

Terms and Conditions applicable to business undertaken or to be undertaken by
Smart Information Technologies Limited

These terms and conditions (conditions numbered 1 to 52) are the terms and conditions applicable to agreements made between Smart Information Technologies Limited and its customer and Project Initiation Documentation (a “PID” or “PIDs”) between Smart Information Technologies Limited and that customer.

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1. Definitions – the following words and phrases have the following meanings:

- 1.1 “Acceptance” shall mean the acceptance by the Client of the services delivered by Smart IT to the Client. The manner of acceptance is set out in each PID.
- 1.2 “Charges” means the charges to be raised by Smart IT for the services delivered under each PID.
- 1.3 The “Client” means the customer of Smart IT identified as such in a PID or in exchanges between Smart IT and its customer.
- 1.4 “Data Protection Legislation” or “UK Data Protection Legislation” means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.
- 1.5 “Data Subject” for the purposes of UK General Data Protection Regulations means an identified or identifiable natural person.
- 1.6 “Delivery Address” means the trading address of the Client at which the services are to be delivered by Smart IT and as specified in each PID or as agreed in the exchanges relating to the preparation of a Gap Analysis.
- 1.7 “Delivery Date” means the date on which any element of the Services is to be delivered to the Client as specified in a PID.
- 1.8 “Effective Date” means the date at which Smart IT starts to deliver the Services as specified in a PID.
- 1.9 “Gap Analysis” or “Investigation” means the work undertaken by Smart IT at the request of the Client intended to identify those areas of the Client’s processes or operations that may need to be addressed by customisation and which will be defined in a PID.
- 1.10 “Group Company” means any limited company which is either the holding company of the Client or is a subsidiary of such holding company as such terms are defined in Section 1159 of the Companies Act 2006.
- 1.11 “Initial Payment” means the payment required to be made by the Client at the commencement of each project governed by a PID
- 1.12 “Intellectual Property Rights” means all vested contingent and future intellectual property rights including but not limited to copyright,

trade marks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications or registrations for the protection of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created.

- 1.13 “Personal Data” has the meaning set out in the Data Protection Legislation.
- 1.14 “PID” means a Project Initiation Document prepared by Smart IT that describes the project that the Client instructs Smart IT to deliver for it.
- 1.15 “Satisfaction” means (in respect of each element of the project as identified in each PID) the acceptance by the Client of the delivery by Smart IT of an element within the project.
- 1.16 “Satisfaction Criteria” means the criteria set out in each PID whereby the Client shall acknowledge its acceptance of the delivery by Smart IT of an element within the project.
- 1.17 “Satisfaction Date” means the date on which:-
 - 1.17.1 the Client shall signify its Acceptance of a delivery. or
 - 1.17.2 to have accepted a Sprint where each Sprint is defined as a section of a PID delivery:
- 1.18 “Services” means the services to be provided by Smart IT to the Client as set out in a PID.
- 1.19 “Smart IT” means Smart Information Technologies Limited (Company number 07142010) whose registered office is at 17 St Peter’s Place, Fleetwood, Lancashire FY7 6EB and whose principal office is at Unit 15 Progress Business Park, Orders Lane, Kirkham, Lancashire PR4 2TZ.
- 1.20 “Specifications” means any plans, drawings, data, specifications or other information (as may be amended by agreement between the parties) relating to any software and/or services identified as a “Specification” in each PID.

- 1.21 If the work to be undertaken by Smart IT is undertaken as an Agile project, a “Sprint” shall be an element of a project identified as a separate element of that project and shall be identified and described in a PID or agreed at meetings between Smart IT and the Client as soon as reasonably possible after a PID is signed. A Sprint or Sprints may be redefined as the development of the project progresses. A Sprint may also define separate billings against each Sprint.
- 1.22 “Working Day” means Monday to Friday inclusive (excluding public holidays). A Working Day comprises 7 hours duration (excluding breaks).
2. In these terms and conditions unless the context otherwise requires:
- 2.1 words importing any gender include every gender;
 - 2.2 words importing the singular number include the plural number and vice versa;
 - 2.3 words importing persons include firms, companies and corporations and vice versa;
 - 2.4 references to numbered clauses and parts are references to the relevant clause or parts of these terms and conditions;
 - 2.5 reference in any of the terms and conditions to numbered paragraphs or clauses relate to the numbered paragraphs or clauses of that part;
 - 2.6 the headings to the clauses, parts and paragraphs of these terms and conditions contained in the Index will not affect the interpretation thereof;
 - 2.7 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
 - 2.8 any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
 - 2.9 any party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.
3. Instructions received from a Client:-

- 3.1 The Client may instruct Smart IT to prepare a Gap Analysis to assist the Client in determining whether or not it shall proceed to a PID relative to that project;
- 3.2 The Client may instruct Smart IT to proceed with a project (in which case a separate PID will be created in respect of each separate project to be undertaken by Smart IT for the Client); and in either case

these terms and conditions will apply to the contract so created and shall be deemed to be incorporated therein. Each PID entered into between Smart IT and the Client will contain detailed information (to the extent that the same has been discussed and agreed between Smart IT and the Client prior to the PID being signed), and using the information gathered in the Gap Analysis, as to (inter alia):

- 3.3 the scope of supply of the services to be provided by Smart IT to the Client;
 - 3.4 the criteria whereby the Client will confirm its satisfaction as to and its acceptance of the services delivered by Smart IT;
 - 3.5 the charge rates applicable to the delivery of such services; and
 - 3.6 the payment terms relative to each such project.
4. In the case of any inconsistency between these terms and conditions and the provisions of a PID these terms and conditions shall prevail.

5. Where;

- 5.1 The Client instructs Smart IT to prepare a Gap Analysis; or
- 5.2 A PID is agreed between Smart IT and the Client;

these terms and conditions shall be effective in relation to each such PID or Gap Analysis. Each PID and Gap Analysis shall constitute a binding contract between Smart IT and the Client incorporating these terms and conditions.

6. Additional to the rights afforded by Clauses 32 (termination on breach) and 33 (termination on insolvency) Smart IT shall have the right to terminate the contract arising under an accepted PID if the Client shall not comply with

the UAT procedure set out in the PID in which event the Client shall pay (on receipt of an invoice for the same) the total of Smart IT's costs as if the project had been completed and become live.

7. If the Client shall not comply with the timetable for "Go Live" that has been agreed between the parties the Client shall pay Smart IT's reasonable charges for revising that timetable and applying appropriate resource to that revision.
8. Smart IT shall not terminate the contract under the right afforded by Clause 6 without at least ten Working Days' notice to the Client and shall invite the Client to comply with the UAT procedure. The Client's failure to then comply with the UAT procedure shall entitle Smart IT to confirm the termination of the contract. If the Client shall comply with the UAT procedure the contract shall not be cancelled.
9. Smart IT shall comply with all applicable laws, regulations or other legal requirements concerning the performance of Services and the delivery thereof to the Client.
10. If the Client shall elect to terminate the instructions for Smart IT to prepare a Gap Analysis before the same shall have been completed the Client shall, on receipt of an invoice for the same, pay to Smart IT the fee agreed for the preparation of that Gap Analysis.
11. The procedure for changing any element within the project to be delivered by Smart IT to the Client will be more particularly set out in each PID, but notwithstanding this:-
 - 11.1 Any perceived requirement for changes to the manner of delivery of the project will be delivered either by Smart IT or the Client by the use of the Smart IT Client Communication Portal.
 - 11.2 Access to that portal in relation to the project shall be given to the Client as soon as the Client has agreed a PID and paid the Initial Payment.

12. Changes – effect on the Charges:-

- 12.1 If after the PID is agreed the Client asks Smart IT to vary the delivery of the project or Tasks within the same but there is no consequential increase in the time required to deliver the same Smart IT shall agree such change and there will be no effect on the Charges.
- 12.2 From time to time the Client may request that Smart IT incorporate a third party module into the instance being customised or configured by Smart IT for the Client. In relation to such module Smart IT;
 - 12.2.1 Will accept no responsibility for the functionality of such module;
 - 12.2.2 Will use its best endeavours to incorporate such module to the Client's instance detailed in the PID;
 - 12.2.3 Will be entitled to charge (on a time and materials basis) for all work required to ensure the incorporation of such module to the Client's instance detailed in the PID.
- 12.3 Where changes to "known requirements" identified in the PID are requested by the Client and such changes will (in Smart IT's reasonable opinion) cause an increase to the time required to deliver the project to the Client:-
 - 12.3.1 Smart IT shall notify the Client that it considers that such change will increase the cost of delivery of the project and shall endeavour to agree a revision to the Charges;
 - 12.3.2 such changes (if agreed) shall apply to the project as if the change had been incorporated within the original PID;
 - 12.3.3 the Charges shall be increased by reference to the number of additional Working Days or hours required to deliver the changes and by Smart IT's daily rate specified in the PID and shall become binding on the parties once agreed.
- 12.4 If the Client shall refuse the proposed revised Charges Smart shall be entitled to:-
 - 12.4.1 reject the Client's change request; and

- 12.4.2 insist on the unaltered terms of the PID applying to the project.
- 12.5 If (after Smart IT's rejection of the Client's change request) the Client shall then refuse to allow Smart IT to proceed with the contract as per the terms of the PID Smart IT shall be entitled to terminate the contract and the Client shall be obliged to pay the total costs as per the PID as if the project had been delivered to it and had become live.
- 12.6 If Smart considers that the Client's change request amounts to an extension to the project (rather than a variation of the agreed Tasks within the project) the parties shall endeavour to agree a new PID in respect of the Client's revised requirements and the original PID shall continue unamended.
- 12.7 Smart IT shall not terminate the contract without prior extensive discussion with the client as to the requirement for the implementation of the requested change and shall endeavour to obtain the Client's agreement to the continuation of the project as per the PID.
- 12.8 The agreement to any change to the project shall be evidenced in the form of an email from the Client acknowledging their acceptance of the change. A note placed in the Smart IT Client Communication Portal by the Client will amount to such evidence.
- 12.9 All changes shall take immediate effect once agreed between Smart IT and the Client unless the contrary is agreed.
- 12.10 No party shall be obliged to accept any change request.
- 12.11 If the Client shall determine not to proceed with the Project before Smart IT has completed the work required in the PID Smart IT shall be entitled to be paid (and the Client shall be obliged to pay) the Initial Estimated Charge together with any charges (to be charged at the daily rate specified in the PID) relating to any agreed further charges for work undertaken by Smart IT up to the Client terminating the project.

13. Change Requests (ongoing Instances)

- 13.1 The Client may request Smart IT to deliver changes to its current Instance (whether or not this shall have been delivered by Smart IT).
- 13.2 On delivery of such a request the Client shall be responsible for, and shall pay, the costs (to be billed at Smart IT's then current rates) of Smart IT in establishing the Client's requirements and carrying out any agreed Changes.
- 13.3 Once those requirements have been agreed between Smart IT and the Client Smart IT shall deliver a form ("a Change Request Form") to the Client indicating:-
 - 13.3.1 Its understanding of the Client's requirements;
 - 13.3.2 The probable timetable for Smart IT to deliver those requirements; and
 - 13.3.3 The estimated cost that the Client is to pay to Smart IT for the delivery of such services.
- 13.4 On agreement from a duly authorised representative of the Client to the Change Request Form a contract for Smart IT to deliver the Change/s to the Client shall exist and these terms and conditions shall apply to the same.
- 13.5 If the Client shall not have agreed the Changes within 10 working days of the delivery of the Change Request Form the Client shall forthwith pay Smart IT's costs for the investigation into its request.

14. Any Quotations or Sales Orders issued by Smart IT to a Client or to a person, firm or organisation who (on acceptance of the Quotation or Sales Order) shall become a Client of Smart IT shall be deemed to include and be subject to these terms and conditions.

15. Acceptance procedure and Tasks:

- 15.1 The Tasks to be comprised within the Project will be confirmed at one or a series of meetings with the Client following its agreement to Smart IT's PID.

- 15.2 Smart IT will confirm the completion of each Task to the Client through the Smart IT Client Communication Portal.
- 15.3 On receipt of such confirmation the Client shall promptly indicate whether it is satisfied with or has any further requirements in respect of that Task. In the absence of any such further requirement the Task shall be deemed complete and accepted by the Client.
- 15.4 Acceptance by a Client of a completed Task shall be without prejudice to any of the Client's rights under the PID or these terms and conditions.
- 15.5 After Acceptance (whether actual or deemed) of a completed Task, Smart IT shall be entitled to continue to deliver the Project and the Client shall be obliged to pay Smart IT's charges (as identified in the PID under which such work is undertaken) for work so undertaken.

16. Charges

- 16.1 Smart IT's Charges for the preparation of a Gap Analysis shall be as agreed between Smart IT and the Client and as evidenced in email exchanges between them.
- 16.2 Smart IT's charges for work undertaken in an accepted PID shall be as per the estimates set out in each PID or as subsequently varied in accordance with the Change Procedure set out in clause 12 or (as the case may be) 13. The estimate set out in a PID shall be:
 - 16.2.1 exclusive of any applicable VAT (which shall be payable additional to and contemporaneously with the payment of the Charge by the Client subject to receipt of a VAT invoice);
 - 16.2.2 exclusive of any travel, accommodation or other expenses unless the contrary is agreed between Smart IT and the Client before any such expense is incurred.
- 16.3 Charges shall be expressed and payments made in Pounds Sterling unless otherwise agreed between the parties.

17. Payment

- 17.1 Payment for work undertaken or to be undertaken in the preparation of a Gap Analysis shall be as defined by Smart IT and agreed by the Client.
- 17.2 In respect of a PID the total estimated charges to be paid to Smart IT for the delivery of the solution to the Client shall be at the rate defined in a PID (plus VAT at the current rate).
- 17.3 The estimated charges (“the Initial Estimated Charge”) for the project identified and agreed in a PID to be paid to Smart IT will be specified in the PID relative to such Project.
- 17.4 On signing a PID the Client shall pay to Smart IT (against an invoice for the same) the percentage (“the Initial Percentage”) of the Initial Estimated Charge specified in the PID as being the Initial Payment plus VAT.
- 17.5 If the Client shall determine not to proceed with the Project before Smart IT has completed the work required in the PID Smart IT shall be entitled to be paid (and the Client shall be obliged to pay) the Initial Estimated Charge.
- 17.6 If the Client shall not engage with Smart IT in such a way as to allow Smart IT to timeously complete the Project Smart IT may properly assume that the Client does not wish to proceed with the Project and may (but is not obliged to) give notice to terminate the contractual arrangement that arose upon acceptance of the PID, in which case the liability of the Client to pay the Charges shall be as per Clause 17.5 hereof.
- 17.7 The Client shall be deemed to have approved the elements of the Project delivered by Smart IT for User Acceptance Testing if it shall not have objected to any part thereof within 10 working days of the same being delivered for UAT.
- 17.8 On approval of final UAT (whether deemed or actual) Smart IT shall issue a Certificate of Practical Completion of the Project as per the provisions of the PID relative to that Project. On issue of that Certificate Smart IT shall issue an invoice for the balance of the Charges as per that PID, to be paid by the Client in accordance with

condition 17.9. Smart IT shall not be relieved of its obligations to provide pre Go Live training and ongoing support as per the terms of the PID between it and the Client.

17.9 All invoices (except in respect of the Initial Payment) are to be paid by the Client so that cleared funds are received by Smart IT no later than the end of the tenth Working Day from and including the date of the delivery of the relevant invoice to the Client.

17.10 Invoices to the Client will be emailed (whether through the Smart IT Client Communication Portal or otherwise) to the Client and treated as delivered at the moment of transmission.

18. Performance

18.1 The Services shall be performed at Smart IT's offices during and within Working Days unless otherwise agreed.

18.2 If Services are to be performed by instalments the PID will be treated as having created a single contract which contract and its provisions are not severable.

19. On request by the Client Smart IT will provide to the Client a summary of its professional negligence indemnity insurance. Such insurance shall be at a level not less than £1,000,000.

20. Effect of termination - The expiry or the termination of Smart IT's obligations to deliver the Services in respect of a PID shall not limit either party from pursuing any other remedies available to it based upon events occurring prior to such expiration or termination. The Client's obligation to pay all Charges shall not be affected by such expiry or termination.

21. If so required by Smart IT (such requirement being indicated in a PID), the Client shall provide Smart IT and its staff with all office and other accommodation and facilities that Smart IT may reasonably require to perform Services, in particular administrative support (for example and without limitation security passes and network logons), access to telephone and fax communications and computer facilities. The Client shall ensure

that it has appropriate back-up, security and virus-checking procedures in place for any computer facilities the Client provides. Smart IT shall comply with the Client's reasonable virus-checking procedures relating to such facilities which are notified to Smart IT in writing by the Client. The Client will procure that any third party assistance or involvement necessary for the proper delivery of the Services by Smart IT is provided at its own cost without recharge to Smart IT. If Smart IT is delayed by reason of any third party failure then the Client shall be liable for all additional costs incurred by Smart IT including additional time charges at the rate set out in a PID.

22. Intellectual Property Rights

- 22.1 Neither party is granted any right, title or licence to, or interest in the other party's Intellectual Property Rights.
- 22.2 Each party acknowledges the other party's rights in such other party's Intellectual Property Rights and agrees that any and all use by it of such Intellectual Property Rights shall be to the sole benefit of the other party.
- 22.3 Neither party shall take any action inconsistent with the other party's ownership of its Intellectual Property Rights and each party agrees not to challenge the other party's ownership or use of such Intellectual Property Rights and further agrees not to attempt to register any such Intellectual Property Rights owned or used by the other party or any other names or marks confusingly similar thereto.
- 22.4 If at any time a party acquires any rights in, or makes any registration or application for registration of any of the other party's Intellectual Property Rights by operation of law or otherwise it will immediately upon request by the other party and at no expense to the other party assign such rights, registrations or applications to the other party, along with any associated goodwill.
- 22.5 Any Intellectual Property Rights which arise from or are generated by Smart IT in performance of the Services shall belong to Smart IT subject to the non-exclusive right and non-transferable right of the

Client to use such Intellectual Property Rights in its business without limit in time.

23. Limitation of liability

- 23.1 Smart IT shall indemnify the Client for personal injury or death caused by the negligence of its employees in connection with the performance of their duties under a PID, or by defects in any Services supplied pursuant to a PID.
- 23.2 Smart IT shall indemnify the Client for direct damage to tangible property caused by the negligence of its employees in connection with the performance of their duties under a PID. Smart IT's total liability under this clause shall be limited to a sum equivalent to the total charges paid to Smart IT pursuant to a PID.
- 23.3 Save in respect of claims for death or personal injury arising from the negligence of Smart IT, in no event will Smart IT be liable for any damages resulting from loss of data or use, lost profits, loss of anticipated savings, nor for any damages that are an indirect or secondary consequence of any act or omission of Smart IT whether such damages were reasonably foreseeable or actually foreseen and except as provided above in the case of personal injury, death and damage to tangible property, Smart IT's maximum liability to the Client under a PID or otherwise for any cause whatsoever (whether in the form of a refund, the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to the lesser of:
 - 23.3.1 the sum for which Smart IT carries comprehensive insurance cover (subject to Smart IT actually recovering such sum from the insurer); or
 - 23.3.2 a sum equivalent to the price paid to Smart IT under the PID.
- 23.4 In no event shall Smart IT be liable to the Client for any losses whatsoever (whether lost future revenues, lost future profits, expenditure incurred to no benefit, or otherwise) suffered or incurred

by the Client solely or substantially because Smart IT's obligation to deliver Services under a PID has been terminated.

23.5 All liability that is not expressly assumed by Smart IT by these terms and conditions or under a PID is hereby excluded. These limitations will apply regardless of the form of action, whether under statute, in contract, tort, including negligence, or any other form of action. For the purposes of this clause "Smart IT" includes its employees, and sub-contractors. The Client acknowledges that Smart IT employees, and sub-contractors shall have the benefit of the limits and exclusions of liability set out in this clause in terms of the Contracts (Rights of Third Parties) Act 1999. Nothing in these terms and conditions shall exclude or limit liability for fraudulent misrepresentation.

23.6 Both parties acknowledge and agree that the limitations and exclusions of liability set out in this clause are reasonable and have been agreed taking into account the commercial value of Services to be delivered under a PID to each party and the commercial standing of each party.

24. Smart IT warrants that:-

24.1 all Services will be performed by adequately qualified and trained personnel with due care and diligence and in accordance with the Scope of Supply set out in each PID.

24.2 the Services will comply with all statutory and legal requirements and regulations applicable to Smart IT within the United Kingdom but shall not be liable to the Client in respect of breaches of statutory and legal requirements applicable to the Client but not to Smart IT unless the Client notifies Smart IT in writing of such statutory and legal requirements and regulations before each relevant PID is signed.

24.3 These warranties are Smart IT's sole warranties with respect to the Services and any other warranties, terms and conditions express or implied, including any warranties, terms or conditions of satisfactory

quality or fitness for any particular purpose are expressly excluded to the maximum extent permitted by law.

25. Data Protection

- 25.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 25 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 25.2 The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the **data controller** and Smart IT is the **data processor** (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).
- 25.3 Without prejudice to the generality of clause 25.1 the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Smart IT for the duration and purposes of this agreement.
- 25.4 Smart shall, in relation to any Personal Data processed in connection with the performance of its obligations under this agreement;
- 25.4.1 process that Personal Data only on the written instructions of the Client unless it is required by Applicable Laws to otherwise process that Personal Data ("**Permitted Purpose**") and shall ensure that:
- 25.4.1.1 any person that it authorises to process the Personal Data (including Smart IT's staff, agents and subcontractors) (an "**Authorised Person**") shall be subject to a strict duty of confidentiality (whether a contractual duty or a statutory duty or otherwise)
- 25.4.1.2 no person shall be permitted to process Personal Data who is not under such a duty of confidentiality.
- 25.4.1.3 all Authorised Persons shall process Personal Data only as necessary for the Permitted Purpose;
- 25.4.1.4 it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful

processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

25.4.2 not transfer any Personal Data outside the United Kingdom unless the following conditions are fulfilled:

25.4.2.1 the Client or Smart IT has provided appropriate safeguards in relation to the transfer;

25.4.2.2 the Data Subject has enforceable rights and effective legal remedies;

25.4.2.3 Smart IT complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and

25.4.2.4 Smart IT complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

25.4.3 assist the Client, at the Client's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach

- notifications, impact assessments and consultations with supervisory authorities or regulators;
- 25.4.4 notify the Client without undue delay on becoming aware of a Personal Data breach;
- 25.4.5 at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- 25.4.6 maintain complete and accurate records and information to demonstrate its compliance with this clause
- 25.5 Subject to the Client's prior written consent, Smart IT may engage a third-party entity as a sub-processor of Personal Data, even if that entity is not bound by Smart IT's terms of business and is not classified as an Authorised Person (as defined in clause 25.4.1.1). Such engagement shall be governed by a written agreement, which may be based substantially on the third party's standard terms of business. Notwithstanding the foregoing, Smart IT shall remain fully liable to the Client for any acts or omissions of such third-party sub-processors appointed under this clause.
- 25.6 Smart IT shall permit the Client (or its appointed third party auditors) to audit Smart IT's compliance with this clause, and shall make available to the Client all information, systems and staff necessary for the Client (or its third party auditors) to conduct such audit. Smart IT acknowledges that the Client (or its third party auditors) may enter its premises for the purposes of conducting this audit, provided that the Client gives it reasonable prior notice of its intention to audit, conducts its audit during normal business hours, and takes all reasonable measures to prevent unnecessary disruption to Smart IT's operations. The Client will not exercise such audit rights more than once in any twelve (12) calendar month period, except:-

25.6.1 if and when required by instruction of a competent data protection authority; or

25.6.2 the Client believes a further audit is necessary due to a security incident suffered by Smart IT.

26 Smart IT and the Client shall keep each other fully and effectively indemnified from and against any costs, claims, liabilities and demands arising from the breach by the indemnifying party of any intellectual property rights which that party is not entitled to use in the performance of any obligations under a PID.

27 Force Majeure:

27.1 Neither Smart IT nor the Client shall be liable for any delay in performing its obligations under a PID if such delay is caused by circumstances beyond its reasonable control (including without limitation any delay caused by any act or omission of the other party).

27.2 Subject to the party so delaying promptly notifying the other party in writing of the reasons for the delay (and the likely duration of the delay), the performance of such party's obligations shall be suspended during the period that the said circumstances persist and such party shall be granted an extension of time for performance equal to the period of the delay.

27.3 Save where such delay is caused by the act or omission of the other party (in which event the rights, remedies and liabilities of the parties shall be those conferred and imposed by these terms and conditions and by law) any costs arising from such delay shall be borne by the party incurring the same.

27.4 Either party may, if such delay continues for more than 10 weeks, terminate the obligations under a PID forthwith by giving notice in writing to the other in which case the provisions of clause 35, 36 and 37 will apply.

28 Progress reports and communication:-

28.1 Although no formal reports shall be provided to the Client by Smart IT the Client shall access the progress towards the delivery of each

project by access to the Smart IT Client Communication Portal provided to it by Smart IT.

28.2 Communication between the parties shall be principally through the Smart IT Client Communication Portal although the nominated representative of the Client may use email or phone calls to the nominated representative of Smart IT.

28.3 The Client shall appoint a suitably qualified and trained representative to liaise with Smart IT for the purpose of the Client's obligations under a PID. The identity of such person shall be confirmed in the PID.

29 The Client shall provide Smart IT with a safe and secure workplace and such facilities as Smart IT may reasonably require while on the Client's premises and allow access to such premises at all reasonable times for the purpose of discharging its obligations under a PID.

30 Each party shall be liable for any discrepancies, errors, or omissions in the drawings and information supplied by it whether they have been approved by the other party or not, provided that such discrepancies, errors, or omissions are not due to inaccurate drawings or information furnished to supplying party by such other party, its agents, employees and sub-contractors.

30.1 The party supplying erroneous information shall at its own expense carry out any such alterations or remedial work necessitated by reason of such discrepancies, errors, or omissions and shall modify the drawings and information accordingly within a period of one month from the date of discovery of such discrepancy, error or omission, or within a period of time that is reasonable under the circumstances.

30.2 If the party supplying erroneous information carries out alterations or remedial work otherwise than in respect of the matters mentioned in clause 30 at the request of the other party, then such other party shall bear all costs reasonably and properly

incurred thereby. Any changes to Specifications resulting from any such alterations or remedial work shall be subject to the procedure for requesting a change or changes to the manner of delivery of the Services as set out in a PID.

- 31 Each party agrees that, during the life of a PID and for 2 years following final delivery of Services thereunder (or earlier termination of a PID), neither it by itself, its officers, employees or agents or otherwise howsoever and whether as a consultant, principal, partner, director, employee or otherwise, shall employ or solicit the services of any employee, officer, agent or consultant of the other party (or, as the case may be, of Smart IT or any Client Group Company) who was engaged and/or involved in providing or receiving the Services.
- 32 Either party may terminate its obligation to deliver (in the case of Smart IT) or to accept (in the case of a Client) the services under a PID immediately by giving written notice to the other party if the other party:
- 32.1 commits any breach of any of these terms and conditions, and:
the breach is not remediable; or
- 32.2 the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so.
- 33 Either party may terminate its obligation to deliver (in the case of Smart IT) or to accept (in the case of a Client) the services under a PID immediately by giving written notice to the other party if:
- 33.1 the other party:
- 33.1.1 is dissolved;
- 33.1.2 ceases to conduct all or substantially all of its business;
- 33.1.3 is or becomes unable to pay its debts as they fall due;
- 33.1.4 is or becomes insolvent or is declared insolvent;
- 33.1.5 convenes a meeting or makes or proposes to make any arrangement or composition with its creditors; or
- 33.1.6 the Client or Smart IT reasonably apprehends that any of the events mentioned above is about to occur in relation to the other party and notifies the other party accordingly.

- 33.2an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party; or
- 33.3an order is made for the winding up of the other party, or the other party passes a resolution for its winding up (other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under a PID).
- 34 If the obligation to deliver or accept services under a PID is terminated as a result of an event falling within clause 32 or 33 the Client shall pay to Smart IT (on receipt of an invoice for the same) all costs and charges (plus vat where applicable) which would have been due to smart it if the project had been completed and become live.
- 35 Termination of obligations under a PID shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuation in force of any of these terms and conditions which expressly or by implication is intended to come into or continue in force on or after such termination.
- 36 On termination of a PID each party will on request return to the other any property of the other that it then has in its possession or control, except that solely for Smart IT's internal audit purposes, Smart IT may retain one copy of any documentation or software prepared by Smart IT, or any documentation upon which the services are based.
- 37 Confidentiality
- 37.1All information of a technical or business nature disclosed by one party to the other either before or after a PID is agreed in connection with any Services or business dealings between the parties shall be regarded as confidential ("Confidential Information") and shall only be disclosed as is strictly necessary and each party shall procure that its personnel and third parties to which Confidential Information is disclosed treat such information as confidential.
- 37.2Confidential Information shall be used only for the purpose for which it was disclosed and for carrying out the purposes of a PID and shall not without prior written consent of the disclosing party be disclosed to any third party provided that either party may disclose without consent any Confidential Information:

- 37.2.1 to its sub-contractors for the provision of the service or any software provided to the Client by Smart IT provided that such disclosure is on a 'need to know' basis only and the sub-contractor undertakes to keep such Confidential Information confidential; or
- 37.2.2 as required to be disclosed to any governmental and/or regulatory authority; or
- 37.2.3 to any Group Company provided that before the release of that Confidential Information the Client shall procure that the Group Company to which the Confidential Information is released shall enter into an agreement with the Client whereby it is bound by the restrictions contained in this clause 37.
- 37.3 Information shall not be deemed to be Confidential Information where it:
- 37.3.1 is authorised to be disclosed by the disclosing party to the extent of the authority given;
- 37.3.2 is made public by the disclosing party or is or becomes part of the public domain other than by the default of the receiving party;
- 37.3.3 is in the possession of or is known by the receiving party without any obligation to keep it confidential prior to its receipt from the disclosing party;
- 37.3.4 is subsequently rightfully obtained by the receiving party from a third party; or
- 37.3.5 is independently developed by the receiving party.
- 37.4 Notwithstanding final delivery of services under a PID or the termination for whatever reason of the delivery of the Services, the obligations of confidentiality shall, unless otherwise agreed, continue for a period of 5 years from such completion or termination.
- 37.5 Any Confidential Information shall remain the property of the disclosing party and shall be returned by the receiving party to the disclosing party if so requested on the termination of obligations under a PID.

- 37.6 The obligations of confidentiality set out above shall be deemed to be discharged provided that there is no intentional disclosure of the Confidential Information, that the party in question has taken reasonable efforts in accordance with best current commercial security practice to reduce the risk of accidental disclosure, and that, where accidental disclosure does occur despite the exercise of reasonable care, steps are taken to minimise the risk of further accidental disclosure of the same kind.
- 38 These terms and conditions shall not create or novate, constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided for in these terms and conditions.
- 39 Subject to the rights granted by clause 11 and 12 no terms or provisions of a PID may be released, discharged, supplemented, interpreted, amended, varied or modified in any manner except as evidenced through a proposal and an acceptance thereof. amendments to a PID shall be made in accordance with the change request procedure set out in the PID and these terms and conditions.
- 40 Smart IT may elect to change the manner in which it communicates with the client as a result of a change in its operating systems or protocols.
- 40.1 Such change will not be implemented by Smart without first giving the Client at least 5 working days' notice of its intention to so change.
- 40.2 Smart IT will procure that communication with the Client from and after the implementation of such change will not impair the passage or exchange of information from or to Smart IT and the Client.
- 40.3 If (for evidenced and reasonable commercial causes) the Client is not satisfied with the relationship with Smart IT as a result of the implementation of the change it may terminate a PID with immediate effect, in which case it shall become liable to pay to Smart IT the amount of all Charges incurred to the date of the change, which payment shall be made on such termination.

- 41 Each PID is personal to the parties and, may not be assigned by either party without the prior written approval of the other party, such approval not to be unreasonably withheld.
- 42 The instructions for the preparation of a Gap Analysis and a PID and its developments together with any accepted change requests shall constitute the entire agreement between the parties relating to the subject matter of that PID or those instructions save that these terms and conditions are deemed to be incorporated to each such contract.
- 43 All notices (whether notices arising under the rights conferred by these terms and conditions or under a PID) shall be in writing and may be in the form of a letter, an email or by posting on the Smart IT client communication portal and shall be deemed to have been duly given:
- 43.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- 43.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated; or
- 43.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid,
- in each case addressed to the most recent address, e-mail address, or facsimile number notified to the other party and in default the addresses appearing in the relevant PID.
- 44 If any of these terms and conditions is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall to the extent required;
- 44.1 be severed from these terms and conditions and rendered ineffective as far as possible without modifying the remaining terms and conditions, and shall not in any way affect any other circumstances of or the validity or enforcement of a PID; and

44.2be substituted by a provision deemed effective and enforceable to the extent of the laws of England and Wales then current.

45 No delay, neglect or forbearance on the part of either party in enforcing against the other party any provisions of a PID as governed by these terms and conditions shall either be or be deemed to be a waiver or in any way prejudice any right of that party under these terms and conditions. no right, power or remedy conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.

46 Smart IT and the Client accept that a PID need not be physically signed by either of them to become binding on that party and that:-

46.1 these terms and conditions shall apply to such PID; and

46.2a PID shall become binding on the parties;

once an Initial Payment has been made by a Client.

47 The parties confirm their intent save where otherwise expressly provided not to confer any rights on any third parties by virtue of a PID or these terms and conditions and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply thereto.

48 Where there is a dispute concerning any element of a PID:-

48.1 the aggrieved party shall notify the other party in writing of the nature of the dispute with as much detail as possible about the deficient performance of the other party. a representative from senior management of each of the parties (“representatives”) shall meet in person or communicate by telephone within five working days of the date of the written notification in order to seek to reach an agreement about the nature of the deficiency and the corrective action to be taken by the respective parties.

48.2 within five working days of the meeting under condition 48.1 the representatives shall produce a report about the nature of the dispute in detail to their respective boards.

- 48.3if the representatives can agree the contents of the report it shall be a mutual report. if they cannot so agree they shall each produce a report which shall be submitted to the boards of directors of Smart IT and the client.
- 48.4if no agreement is reached on corrective action, then the chief executives of each party shall meet in person or communicate by telephone, to facilitate an agreement within five working days of a written notice by one to the other.
- 48.5if the dispute cannot be resolved at board level within a further five working days, or if the agreed upon completion dates in any written plan of corrective action are exceeded, either party may seek its legal remedies as provided below.
- 48.6if the parties cannot resolve a dispute in accordance with the procedure in condition 48.1 to 48.5, they shall (with the assistance of the centre for alternative dispute resolution) seek to resolve the dispute or difference amicably by using an alternative dispute resolution (“ADR”) procedure acceptable to both parties before pursuing any other remedies available to them. if either party fails or refuses to agree to or participate in the ADR procedure or if in any event the dispute or difference is not resolved to the satisfaction of both parties within 30 days after it has arisen, the matter shall be settled in accordance with the procedure in condition 48.7.
- 48.7if the parties cannot resolve the dispute by the procedure set out in conditions 48.1 to 48.6 inclusive, they shall irrevocably submit to the exclusive jurisdiction of the courts of England and Wales for the purposes of hearing and determining any dispute arising.
- 49 While the dispute resolution procedure above is in progress and an invoice has been raised by Smart IT to the client the amount of the invoice shall be paid into an interest bearing deposit account to be held in the names of both or all relevant parties at a clearing bank and such payment shall be a good discharge of the party’s payment obligations under the PID following resolution of the dispute, whether by mediation or legal proceedings, the sum held in such account shall be payable as determined in accordance with the mediation or legal proceedings, and the interest accrued shall be allocated between the parties pro rata according to the split of the principal sum as between the parties.

- 50 These terms and conditions are specified only in the English language. if there is any conflict in the meaning between the English language version of these terms and conditions and any version or translation of it in any other language, the English language version shall prevail.
- 51 These terms and conditions, the instructions for the preparation of a Gap Analysis and the provisions of a PID and any dispute resolutions referred to below shall be governed by and construed in accordance with English law and for the avoidance of doubt, the place of performance of the obligations under a PID is agreed by the parties to be England.
- 52 The headings in the index shall not affect the interpretation of any of the terms and conditions hereof.

End