by means of Software Installation on Customer's servers.

2.2 In consideration of payment of the Software Fees, TFM hereby grants to Customer with effect from the Licence Commencement Date a non-exclusive, non-transferable licence during the Term to install and use the TFM Software on or from servers located at the Deployment Location(s), for and in connection with Customer's internal facilities management but for no other purpose, and otherwise in accordance with and subject to the terms of this Agreement.

2.3 Customer may make copies of the TFM Software to the extent such copies are reasonably necessary for the operation of a parallel back-up system for use for business continuity purposes in the event of total or partial failure or degradation of its primary live installation, but which shall not otherwise be used for processing live data. Customer shall maintain full records of the date of creation of any such copies of the TFM Software made pursuant to this clause 2.3.

2.4 TFM shall supply or make available to the Customer one or more electronic copies of the Documentation. Customer may make a reasonable number of copies of the whole or any part of the Documentation for the sole purpose of providing information and training on the Software and/or use of the Hosted Service to Customer's personnel, and provided that Customer shall not remove any trade mark, copyright or other proprietary notices from any Documentation or copies thereof.

2.5 TFM shall grant or procure the grant to Customer of non-exclusive non-transferable licences during the Term of the Third Party Software, for use at the Deployment Location(s) solely in conjunction with the use or operation of the Software and subject to the licence terms and restrictions set out in this clause 2 and clause 4.

2.6 Upon Customer's written request, TFM shall enter into an agreement with NCC Group plc (**"NCC"**) for the deposit of the source code version of the TFM Software. The terms of such agreement shall be on the standard terms issued by NCC from time to time or as otherwise agreed between the parties (and NCC) in writing. Customer shall be responsible for all set up charges associated with establishing such escrow and for any subsequent charges necessary to maintain and update the escrow for Customer's benefit.

2.7 All New Releases and Updates supplied to Customer pursuant to this Agreement, and all modifications, replacements or additions to the TFM Software or additional software created or developed in the course of the provision of the Support Services or Consultancy Services and supplied to Customer, shall with effect from the date of each such supply be deemed to be Software and shall accordingly be licensed to Customer in accordance with and subject to this Agreement.

2.8 TFM may from time to time and in its sole discretion offer to Customer new software modules (other than New Releases) providing new functionality, for use with the Software or comprised within the Hosted Service, and for additional fees chargeable to Customer. Any such software modules shall, if supplied by TFM to Customer, be deemed to become part of the Software and/or Hosted Service (as appropriate) from the date on which they were supplied to Customer, and Customer's use thereof shall be subject to the provisions of this Agreement, and all additional fees or payments in relation thereto (including additional Annual Fees if any) shall be deemed to be additional Software Fees and shall be payable in accordance with this Agreement as directed by TFM.

3 HOSTED SERVICE

3.1 This clause 3 shall apply in respect of TFM Software which is supplied to Customer by means of the provision of the Hosted Service.

3.2 In consideration of payment of the Software Fees, TFM hereby grants to Customer with effect from the Licence Commencement Date a non-exclusive, non-transferable licence during the Term to access and use the Hosted Service via the Website, for and in connection with Customer's internal facilities management but for no other purpose, and otherwise in accordance with and subject to the terms of this Agreement.

3.3 TFM hereby grants to Customer with effect from the Licence Commencement Date limited, non-exclusive, non-transferable licences: (a) to download and copy such parts of the Software which are necessary to be downloaded by Customer solely in order to receive the benefit of the Hosted Services and for no other purpose; and (b) to download and print copies of any online materials, reports or documentation generated through the Hosted Service for use solely for and in connection with Customer's internal facilities management and for no other purpose.

3.4 Customer shall, and shall procure that Customer Affiliates shall, not transfer, lend, share, licence, distribute or in any other way make the Hosted Service available to any third parties other than Licensed Users.

3.5 TFM shall ensure that the Hosted Service benefits from industry standard internet security precautions including up-to-date anti-virus protection. Subject to the foregoing however, TFM shall not be liable for any unavailability or

breakdown of the Website, or any corruption or compromise caused to the Hosted Service due to virus or other extraneous attack, which is outside the reasonable control of TFM.

3.6 Customer shall, and shall procure that all Licensed Users shall, at all times use the Hosted Service in compliance with the terms of this Agreement, the terms of use of the Website, the Acceptable Use Policy and all applicable law, codes and regulations (including without limitation law relating to data protection). Without prejudice to the foregoing, Customer shall, and shall procure that Licensed Users shall, not use or access the Hosted Service to: (a) send spam or unsolicited messages in violation of applicable laws; (b) send or store infringing, obscene, threatening, libellous, or otherwise unlawful material; (c) send or store material containing software viruses, worms or other harmful computer code, files or scripts; (d) interfere with or disrupt the integrity or performance of the Hosted Service or the data contained therein; or (e) attempt to gain unauthorised access to the Hosted Service or its related systems or networks (including other parts of the Website).

3.7 Customer agrees that while TFM will use reasonable endeavours to give Customer prior notice of any suspension, TFM may, without further notice or liability, suspend the Hosted Service if:

3.7.1 the Hosted Service is in the reasonable consideration of TFM being used in breach of the terms of the Acceptable Use Policy;

3.7.2 in TFM's reasonable consideration, Customer does not fully co-operate with TFM's investigation or attempted investigation of any suspected violation of the Acceptable Use Policy;

3.7.3 TFM has reason to believe that there is or may be unauthorised access of the Hosted Service and suspension of the Hosted Services is reasonably necessary in order to protect Customer or third parties; or

3.7.4 required to do so by law, regulation, law enforcement agency or government agency.

3.8 Each party shall comply with its respective obligations under the Data Protection Act 2018 (**"DPA"**) and all other applicable data protection laws relating thereto. For these purposes, Customer acknowledges that it is a data controller (as defined by the DPA) in respect of any personal data comprised or derived from data provided by Customer in its use of the Hosted Service.

3.9 Where TFM is acting as a data processor (as defined by the DPA) it undertakes in respect of all personal data (as defined in the DPA) processed by it in such capacity that it shall:

3.9.1 keep such data confidential and not use or disclose it other than as provided for under this Agreement or in accordance with the lawful instructions of Customer;

3.9.2 take reasonable steps to ensure the reliability of any employees of TFM who have access to such data; and

3.9.3 ensure that it has in place appropriate technical and organisational measures to safeguard against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access of or to such data.

3.10 Customer shall indemnify TFM and keep TFM indemnified from and against all claims, liability, loss, damage, cost or expenses suffered or incurred by TFM arising from or in connection with Customer's breach of the Acceptable Use Policy or breach of its obligations under the Data Protection Act 2018.

4 CUSTOMER RESTRICTIONS

4.1 As a condition of supply of the Software, Customer shall ensure that (a) all Customer Systems to be used for or with the Software shall at all times comply with the relevant Minimum System Requirements and the Technical Summary; and (b) it maintains throughout the Term, at its own cost and expense, valid and sufficient licences in respect of all Microsoft Office applications required to be used with the TFM Software or the Hosted Service.

4.2 Customer shall ensure that the number of individual users concurrently using the Software at any time does not exceed the number of Licensed Users for which Customer is then licensed.

4.3 Customer hereby acknowledges and agrees that, in its licence of the Software or provision of the Hosted Service to Customer, TFM may in its sole discretion issue time-limited licence access keys or passwords for each Contract Year which are enabled so as to expire automatically upon the expiry of that Contract Year and/or upon valid termination of this Agreement (howsoever arising).

4.4 Save to the extent permitted under clause 2.3, Customer shall not reproduce, modify, adapt, merge, translate, disassemble, decompile, recompile or reverse engineer the TFM Materials or the Hosted Service, or create derivative works based on the TFM Materials or the Hosted Service (or any part thereof), or incorporate the TFM Materials or the Hosted Service (or any part thereof) into any software program or system not supplied by TFM.

4.5 The information necessary to achieve interoperability of any TFM Software (or part thereof) licensed to Customer with other programs is available from TFM upon request. All such information shall be deemed to be Confidential Information, and Customer shall not use such information for any purpose other than achieving interoperability.

4.6 All Licensed Users must be directors or employees of Customer or, if the Schedule indicates that this Agreement extends to Customer Affiliates, directors or employees of such Customer Affiliates, provided that the total number of Licensed Users shall not be thereby exceeded. For the purposes of this Agreement, all acts, omissions and defaults of Licensed Users shall be deemed to be those of Customer, and Customer shall be responsible and liable for all such acts, omissions and defaults.

4.7 Customer shall not remove any copyright notices or trade marks of TFM from the TFM Materials.

5 PROVISION OF SERVICES BY TFM

5.1 All installation, configuration, development and testing services provided by TFM under this Agreement shall constitute Consultancy Services, in respect of which Customer shall pay TFM additional charges as agreed between the parties. Unless expressly agreed in advance, TFM shall not be obliged to carry out any software development or customisation work in the course of installation or configuration of the Software. All testing (including acceptance testing), and all training services, shall be subject to separate agreement between the parties.

5.2 TFM shall provide all Consultancy Services with reasonable skill and care. TFM shall use all reasonable endeavours to meet Customer's timetable but time shall not be of the essence in respect of the performance of Consultancy

Services. Customer acknowledges that the relevant personnel of TFM shall not be exclusively employed or engaged in the provision of Consultancy Services.

5.3 TFM shall provide the following maintenance and support services (**"Support Services"**) during the Term (for an annual fee):

5.3.1 TFM shall provide a remote telephone helpdesk facility during Working Hours for the provision of advice and assistance on technical issues relating to the use of the Software or the Hosted Service (as the case may be) but not for ad hoc product training;

5.3.2 TFM shall make Updates available to Customer from time to time, but no later than the time generally made available to other clients of TFM, and TFM shall in its sole discretion make New Releases available to Customer from time to time;

5.3.3 TFM shall use all reasonable endeavours to remedy (or assist Customer in remedying) demonstrable errors or defects in the Software or Hosted Service which are notified to TFM by Customer and which are shown to be related to functionality of TFM Materials (to be notified by such means as reasonably required by TFM and in sufficient detail to enable replication of the error or defect by TFM) within 60 days of such notification;

provided that TFM shall not provide Support Services in respect of (a) any Software which is installed on hardware not complying with the Minimum System Requirements or the Technical Summary, or (b) any errors or faults which are a result of use of the Software outside the terms of this Agreement or improperly or for a purpose for which it was not designed or use in combination with third party software not approved by TFM (including any update or new release of any third party software not approved by TFM); or (c) any errors or faults which are a result of any repair, adjustment, alteration or modification of the TFM Materials which has not been authorised by TFM; or (d) any errors or faults which are due to third party software or hardware, the Customer Systems or any telecommunication or internet networks.

6 FURTHER OBLIGATIONS OF CUSTOMER

6.1 Customer shall, and shall procure that all Customer Affiliates shall, make all necessary preparations for the installation and configuration of the Software and related Equipment, and (where applicable) provide TFM with such access (including remote access) to the Equipment and Software as reasonably required by TFM for the provision of Consultancy Services and/or Support Services.

6.2 Customer shall, and shall procure that all Customer Affiliates shall, provide all such information and assistance as reasonably required by TFM to enable the performance of its obligations under this Agreement.

6.3 Once in every Contract Year TFM and/or its authorised representatives may, on reasonable written notice, visit the Deployment Locations and other relevant premises of Customer and/or Customer Affiliates in order to verify the number of Licensed Users, the usage of the TFM Software, and the general compliance with this Agreement by Customer and Customer Affiliates. TFM and/or its authorised representatives shall be permitted to inspect and take copies of any relevant records, data and documentation relating to the use of the TFM Software. Such verification shall be carried out during normal business hours and TFM shall use reasonable endeavours to ensure that such verification does not unreasonably disrupt Customer's or Customer Affiliates' business activities.

6.4 Customer shall not, during the Term or for a period of six months thereafter, directly or indirectly induce or attempt to induce any employee of TFM who has had material dealings with Customer in connection with this Agreement in the previous 12 month period preceding that date to leave TFM's employment, or engage, attempt to engage, employ, attempt to employ or offer employment or work to any such employee.

6.5 If Customer wishes at any time during the Term to change any aspect of the Customer System specified in the Technical Summary, Customer shall obtain TFM's prior written approval. TFM shall in giving or withholding such approval inform Customer of any impact which TFM reasonably anticipates such change may have on the operation of the Software, the Hosted Service and/or the Support Services as well as any associated costs payable by Customer for the provision of Consultancy Services in order to implement the required changes to the Software or Hosted Service in order to continue to comply with the warranties set out in this Agreement. If Customer fails to obtain TFM's approval to such change in the Customer System, TFM shall not be liable (insofar as may be permitted by law) for any breach of the warranty set out in clause 9.1 or any diminution in or failure of the Hosted Service to the extent that such breach, diminution or failure relates to such unapproved change(s) and TFM shall not be required to provide Support Services in respect of any parts of the Customer System affected by such unapproved change(s). Where any changes are approved in writing by TFM the Technical Summary shall be deemed to be amended accordingly and all references to Technical Summary shall include any such approved changes.

7 FEES AND EXPENSES

7.1 All Software Fees shall be as set out in, or calculated by reference to the scale of fees contained in the Schedule. The Initial Fee shall be payable in two instalments, whereby the first instalment of 50% of the Initial Fee shall be payable on the Effective Date and the second instalment of 50% of the Initial Fee shall be payable on the Licence Commencement Date. All Annual Fees shall be payable by Customer annually in advance, on the first Working Day of each Contract Year.

7.2 Unless otherwise agreed in writing, TFM shall invoice Customer monthly in arrears in respect of the provision of Consultancy Services, on a time and materials basis, the time taken being chargeable in accordance with the Consultancy Rates.

7.3 TFM shall be entitled to invoice and be reimbursed by Customer in respect of all reasonable travel, hotel and subsistence expenses incurred by TFM's personnel in connection with the provision of Consultancy Services and for which TFM provides receipts or other evidence of expenditure in accordance with TFM's Expenses Tariff as set out in the Schedule.

7.4 **CUSTOMER SHALL PAY ALL AMOUNTS INVOICED TO IT BY TFM WITHIN 30 DAYS OF THE DATE OF THE RELEVANT INVOICE.**

7.5 **THE SOFTWARE FEES AND THE CONSULTANCY RATES ARE SUBJECT TO ANNUAL ADJUSTMENT AFTER THE INITIAL TERM, CAPPED AT 5%, AS DESCRIBED IN THE SCHEDULE. TFM SHALL NOTIFY CUSTOMER IN**

WRITING OF EACH SUCH ANNUAL ADJUSTMENT NOT LESS THAN ONE MONTH PRIOR TO THE DATE ON WHICH IT TAKES EFFECT.

7.6 All payments under this Agreement are stated exclusive of value added tax or any goods or services tax or other sales tax that may be payable by reference to the relevant payment(s), all of which taxes shall (if and to the extent applicable) be payable by Customer in addition to the relevant payment(s). Customer shall be responsible for paying any taxes which arise under this Agreement save for any tax based on TFM's income.

7.7 Customer shall pay all amounts due under this Agreement in full and without set-off, deduction or counterclaim. If however Customer is required to make any withholding by way of withholding tax it shall gross up the payment to TFM so that TFM receives the sum that it would have received had no such withholding been made.

7.8 All payments shall be made in the currency in which the relevant fee is stated on TFM's invoice, and shall be made by electronic payment to TFM's bank account (as nominated by TFM from time to time).

7.9 TFM reserves the right to charge interest at a daily rate on all unpaid sums from the due date for payment until payment in full is received whether before or after judgment at the rate of 5% per annum above the UK base lending rate from time to time of the Bank of England.

8 INTELLECTUAL PROPERTY

8.1 Customer hereby acknowledges and agrees that as between the parties, TFM is the exclusive owner of all Intellectual Property Rights protecting the TFM Materials (whether or not licensed to Customer). Customer shall not be licensed in respect of any of the foregoing save as expressly set out in this Agreement.

8.2 To the extent that any Intellectual Property Rights protecting any software, materials or other works created or developed in the course of the provision of Support Services or Consultancy Services do not, by operation of law, vest automatically in TFM but are owned by Customer or any Customer Affiliates, Customer hereby irrevocably assigns, and/or shall procure that Customer Affiliates shall assign, the same to TFM by way of present and (where possible) future assignment with full title guarantee, and Customer shall at the expense and request of TFM do or procure to be done all such things and execute or procure the execution of all such documents which may be necessary or desirable to vest such rights in TFM absolutely.

8.3 The indemnity in this clause 8 applies solely in respect of Software licensed to Customer and installed on Customer's servers, and not in respect of the use of the Hosted Service. TFM shall indemnify and hold harmless Customer against all actual direct damages, costs and expenses awarded against Customer by a court of competent jurisdiction not subject to appeal directly arising from a claim brought by a third party that the use and/or possession by Customer or any Customer Affiliate of the TFM Materials in accordance with this Agreement infringes any trade mark or copyright of such third party, provided that:

8.3.1 Customer shall promptly notify TFM in writing of any claim of alleged infringement for which indemnification is sought under this clause 8.3 (**"Infringement Claim"**);

8.3.2 Customer makes no admissions as to liability or compromise or agree any settlement of any Infringement Claim without the prior written consent of TFM, or otherwise prejudice the defence of any Infringement Claim;

8.3.3 Customer gives TFM (or such person as TFM shall direct) immediate and complete control of the conduct or settlement or all negotiations and litigation arising from any Infringement Claim, provided that TFM shall consult Customer periodically in relation to such conduct or settlement; and

8.3.4 on payment of its reasonable costs, Customer gives TFM and such other third parties as TFM shall direct all reasonable assistance with the conduct or settlement of any such negotiations or litigation.

8.4 In the event of any Infringement Claim, TFM may, at its sole option and own expense:

8.4.1 procure the right for Customer to continue using the infringing TFM Materials;

8.4.2 avoid future infringement by making such alterations, modifications or adjustments as TFM considers necessary or desirable provided that such alternations, modifications or adjustments do not entail a material diminution in performance or function;

8.4.3 replace the TFM Materials, or infringing part thereof, with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function; or

8.4.4 terminate this Agreement on giving written notice to Customer and refunding a proportion of the Annual Fees prepaid by Customer in that Contract Year which corresponds to the unexpired remainder of the Contract Year outstanding as at the date of termination.

8.5 Notwithstanding clause 8.3, TFM shall have no liability for any claim of infringement based on:

8.5.1 use of the TFM Materials other than in accordance with the Documentation or this Agreement, or use of the TFM Materials for a purpose for which it was not designed;

8.5.2 the use of a superseded or altered release of the Software which is no longer supported under this Agreement if the infringement would have been avoided by the use of the then current release or the immediately preceding New Version of the TFM Software; or

8.5.3 any repair, adjustment, alteration or modification of the Software which has not been authorised by TFM or its licensors.

8.6 This clause 8 states the entire liability of TFM in respect of infringement of any Intellectual Property Rights of any third party.

9 WARRANTY

9.1 The warranty in this clause 9 applies solely in respect of Software licensed to Customer by means of Software Installation on Customer's servers. TFM hereby warrants that, for the duration of the Warranty Period, the TFM Materials, when used properly in conjunction with the Third Party Software and on Customer Systems complying with the Minimum System Requirements and the Technical Summary and in accordance with this Agreement, shall materially provide the features and functionality set out in the Documentation, provided that TFM does not warrant that the use or operation of the TFM Materials will meet the Customer's requirements or will be uninterrupted or error free. If any part of the TFM Materials fails to conform with the foregoing warranty, TFM shall at TFM's own cost and expense, use all reasonable endeavours to remedy (or assist Customer in remedying) demonstrable errors or defects

in the TFM Materials which are notified to TFM by Customer (by such means as reasonably required by TFM and in sufficient detail to enable replication of the error or defect by TFM) within 60 days of such notification.

9.2 TFM does not warrant that the TFM Materials will be compatible with Customer's software, hardware or other equipment (other than the hardware and software specifically referred to in the Minimum System Requirements and/or the Technical Summary), and accordingly TFM shall not be liable for any damage caused to such software, hardware or other equipment as a result of using the TFM Materials. Customer is solely responsible for ensuring the TFM Software is compatible with the Customer Systems, and accepts that the TFM Software was not designed to Customer's individual requirements.

9.3 So far as permissible by law, TFM shall not be liable for any breach or non-performance of the warranty in clause 9.1 if such breach or non-performance is as a result of:

9.3.1 use of the TFM Materials other than in accordance with the Documentation or this Agreement, or improper use of the TFM Materials or hardware on which the Software is installed, or use of the TFM Materials for a purpose for which it was not designed, or use in combination with third party software not approved by TFM (including any update or new release of any third party software not approved by TFM); or

9.3.2 any repair, adjustment, alteration or modification of the TFM Materials which has not been authorised by TFM, or any error or defect due to a malfunction of any hardware, equipment or other software not provided by TFM.

9.4 The rights and remedies set out in this clause 9 are the entire rights and remedies of Customer and (if applicable) any Customer Affiliates in respect of a breach of the warranty contained in clause 9.1. Except as expressly warranted in this Agreement, TFM makes no other warranty of any kind, express or implied, and any such warranties are hereby excluded to the fullest extent permissible by applicable law.

10 LIABILITY

10.1 Neither party excludes or restricts its liability to the other party for death or personal injury resulting from its negligence or for fraudulent misrepresentation or for any other liability which cannot be excluded or restricted under applicable law.

10.2 Subject to clause 10.1, TFM shall not in any circumstances be liable to Customer, whether in contract, tort, negligence, breach of statutory duty or otherwise, in respect of loss (whether direct or indirect) of profits, anticipated profits, revenue, anticipated savings, goodwill, reputation, business or business opportunity, or in respect of loss or corruption of data or cost of restoration of data, or in respect of any indirect, consequential, financial or economic loss damage costs or expenses whatsoever or howsoever arising out of or in connection with this Agreement and whether or not foreseeable.

10.3 Subject to clauses 10.1 and 10.2, the total and aggregate liability of TFM under or in connection with this Agreement shall not at any time exceed [125%] of the total Software Fees paid by Customer to TFM under this Agreement in the 12 month period immediately preceding the date on which the relevant liability arises.

10.4 TFM shall not be liable in respect of any delay or other default concerning the provision of any information, data or services to Customer, which is attributable in whole or part to any non-compliance, delay or default hereunder by Customer and/or any Customer Affiliates (as the case may be).

10.5 Customer agrees on its own behalf and on behalf of all Customer Affiliates that nothing in this Agreement shall allow multiple recovery by Customer and/or any Customer Affiliate in respect of the same loss or liability.

11 CONFIDENTIALITY

11.1 Each party shall, and in the case of Customer shall procure that all Customer Affiliates shall:

11.1.1 keep all Confidential Information of the other party confidential, and not without the prior written consent of the other party disclose or permit the disclosure of the same to any third party other than its or their respective personnel on a strictly need to know basis; and

11.1.2 use the Confidential Information of the other party only for the proper performance of its duties or exercise of its rights under this Agreement.

11.2 Save in respect of the TFM Materials (which Customer shall continue to treat in confidence notwithstanding their entry or purported entry into the public domain), the provisions of clause 11.1 shall not apply to any Confidential Information that:

11.2.1 the receiving party can reasonably demonstrate was known to the receiving party or in its possession before that information was acquired from the disclosing party;

11.2.2 is in or enters the public domain through no default of the receiving party or any person on its behalf, with effect from the date that the relevant Confidential Information enters the public domain; or

11.2.3 the receiving party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence.

11.3 Each party shall keep the contents of this Agreement and all negotiations in relation to it confidential, and not disclose the same to any third party. Customer shall, and shall procure that all Customer Affiliates shall, keep confidential

and not disclose to any third party any TFM Materials and all coding, documentation, materials, information and data relating or preparatory thereto.

11.4 The provisions of clauses 11.1 and 11.3 shall not apply to any information which is required to be disclosed by any applicable law or by order of any court of competent jurisdiction or any government body, agency or regulatory body, to the extent of the required disclosure, provided that the receiving party shall use all reasonable endeavours:

11.4.1 to give the other party as much written notice of the disclosure as it reasonably can to enable the other party to seek a protective order or other action protecting such information from disclosure;

11.4.2 to furnish only that portion of the information that it is legally obliged to disclose; and

11.4.3 to consult with the other party with a view to agreeing the timing and content of any such disclosure.

11.5 The receiving party shall notify the disclosing party promptly if it becomes aware that any of the Confidential Information falls within the provisions of clauses 11.2 or 11.4.

12 TERM AND TERMINATION

12.1 This Agreement shall commence on the Effective Date and, subject to termination in accordance with this Agreement, shall continue for the duration of the Initial Term and shall continue automatically thereafter for further successive 12 month periods.

12.2 Customer may terminate this Agreement at any time on or after the expiry of the Initial Term, subject to giving TFM at least 3 months' prior written notice (such notice to state the date of intended termination). In the event of termination by Customer during a Contract Year pursuant to this clause, Customer shall not be entitled to any refund of any Software Fees prepaid in respect of that Contract Year.

12.3 This Agreement may be terminated immediately by either party, on giving written notice to the other, if:

12.3.1 the other commits a material breach of any term of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;

12.3.2 the other party is dissolved, struck off the register of companies or has a winding up order made against it, or a petition is presented, a resolution passed, or a meeting is convened for or with a view to such winding-up, in all cases except for the purpose of a scheme of solvent reconstruction, reorganisation, merger or consolidation; or the other party has a receiver, administrative receiver, manager, insolvency practitioner or similar officer appointed over the whole or any part of its undertaking or assets; or a notice of intention to appoint an administrator is given by any person, or any other step is taken by any person with a view to placing the other party into administration; or the other party enters into a composition, scheme of arrangement or voluntary arrangement with any of its creditors or otherwise, or any such composition or arrangement is proposed, or a moratorium is agreed, imposed or declared in respect of or affecting all or a material part of (or of a particular type of) the debts of the other party; or in any other jurisdiction any event or circumstance analogous or equivalent to those referred to above occurs or arises; or

12.3.3 the other party ceases or threatens to cease carrying on business.

12.4 This Agreement may be terminated by TFM for convenience on the last day of any Contract Year, upon TFM giving at least 3 months' prior written notice to Customer.

12.5 Any termination of this Agreement shall be without prejudice to any other rights or remedies either party may be entitled to under this Agreement or at law.

12.6 The provisions of clauses 3.10, 6.4, 7, 8, 10, 11, 12.5, 12.6, 12.7 and 13 shall survive expiry or termination (howsoever arising) of this Agreement and shall continue in full force and effect thereafter.

12.7 In the event of expiry or termination (howsoever arising) of this Agreement:

12.7.1 all licences granted hereunder shall immediately cease and accordingly Customer shall, and shall procure that all Customer Affiliates shall, immediately cease all use of the TFM Materials and/or the Hosted Service;

12.7.2 Customer shall, and shall procure that all Customer Affiliates shall, within 14 days of such expiry or termination return to TFM or at TFM's direction destroy all copies of the Software and Documentation and all other recorded Confidential Information of TFM (whether in paper or electronic form) in its or their possession, custody or control; and

12.7.3 Customer shall promptly pay all sums due and payable under this Agreement without delay, including any amounts accrued in respect of the provision of Consultancy Services.

13 GENERAL

13.1 **Announcements.** Neither party shall make any announcement in relation to this Agreement or otherwise publicise its existence or its contents or use or refer to the name, trade mark or trade name of the other party in any disclosure without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

13.2 **Assignment.** Neither party shall without the prior written consent of the other party assign, transfer (in whole or in part) or charge or deal in any manner with this Agreement or the benefit or burden of or the rights under this Agreement.

13.3 **Force majeure.** Neither party shall be liable to the other party for any delay or non-performance of its obligations under this Agreement, other than an obligation to make any payment due to the other party, if that delay or failure is caused by circumstances beyond the reasonable control of that party, including war or other military action, riot, terrorism, civil commotion, sabotage, malicious damage, strike, lock out, embargoes, failure of a telecommunications or internet service provider, unforeseeable shortage of labour or materials, fire, explosion, flood, earthquake, storm, lightning or other natural calamity.

13.4 **Waiver and remedies.** Except as otherwise stated in this Agreement, the rights and remedies of each party under this Agreement are in addition to any other rights or remedies under this Agreement or the general law, and may be waived only in writing and specifically. Delay in exercising or non-exercise of any right or a partial exercise of any right under this Agreement is not a waiver of that or any other right under this Agreement. Waiver of a breach of

any term of this Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

13.5 **Severance.** If any provision of the Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect the legality, validity or enforceability in that jurisdiction of any other provision of the Agreement or the legality, validity or enforceability in any other jurisdiction of that or any other provision of the Agreement. The parties shall negotiate in good faith to modify any such provisions so that to the greatest extent possible they achieve the same effect as would have been achieved by the invalid or unenforceable provisions.

13.6 **No reliance.** Each party acknowledges to the other that it has not been induced to enter into this Agreement by nor has it relied upon any representation, promise, assurance, warranty or undertaking (whether in writing or not) by or on behalf of the other party or any other person save for those contained in this Agreement. Accordingly, each of the Parties acknowledges and agrees that the only remedy available to it in respect of the subject matter of this Agreement shall be for breach of contract under the terms of this Agreement. However nothing in this Agreement shall exclude liability for fraud.

13.7 **Variation.** No variation of this Agreement shall be valid unless it is in writing and signed by an authorised representative of each of the parties.

13.8 **Rights of third parties.** A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Agreement.

13.9 **Notices.** All notices between the parties with respect to the Agreement shall be in writing and signed by or on behalf of the party giving it. Any notice shall be duly served (i) on delivery if delivered by hand, (ii) 48 hours after sending if sent by first class post or recorded delivery or (iii) on sending if sent by fax (provided that a copy is also sent by post), provided that in each case the notice is sent to the address of the addressee in the Agreement or such other address as the addressee may from time to time have notified for the purpose of this clause.

13.10 **Governing law and jurisdiction.** This Agreement shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the non-exclusive jurisdiction of the English courts in relation to (a) any action or proceedings arising out of or in connection with this Agreement or its implementation or effect and (b) relating to any non-contractual obligations arising out of or in connection with this Agreement.

13.11 TFM shall be granted the right to advertise the award of contract by the customer, upon receipt of a signed contract. This advertisement may take the form, but not be limited to, social media messages or publishing logos on TFM websites.