

General Terms and Conditions for Mercur Cloud Services

1 The service

- 1.1 This Agreement is intended for a standardized, permanent internet based service including the Application Mercur Business Control (“the Application”) as a SaaS service. Mercur is responsible for continuously maintaining and updating the performance of the technical environment and security so that it will always corresponds to the common requirements of the Customer and Mercur.
- 1.2 The number of authorized users corresponds to the number specified in the agreement. The fees that shall be paid for the service are stated in the Agreement under “Fees”.
- 1.3 In conjunction with the start-up of the Service Mercur can on request, provide consulting services for adaptation and integration of applications and education on the operation of the Application. The terms and conditions for such consultancy services shall be regulated in a separate agreement.
- 1.4 The Customer is responsible for necessary system administration of the Application, i.e. user administration, user rights etc.

2 Term and termination

- 2.1 The Agreement is effective for an initial term of 12 months from the date it has been signed by authorized representatives of both parties and shall remain valid until it is terminated according to the terms in this Agreement.
- 2.2 The Agreement may be terminated as follows:
 - a) Either party may terminate this Agreement if the other party commits a material breach of its obligations under the Agreement and fails to remedy such breach within thirty (30) days after receiving written notice of such breach.
 - b) Either party may immediately terminate the Agreement if the other party cancels its payments, is declared bankrupt, initiates composition proceedings or otherwise is insolvent.
 - c) The Customer also has a right at every anniversary, following the initial term, of the signing of the Agreement to terminate. Such termination shall be made in writing and at least three (3) months prior to the anniversary; otherwise the Agreement shall be extended by one (1) year at the time.
 - d) Mercur also has a right to terminate this Agreement according to §5.4 below.

3 Terms of payment

- 3.1 The fees for the Service shall be invoiced at the first time on the signing of this agreement. The fees will be invoiced quarterly in advance.
- 3.2 The fees shall be paid within thirty (30) days from the date of the invoice and statutory VAT will be added. Default interest will be invoiced at 2.25% per month for late payment.

4 Backup and reliability

- 4.1 Backup of the Application and database are made every day. The backups are stored and can be read back for up to 10 days in time if something unexpected happens.
- 4.2 All data centers are equipped with redundant Internet connections, power supply and other infrastructure to maintain stable operations regardless of unexpected loss of supporting systems. In addition to UPS systems that immediately takes over when the power fails, other systems take over in an extended power failure.

5 Maintenance and support

- 5.1 This Agreement includes maintenance and support of the Application. The Application can be modified and adapted specifically to the Customers business operation and this means that it might not be possible to implement certain updates or that some consultancy effort might be required to implement certain updates in the Customers business operation.
- 5.2 The maintenance includes correcting of any errors in the Application that are discovered by the Customer and notified to Mercur per instructions from Mercur. The maintenance also includes amendments to the electronic documentation related to the Application. The maintenance does not include modifications and adaptations made to the Application.
- 5.3 Maintenance includes free implementation of updates that Mercur from time to time implement in the Application. However, this assumes that no modifications have been made in the source code of the Application. Updates are identified by having the same initial sequence number as the update before but the next figure is higher than the previous one (e.g. 7.5 is updated to 7.6). A new generation of the Application are identified by having a new initial sequence number compared to the prior generation (e.g. 8.0 compared to 7.6). New generations are included in the maintenance but not the implementation of these. New applications or modules, etc. are normally not included in maintenance.
- 5.4 When Mercur implements updates where the source code has been modified and when Mercur implements a new generation of the Application the Customer shall compensate Mercur according to the current price list for consultancy services. Such consultancy efforts shall be subject to the Customer prior approval. If the Customer does not want to upgrade the Application to a new generation Mercur has the right to terminate this Agreement two (2) years after the release of the new generation. Such termination shall be made in writing earliest three (3) months prior to the two (2) years anniversary of the release of the new generation.

- 5.5 Consultancy services in connection with trouble-shooting and similar activities shall be compensated by the Customer according to the current price list if the cause of the disruption is found to be due to the Customer operation or configuration.
- 5.6 The maintenance also includes a right for one of the Customer designated contact persons to, during Mercur's normal business hours, contact the Mercur Support via telephone; e-mail etc. to solve any problems caused by errors in the Application. The maintenance does not include any user support.
- 5.7 Service levels (SLA) – error classification

Priority	Classification	Definition
1	Critical	Fatal error that prevents the use of the system.
2	Major	Errors that do not prevent the use of the system but which significantly inhibit the effectiveness and use of the system.
3	Minor	Errors of a less serious nature and which do not significantly inhibit effective use of the system.
4	Trivial	Errors with little or no impact, e.g. errors in labels, documentation or help texts.

- 5.8 Service levels (SLA) - agreed response times

The time, within the agreed service time, from when the error is reported until Mercur with relevant skills start the process of problem solving.

Priority	Primary response	Forecast Resolution Time	Target Resolution time
1	1 working hour	Within 3 working hours	8 working hours
2	4 working hours	Within 8 working hours	16 working hours
3	8 working hours	Within 5 working days	10 working days
4	TBA	TBA	TBA

All errors of priority 1 Critical, problem solving should begin within four working hours. Mercur shall put the necessary resources in place and continuously work with the error during normal business hours until it is resolved or moved to a lower error classification. Mercur shall aim to have errors of priority 1 corrected within two working days. Forecast on when the error can be corrected shall be submitted to the Customer within one working day from when the service request has been received. In the case of a disagreement as to the classification of errors as Priority 1, the classification by the Customer has precedence. In case of errors of type 2 Major or 3 Minor, the Mercur staff shall begin problem solving within one or 5 working days from receipt of the Customer written error report. Forecast on when the error can be corrected shall be submitted to the Customer within one or 5 working days from when the service request has been made. Errors of type 4 Trivial are handled as time permits or as agreed with the Customer.

The above service levels are only valid if the Customer use Mercur's defined error reporting processes to Mercur support, i.e. telephone, mail or on-line. Where Mercur fails to meet the Target Resolution time for three (3) or more Priority 1 Critical or Priority 2 Major errors in any three (3) month period, the Customer shall be entitled to treat this as a material breach of the Agreement in accordance with clause 20.4(a)(i) of the General Terms.

Mercur shall ensure that the Services shall have an overall availability of no less than 99.5% in each calendar month (the “Availability Percentage”), this can be viewed at <https://status.mercur.com>. Where Mercur fails to meet the Availability Percentage for a month, it shall provide the Customer with service credits in accordance with the following table.

Availability Percentage	Service Credit
99.5% +	No credit
99%	5%
98.5%	7.5%
98%	10%
97.5%	20%
97% or less	25%

6 System diagnostics

- 6.1 The Customer gives Mercur permission, as described below, to automatically transfer the below defined information from the Customer installation of the Application.
- 6.2 All errors that occur in the Application are by default logged. These logs are searchable as event logs in each Application with the log type "Error". These error logs periodically (configurable, but usually once a day or week) will automatically be compiled and sent to a server at the Mercur headquarters. The data is transmitted via a secure HTTPS connection and sensitive information such as customer data and passwords are never sent. Information about errors of the Customer Mercur installation can then be compiled and analyzed by Mercur’s developers, in order to facilitate early detection of frequent errors.

In addition to information about errors, an activity log measuring the use of the Application by the Customer is also transmitted. This is only a single value per day and user summarizing the number of openings, saves, and other similar events. This is needed only to create ratios where the failure rate is related to how much the system is used.

7 Entire agreement and changes to the Agreement

- 7.1 This Agreement together with its appendices constitutes the entire agreement regarding the subject matter of this Agreement. All written and oral undertakings and representations preceding this Agreement shall be replaced by the content of this Agreement.
- 7.2 Changes and additions to this Agreement shall be made in writing and signed by both parties in order to be valid and effective.

8 Other

- 8.1 For other terms and conditions apply General Terms and Conditions IT Project (UK) issued by IT & Telekomföretagen 2014, and adapted by Mercur Solutions (UK) Limited 2019

General Terms and Conditions

IT Project (UK)

Issued by IT & Telekomföretagen 2014 and adapted for the UK by Mercur Solutions (UK) Limited 2019)

These general terms and conditions are intended for use with projects where the Supplier is responsible for delivering an IT system with certain agreed properties.

These general terms and conditions constitute an appendix to the agreement entered into between the parties. In the event of any conflicting information in the Agreement, the parts of the Agreement prepared by the parties shall take precedence over these general terms and conditions.

1. General

1.1 Definitions

Unless the context or circumstances clearly require otherwise, the following words and phrases shall have the meanings specified below:

Agreed Approval Date

The date by which the System, in accordance with the applicable timetable, shall fulfil the Specification, which shall be verified in accordance with clause 7.

Agreement

The agreement, including appendices, entered into between the parties.

Actual Approval Date

The date on which the System is approved in accordance with clause 7.3.

Data Protection Legislation

The EU General Data Protection Regulation 2016/679 (so long as and to the extent that the law of the European Union has legal effect in the UK) and the Data Protection Act 2018, together with all other applicable legislation relating to privacy or data protection including any statute or statutory provision which amends, extends, consolidates or replaces the same. The terms “personal data”, “data subject”, “controller”, “processor” and “process” (and its derivatives) shall have the meanings given to them in the Data Protection Legislation.

Intellectual Property Rights

Patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), 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.

Project Plan

A plan, including but not limited to a timetable, of how the Project will be carried out.

Product(s)

The machine and standard software products to be delivered by the Supplier in accordance with the Agreement.

Project

All services to be performed and any delivery of Products to be made in accordance with the Project Description and Specification.

Project Description

A description contained in the Agreement of the results which the Supplier shall deliver, the other services to be performed and, where applicable, the Products to be

delivered.

Specification

A detailed written description of the requirements for the system which the Supplier shall deliver. The System’s fulfilment of the Specification shall be checked during the acceptance test period in accordance with clause 7.

Supplier

Mercur Solutions (UK) Limited, a company incorporated in England and Wales with company number 12025712.

System

The result which the Supplier must deliver in order to fulfil the Specification.

Third Party Product

Machine or software products and tools:

- a) expressly specified in the Agreement as third party products, or
- b) which have not been delivered by the Supplier under the Agreement, or
- c) expressly specified in the Agreement as open source software.

- 1.2 In the event that the Project Description consists of various documents and in the event these documents contain conflicting information, the most recently prepared document shall take precedence.

In the event of conflicting information in the Project Description and the Specification, the Specification shall take precedence.

2. Scope of the Project

- 2.1 The Supplier shall draw up the Specification and Project Plan on the basis of the Project Description, unless they are already attached to the Agreement. The Specification and Project Plan shall be approved by the Customer in accordance with clause 2.3.

- 2.2 Any changes to the Project Description, Specification and/ or Project Plan must be made in accordance with clause 3 below.

- 2.3 The Supplier shall submit the Specification and Project Plan to the Customer for approval. Unless the parties have agreed a different time period, the Customer must approve the Specification and Project Plan within 15 days of receipt.

- 2.4 If the Specification and Project Plan are not approved in accordance with the above and the parties are thereafter unable to agree on an approved Specification and Project Plan, either Party may terminate the Agreement in writing with immediate effect. In the event that a fixed price has been agreed for the work on the Specification and Project Plan, the Customer shall pay this upon termination. If the parties have not made such an agreement, the work performed by the Supplier shall be remunerated on current account.

3. Changes to the Project

- 3.1 If the Customer wishes to change the Project Description, Specification or Project Plan, the Customer must submit a request for change to the Supplier. The Supplier shall not object to the Customer’s request for change, unless

it can demonstrate an objective reason for so doing. However, the Supplier may be entitled to terminate the Agreement in accordance with clause 20.3.

- 3.2 The Supplier shall, within a reasonable time from receipt of a request for change, provide written notification as to whether the change has been accepted and what changes this entails in the remuneration and/or the timetable (changes to the Agreed Approval Date etc.).

Any changes to the Project, including any change to the remuneration and/or timetable, shall be agreed in writing between the parties in advance.

- 3.3 Where agreement in accordance with sub-clause 3.2 cannot be reached, but the Supplier has confirmed to the Customer in writing that the requested change will be implemented, the change shall be implemented against payment on current account and the Supplier shall be entitled to a reasonable extension of time.

4. Implementation of the Project

- 4.1 The Parties shall cooperate and consult during the implementation of the Project. Each party shall designate a contact person who shall be responsible for the cooperation in regard to the Agreement. Each party shall notify the other party of the designated contact person. The contact person is entitled to represent the principal in matters concerning the implementation of the Project. Other contact areas and cooperation bodies as well as their composition and tasks shall be set out in the Agreement.

- 4.2 The Supplier shall perform the tasks required in order to fulfil both the Specification and what is otherwise set out in the Project Description. The Supplier shall perform the Project in accordance with the agreed Project Plan, with the time extensions that may follow from clauses 3 and 9.2 respectively.

The Supplier shall perform its obligations with adequate resources and employees that are appropriate, qualified and competent for the purpose. The obligations shall be performed in a professional manner.

The Supplier may engage a subcontractor to perform services within the scope of the Project. The Supplier shall inform the Customer before it intends to engage a subcontractor to perform work within the scope of the Project. The Supplier is liable for the subcontractor's work as if it were its own.

- 4.3 The Customer shall perform the obligations set out in the Agreement with employees that are appropriate, qualified and competent for the purpose and with adequate resources.

The Customer shall provide accurate information for the performance of the Project. The Customer shall review all documents received, announce decisions and otherwise implement agreed measures to make it possible for the Supplier to follow the agreed timetable.

- 4.4 A party who becomes aware of any circumstances that may affect the timetable for implementation of the Project, shall notify the other party without delay.

5. Risk and Delivery Terms for Products

- ~~5.1 The risk for Products, documentation and other materials provided by the Supplier in accordance with the Agreement shall pass to the Customer on delivery.~~
- ~~5.2 Unless the parties agree otherwise, the place of delivery shall be the Customer's premises or other agreed location.~~

6. Retention of Title

- ~~6.1 Products that are machine products remain the property of the Supplier until they have been paid in full.~~

7. Acceptance Testing, Approval

- 7.1 The Customer shall verify that the System fulfils the Specification during an acceptance test period covering, unless otherwise follows from the timetable, 30 days

before the Agreed Approval Date. Acceptance tests shall be minuted. The Customer is entitled to postpone the timetable for the acceptance test period in accordance with the rules for changes to the Project in clause 3 and with consideration to clause 10.

The Customer shall approve the System if it complies with the Specification and does not deviate from what may be considered to follow from the Project being implemented in a professional manner.

- 7.2 The Supplier is not liable for faults in or delays caused by Third Party Products.

- 7.3 The Actual Approval Date is the date when:

- a) the System has been approved by the Customer; or
- b) the acceptance test period expires without the Customer making a legitimate complaint; or
- c) the acceptance test period expires and the System does not comply with the Specification but this is due to circumstances for which the Supplier is not responsible in accordance with sub-clause 7.2; or
- d) the System complies with the Specification after the Supplier has remedied the legitimate complaints raised by the Customer in the minutes of the acceptance test; or
- e) the Customer, after the acceptance test period has expired, and without the Actual Approval Date entering into effect in accordance with the above, uses the System in its business without the Supplier's written consent.

- 7.4 Non-compliance with the Specification which does not significantly affect the System's intended use shall not prevent the Actual Approval Date from entering into effect. The Supplier's liability for non-compliance with the Specification after the Actual Approval Date is set out in clause 11.

8. Part Approval

- 8.1 If, according to the Project Plan, acceptance testing shall be conducted on part of the System, the provisions regarding acceptance testing and approval in clause 7, the Supplier's delay in clause 9 and liability for faults in clause 11 respectively, shall apply to each such part and the corresponding part of the Specification.

9. Supplier's delay

- 9.1 Unless the parties agree otherwise, and taking account of any extension of time which may result from sub-clause 9.2, Supplier delay occurs if the Actual Approval Date takes effect after the Agreed Approval Date.

- 9.2 The Supplier is entitled to a reasonable extension of time if the Supplier is delayed owing to a circumstance for which the Customer is responsible or owing to a circumstance set out in clause 21 (force majeure) or owing to a change to the Project in accordance with clause 3.

- 9.3 In the event of the Supplier's delay in accordance with sub-clause 9.1, the Customer is entitled to liquidated damages at a sum per week of delay specified in the Agreement. In the absence of such agreement, liquidated damages per full week of delay accrue at a rate of 0.5% of the estimated remuneration for the part of the Project which is subject to acceptance testing (hereinafter referred to as the basis for liquidated damages), up to a total amount of liquidated damages of 10% of the basis for liquidated damages. If the Actual Approval Date comes into effect for part of the System in accordance with clauses 7.3 e) or 8, the remuneration for such part of the System shall not be included in the basis for liquidated damages. Except as prescribed in this clause and clause 20, no other remedy is available to the Customer on the grounds of the delay, other than in the event of intent or gross negligence.

The Customer loses its right to claim compensation for delay, unless it makes such claim in writing within three (3) months of the Actual Approval Date entering into effect.

10. Customer's delay

- 10.1 If, as a result of circumstances for which the Customer is responsible or conditions on Customer's side, the Supplier is unable to utilise allocated resources, the Supplier is entitled, after notifying the Customer's contact person to this effect, to charge compensation for the allocated time that cannot be utilised. This applies to the extent that the Supplier cannot cover the allocated resources with other work.
- 10.2 The Supplier loses its right to claim compensation as a result of being unable to utilise allocated resources, if such claim is not made in writing within three months after the delay occurred.

11. Liability for Faults

- 11.1 With the urgency required by the circumstances, the Supplier shall remedy any faults in the System that were documented in connection with the acceptance test, and any faults that should not have been discovered during the acceptance test period and were notified within twelve months of the Actual Approval Date entering into effect. Where the Supplier has received remuneration for faulty work, the fault shall be remedied without cost.
- Fault means that the System does not comply with the Specification or deviates from what may be considered to follow from the Project being implemented in a professional manner. The Supplier is not liable for any faults that are immaterial to the intended use and which do not cause the Customer any inconvenience.
- 11.2 With regard to Third Party Products, the provisions on faults in the licensing terms for such Third Party Product shall apply instead. The Supplier is only responsible for putting forward the Customer's claims against the supplier of the Third Party Product. The Supplier shall, on the Customer's request, assign all its rights against the Third Party Product Supplier relating to the faults in the Third Party Product to the Customer.
- 11.3 The Supplier's liability for faults under sub-clause 11.1 does not include:
- a) faults in Third Party Products;
 - b) faults caused by the Customer's changes to or interference with a Product or the System;
 - c) faults caused by the Customer's use of a Product or the System with equipment, accessories or system software that were not prescribed by the Supplier, in a manner that affects the function of the Product or System;
 - d) faults caused by the Customer's failure to provide correct information or a correct selection of sample data or by the Customer's provision of incorrect or insufficient system requirements.
- 11.4 Remedy of faults under sub-clause 11.1 shall be carried out by correction or, as regards a Product that is a software product, by providing work-around instructions. The Customer's right to make a claim regarding a fault for which the Supplier is liable under sub-clause 11.1 is conditional upon the Customer notifying the Supplier within a reasonable time after discovering the fault. The Customer shall state, and if necessary demonstrate, how the fault presents itself.
- In connection with remedying a fault, the affected parts shall if necessary be put at the Supplier's disposal for the necessary time during the Supplier's ordinary working hours. Where a fault shall be remedied at the Customer's premises, a representative of the Customer shall, on the Supplier's request, be present during the work performed by the Supplier.
- 11.5 In addition to what might follow under sub-clause 11.1, the Supplier shall, with the urgency required by the circumstances, remedy any faults in a delivered Product that were notified by the Customer within twelve months

of the Actual Approval Date. However, if the Customer has started using the Product in its operations, other than in connection with the acceptance test period, the fault shall be notified within twelve months of the notice from the Supplier that the Product has been installed. If the Agreement refers to particular licensing terms for software products, the provisions on faults in such licensing terms shall apply instead.

Fault means non-compliance with a product description issued by or on behalf of the Supplier or used in marketing or generally accepted standards for equivalent products, at the time of entering into the Agreement. The Supplier's liability does not include any faults that are immaterial to the intended use of the Product and which do not cause the Customer any inconvenience.

Sub-clauses 11.3 and 11.4 also apply to the Supplier's liability for faults in Products.

Faults in machine products shall be remedied at the Customer's premises, unless the Supplier finds it more appropriate that the machine product is sent for repair to the Supplier or a repair centre in the United Kingdom nominated by the Supplier. In such case the Supplier shall arrange and bear the costs of the transport. Where the Customer has moved the Product from the original installation address, the Customer shall bear any resulting extra costs. Where the Customer elects to engage a carrier, the Customer will however bear the risk for and costs of the transport.

- 11.6 Where the Customer has notified a fault, but no fault for which the Supplier is liable is deemed to exist, the Customer shall compensate the Supplier in accordance with the Supplier's from time to time applicable price list for the services performed by the Supplier on account of the Customer's notification.
- 11.7 If the Supplier does not remedy the fault with the urgency required by the circumstances, the Customer may give the Supplier a written, final and reasonable deadline for remedy. If the fault has not been remedied by the expiry of the deadline, the Customer shall be allowed a reduction in the remuneration for work performed or, as the case may be, in the remuneration paid for a Product, which reduction shall correspond to the fault. The Customer is also entitled to damages with the limitations set out in clauses 12.2 and 12.3.

12. Liability for Damages

- 12.1 Subject to the limitations set out below, the Supplier is liable for damage arising from any negligence by the Supplier in performing the Project. The Supplier's liability for delay or termination of the Agreement caused by such delay is limited to what is stipulated in clauses 9 and 20.4 c) and, with regard to faults in the System or a Product, to what is stipulated in clause 11.
- 12.2 A party's liability for damages shall be limited to the sums specified in the Cloud Services and Consultancy Services Agreements. If the Agreements do not specify such a sum, the liability shall be limited to 50% of the total remuneration for the Project or, where work is carried out on current account, to 50% of the estimated remuneration for the Project. A party's liability does not in any event include damages for loss of profit or any other indirect damage or loss of data. Furthermore, a party is not liable for the other party's liability towards a third party, other than as stated in clause 14.
- 12.3 A party does not have the right to make a claim for compensation, unless such claim is made within three (3) months after the party in question became aware of the cause for the claim, albeit no later than twelve (12) months after Actual Approval Date.
- 12.4 Nothing in clauses 11 or 12 shall exclude or restrict the Supplier's liability for (i) death or personal injury caused by negligence (ii) fraud or dishonesty or (iii) otherwise to the extent that it cannot be excluded or restricted by law.

13. Intellectual Property Rights, Licensing Terms

- 13.1 The Customer is granted a non-exclusive, perpetual license to use the results of the Supplier's work for the agreed purpose in the Project Description. Such use includes a right for the Customer to modify and duplicate the results of the Supplier's work. The Customer may assign its right in connection with a sale of its business.
- 13.2 With regard to Third Party Products that are software products and delivered under the Agreement, use shall be regulated by the licensing terms for such Third Party Products instead of the provisions of sub-clause 13.1 above. With regard to Products that are software products and delivered under the Agreement, but that are not Third Party Products, the specific licensing terms referred to in the Agreement shall apply. If the Agreement does not refer to any licensing provisions, then the provisions of sub-clause 13.1 shall apply to such Product.
- 13.3 The Supplier shall not, unless it follows from the Agreement or otherwise has been approved by the Customer, include any open source software in the results of the Supplier's work. Where the Supplier proposes to use open source software in the results of the Supplier's work, the Customer shall not unreasonably object to such use. With regard to open source software included in the results of the work performed by the Supplier, use shall be regulated by the licensing terms for such open source software instead of the provisions of sub-clause 13.1 above. It is the Customer's responsibility that the licensing terms of the open source software are appropriate for the area in which the Customer intends to use the results of the work performed by the Supplier. The Supplier shall assist in providing the licensing terms for any open source software included in the results of the Supplier's work.
- 13.4 If the Customer needs the source code or other documentation issued by the Supplier in relation to the results of the Supplier's work to use the right granted under sub-clause 13.1, the Supplier shall, after the Actual Approval Date, submit such source code and/or documentation to the Customer, provided that the Customer has fulfilled its payment obligations. If standard components are included in the results of the Supplier's work, the Supplier is not obliged to submit such part, unless the parties have agreed otherwise. The Customer may only use source code and documentation in accordance with the right granted under sub-clause 13.1.

14. Infringement of Intellectual Property Rights

- 14.1 It is the Supplier's responsibility that the results of the Supplier's work do not infringe the rights of any third parties. The Supplier undertakes to defend, at its own expense, the Customer against any claims or actions regarding infringement of any Intellectual Property Rights due to the use of the results of the Supplier's work in the United Kingdom and/ or Ireland, provided that the infringement can be attributed to the Supplier's work or to material provided by the Supplier. The Supplier shall furthermore indemnify the Customer against all reasonable costs or damages that the Customer may become liable to pay as a result of such judgment or settlement. The obligation by the Supplier only applies if the Customer has notified the Supplier in writing of a claim or action within a reasonable time and the Supplier has sole control over the defence against such action and the sole right to negotiate any agreement or settlement. If it is finally decided that infringement has occurred and the Supplier has had to participate in an action or settlement as set out above or if the Supplier deems it likely that an infringement has occurred which can be attributed to the Supplier's work or to material provided by the Supplier, the Supplier shall, at its own expense, ensure the Customer the continued use of the results of the Supplier's work or replace the part of the results of the Supplier's work that constitutes the infringement with a different part which the Customer reasonably can approve, and the use of which does not constitute infringement, or amend the part so that infringement does not occur.

The Supplier is not liable for infringement claims based on material which the Customer has added or provided or for a change that the Customer has made to the results of the Supplier's work. The provisions of this clause 14 exhaustively regulate the Supplier's liability in the event the results of its work infringe intellectual property rights.

- 14.2 With regard to any Third Party Products that shall be delivered under the Agreement, the licensing terms for such Third Party Product shall instead apply to infringement. The Supplier is only responsible for putting forward the Customer's claims against the Supplier of the Third Party Product. The Supplier shall, on the Customer's request, assign any rights against the Third Party Product Supplier relating to infringement by the Third Party Product to the Customer. The Supplier's liability under this clause 14 does not include open source software included in the results of the Supplier's work in accordance with clause 13.3.
- 14.3 With regard to Products that are software products and delivered under the Agreement, but that are not Third Party Products, the specific licensing terms referred to in the Agreement shall apply. If the Agreement does not refer to any licensing provisions, then the provisions of sub-clause 14.1 shall apply to such Product.

15. Remuneration

15.1 Fees

If the Project or parts of the Project shall be performed at a fixed fee, the fee is payable regardless of the time spent by the Supplier, and shall include any overtime work and travel time.

If the parties have not agreed a fixed fee, then the Customer shall remunerate the Supplier on current account in accordance with the hourly rates, overtime rates, etc. specified in the Agreement. Travel time outside the Supplier's normal working hours will be charged at half of the agreed hourly rate. If the Agreement does not specify the hourly rate, overtime pay, etc. is payable, the Supplier shall be remunerated in accordance with the Supplier's price list from time to time applicable.

For payment on current account, the Supplier may, annually as from the start of a new calendar year, adjust all fees to reflect any increase in line with the Retail Price Index (United Kingdom).

The fees are exclusive of VAT and other additional taxes that were fixed after the Agreement was entered into.

- ~~15.2 Overtime when paying on current account Unless otherwise follows from the Agreement, the Supplier is entitled to remuneration for overtime in accordance with the following:~~

~~Agreed work to be performed outside normal working hours but after 06:00 and before 20:00 on normal working days Monday-Friday shall be debited at the hourly rate specified in clause 15.1 multiplied by a factor of 1.5.~~

~~Agreed overtime work at other times shall be debited at the hourly rate specified in sub-clause 15.1 multiplied by a factor of 2.0.~~

- 15.3 **Prices, fees for products** Remuneration for Products shall be paid in accordance with the Agreement. The prices/fees are exclusive of VAT and other additional taxes that were imposed after the Agreement was entered into.

- 15.4 **Expenses, travel costs** The Supplier is entitled to reimbursement for expenses specifically agreed and when prior approval is received from the Customer. If the parties have not agreed that travel costs should be included in the agreed fee, the Supplier when travelling from the Supplier's permanent base, is entitled to remuneration for the costs of subsistence and travel relating to travel by private car in accordance with the Supplier's from time to time applicable price list and for the costs of accommodation and travel relating to travel by

- means other than a private car or on the basis of costs incurred and agreed with the Customer in advance.
- 15.5 **Other remuneration** In the event that the Supplier incurs extra work or additional costs due to circumstances for which the Customer is responsible, the Customer shall remunerate the Supplier for such extra work in accordance with the agreed hourly rate or, in the absence of an agreed hourly rate, in accordance with the Supplier's from time to time applicable price list as well as for other additional costs actually incurred.
- 16. Payment**
- 16.1 Prices/fees for Products shall be paid in accordance with the Agreement.
- 16.2 If the Project or parts of the Project shall be performed at a fixed fee, such fee shall be paid in accordance with the agreed payment plan. In the absence of a payment plan, the Supplier is entitled to be paid once per month with an amount comprising 80% of the part of the remuneration which corresponds to the performed and reported work. The balance should be invoiced immediately after the Actual Approval Date.
- If the Project shall be performed on current account, the Supplier is entitled to be paid once per month for performed and documented work as well as for any cost incurred.
- 16.3 Payment shall be made against an invoice. The invoice should state the nature and extent of the work performed during the period to which the invoice relates, costs incurred during the period and other agreed remuneration as well as the number of hours worked along with the hourly rates for each person or employee category involved with the Project.
- Payment shall be made within 30 days of the date it was issued. In event of a delay in payment, default interest and other compensation shall be paid in accordance with law. No later than six months after the Project has ended the Supplier shall send the Customer an invoice for all remaining items relating to the Project. If the Supplier fails to send such an invoice, the Supplier loses its right to remuneration for work performed, except with regard to its right of offset.
- 16.4 If the Customer's payment is delayed and the Supplier has requested the Customer in writing to pay the amount due the Supplier may, 30 days after notifying the Customer in writing with reference to this clause, withhold further work until the Customer has paid all amounts due and outstanding. In such event, the Supplier is entitled to an extension of time in accordance with clause 9.2 and compensation in accordance with clause 10.
- 16.5 Unless the parties agree otherwise, payment shall be made in pounds sterling.
- 17. Confidentiality**
- 17.1 Each party undertakes not to disclose, without the other party's consent, to a third party, during the performance of the Project or for a period of three years thereafter, any information regarding the other party's business that may be considered a business or professional secret or which according to law is subject to a duty of confidentiality. Unless otherwise follows from law, the Supplier's pricing information or other information that a party specifies as confidential shall always be regarded as a business or professional secret. The confidentiality obligation does not apply to information that the party can demonstrate has become known to the party other than through the Project or which is publicly known. Furthermore, the confidentiality obligation does not apply when a party is required to disclose such information by law, court or government order or binding stock exchange regulations. Where a party is required to disclose information in such way, it shall notify the other party to this effect prior to disclosure. Where the Customer in accordance with clause 13.4 receives the source
- code or any other documentation provided by the Supplier in relation to the results of the Supplier's work, the Customer may only disclose the source code or such other documentation to the extent necessary for the Customer to make use of the right it has been granted under clause 13.1. The Customer's confidentiality obligation relating to the source code and other documentation shall not be restricted in time.
- 17.3 A party shall ensure that confidentiality is maintained as set out above by entering into confidentiality agreements with employees or taking other appropriate measures. A party shall also ensure that subcontractors and subcontractor's employees that participate in the performance of the Project sign confidentiality obligations on equivalent terms.
- 18. Data Protection**
- 18.1 Each party shall comply with its obligations under the Data Protection Legislation in respect of any personal data processed by it in connection with this Agreement.
- 18.2 When processing data within the scope of the Project, the Customer is the data controller and the Supplier is the data processor for the purposes of the Data Protection Legislation. As data controller it is the Customer's responsibility that personal data is processed in accordance with applicable legislation. The Supplier undertakes that it will only process personal data in accordance with the Agreement and the Customer's written instructions. Where the requested action does not follow from the Agreement, the Supplier shall be remunerated for following the Customer's written instructions. When the Supplier processes personal data on the Supplier's equipment, the Supplier shall implement the agreed technical and organisational measures to protect the personal data. When the Supplier processes personal data on the Customer's equipment, the Customer shall ensure that the technical and organisational measures necessary to protect the personal data are implemented. When using a subcontractor (a "subprocessor") who processes the Customer's personal data, the Supplier, as the Customer's representative, shall sign an agreement with the subprocessor, according to which the subprocessor, as data processor, undertakes towards the Customer to comply with the provisions of this sub-clause 18.2. The Supplier shall notify the Customer of the identity of any subprocessors it intends to use and which country personal data will be processed in. On the Customer's request, the Supplier shall send the Customer a copy of any agreements signed by the Supplier under this sub-clause 18.2.
- 18.3 To facilitate the implementation of the Project personal data about the parties employees may be processed within the Project for example by publication on the intranet. Each party is responsible for obtaining any required consents and for informing the employees of such dataprocessing.
- 18.4 The Customer is responsible for the Supplier not processing any categories of personal data other than those specified in the Appendix 'Specification of the Processing of Personal Data' and to the extent specified therein.
- 18.5 The Supplier shall notify the Customer without undue delay if a data subject requests information relating to the processing of its personal data under the Agreement, and also refer the data subject to the Customer. The Supplier shall help the customer to respond to such query in accordance with its obligations under the Data Protection Legislation.
- 18.6 In addition to what is otherwise stated in the Agreement, the Supplier shall be entitled to reasonable remuneration for complying with the Customer's written instructions in respect of the treatment of Customer Data, provided that the action requested is not specified in the Agreement. If the Supplier is entitled to remuneration for work performed, the price list applicable in the

Agreement shall apply to such work and, in the absence of such, the Supplier's then-current price list.

19. Security

- 19.1 Unless otherwise follows from the Agreement, the Supplier shall comply with its internal security regulations. The Supplier's internal security regulations shall be available on the website or other accessible place specified in the Specification. The Supplier may, after the conclusion of the Agreement, change the applicable security regulations in accordance with clause 3.
- 19.2 The Supplier shall implement the organisational and technical measures required pursuant to Data Protection Legislation and those stated in the Appendix 'Specification of the Processing of Personal Data' and also those that may otherwise be stipulated in the Agreement in order to protect the personal data processed against personal data breaches ('security measures').
- 19.3 When performing the Service, the Supplier shall abide by the security measures specified in the Appendix 'Specification of the Processing of Personal Data' and as may be stipulated in the Agreement and otherwise its internal security regulations. After signing of the Agreement, the Supplier may amend its internal security regulations in accordance with the terms of the Agreement, provided that the amendment is compliant with Data Protection Legislation.
- 19.4 The Supplier shall notify the Customer without undue delay after becoming aware of a personal data breach.
- 19.5 Taking into account the nature of the processing and the information that the processor has available, such a notification shall:
- describe the nature of the personal data breach and, where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned,
 - describe the likely consequences of the personal data breach, and
 - describe the measures taken or proposed to be taken to address the personal data breach or mitigate its possible adverse effects.
- 19.6 Where, and insofar as, it is not possible to provide the information at the same time, the information may be provided in phases without further undue delay.
- 19.7 If the Customer, in violation of Data Protection Legislation, does not inform the data subject of a personal data breach and the relevant data protection authority orders the Supplier to do so in its stead, the Customer shall compensate the Supplier for the costs incurred by the Supplier when complying with the authority's decision.

20. Cancellation and Early Termination

- 20.1 This Agreement takes effect when signed by the parties. The initial term of Agreement ("Initial Term") shall be specified in the Agreement. In the absence of such agreement, the Initial Term shall be 12 months from acceptance by the Customer of the Supplier's services. Unless the parties agree otherwise, either party may terminate the Agreement by providing notice in writing to the other no later than 90 days before the expiry of the Initial Term. Otherwise the Agreement shall automatically renew for 12 month periods subject to termination by either party by providing notice in writing to the other no later than 90 days before the expiry of the current 12 month renewal period, or otherwise in accordance with this clause 20.

- 20.2 The Customer may terminate the Agreement in relation to any non-performed parts, without cause, by notice 45 days in advance.
- 20.3 The Supplier is entitled to remuneration for Products to be delivered under the Agreement, work performed and documented necessary costs, and, during the period of notice, for allocated resources. With regard to Projects or parts of Projects carried out at a fixed price, the Supplier is also entitled to remuneration with an amount equal to 10% of the estimated balance of the fixed price outstanding at the date of the expiry of the Agreement. In the event of termination due to force majeure in accordance with Clause 21, the Supplier shall be entitled to remuneration under the Agreement, for work performed and any documented necessary costs.
- 20.4 The Agreement can also be terminated in accordance with clause 2.4.
- 20.5 The Supplier may terminate the Agreement with immediate effect if the Project is substantially changed or extended as a result of a significant delay caused by the Customer. In such event the Supplier is entitled to remuneration in accordance with the Agreement for Products to be delivered under the Agreement, work performed and documented necessary costs. If the Agreement is terminated because the Customer has significantly delayed the Project and this is not a result of circumstances set out in clause 21, or if the Supplier has terminated the Agreement in accordance with sub-clause 20.4, then the Customer shall also pay remuneration for allocated resources in accordance with the principles of sub-clause 20.1 for a period equal to the notice period.
- 20.6 Either party may also terminate the Agreement with immediate effect as follows:
- Either party may terminate the Agreement if the other party commits a significant breach of its obligations under the Agreement and does not remedy such breach within 30 days of a written notice that is addressed to the party in question and contains a reference to this clause.
 - Either party may terminate the Agreement if the other party enters into bankruptcy, initiates composition negotiations, is subject to a business reorganisation or is otherwise insolvent.
 - The Customer may terminate the Agreement due to the Supplier's delay in accordance with clause 9.1, where the delay has persisted more than 15 weeks and the Customer after such time gives the Supplier a written, final and reasonable deadline by when the Actual Approval Date shall occur and the Supplier's delay persists after the expiry of such deadline in accordance with 9.1. Where the Customer terminates the Agreement in accordance with this sub-section 20.4 c), the Customer is entitled to damages, subject to the limitations set out in clause 12. Any liquidated damages that the Customer has received in accordance with clause 9.3 as a result of the delay, shall be deducted from the damages.
- 20.7 When terminating the Agreement in accordance with sub-clause 20.4, the Customer shall be entitled to a repayment of any payments made in respect of the Supplier's work with the Project, to the extent the results of the Project do not have a thereto corresponding value. Where the Customer only has a minor benefit of a Product delivered under the Agreement, the Customer may return such Product in connection with the expiry of the contract against repayment of any payments made for such Product. Otherwise the Customer shall keep such Product.

- 20.8 Termination shall only be valid if made in writing.
- 20.9 When a termination becomes effective in accordance with sub-clauses 20.1-3, or when the Supplier has terminated the Agreement in accordance with sub-clause 20.4, the Supplier is obliged to provide, no later than at the time of payment, an account of and hand over the results of work performed. Where the Customer has terminated the Agreement in accordance with sub-clause 20.4, this obligation applies immediately when the Agreement ceases to apply. The Customer is entitled to use the results, as if the Project had been fulfilled, provided that the Customer has fulfilled its payment obligations.

21. Principles of Business Ethics

- 21.1 The Supplier undertakes to use principles of business ethics that comply with the Supplier's basic principles on business ethics (as provided by the Supplier along with this Appendix and as updated and notified to the Customer from time to time).

22. Force Majeure

- 22.1 If a party is prevented from fulfilling its obligations under the Agreement due to a circumstance beyond the party's control, including but not limited to lightning strike, labour dispute, fire, natural disaster, changes in regulations, governmental actions and/or a failure or delay in services provided by a subcontractor due to a circumstance stated herein, then this shall constitute a ground for release resulting in an extension of the deadline for performance and release from damages and other remedies. If the performance of the Agreement in substantial aspects is prevented for a period exceeding three months due to a circumstance stated herein, either party shall have the right to terminate the Agreement in writing. Clause 20.1 applies to termination by the Customer and Clause 20.3 applies to termination by the Supplier.

23. Notices

- 23.1 Notice of termination and/or any other notices shall be sent by courier, registered post or electronic message to the other party's contact person at the address specified by such party.
- The other party shall be deemed to have received such notice:
- at the time of delivery, if delivered by courier;
 - 5 days after dispatch, if sent by registered post;
 - At the time of arrival at the recipient's electronic address, if sent by electronic message.

24. Assignment

- 24.1 The Agreement may not be assigned without the approval of the other party.
- 24.2 Notwithstanding the above the Supplier may assign the right to accept payment under the Agreement without the approval of the Customer.

25. Governing law, Disputes

- 25.1 This Agreement or any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales.
- 25.2 The courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement.