

Epilog - Terms and Conditions

Agreed terms

1. Interpretation

- 1.1 The additional definitions and rules of interpretation in this clause apply to the Agreement.

Agreement: the agreement to which these terms and conditions are attached.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Business Hours: the period from 9.00 am to 5.00 pm on any Business Day.

Customer Data: all death, burial, cremation and associated information and records which the Customer is required to maintain under any applicable law or regulation.

Customer Hosting: the hosting of the Software and Customer Data on Customer Infrastructure.

Customer Infrastructure: the computer hardware and systems of or available to the Customer excluding Supplier Infrastructure.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018; and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and rights in domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (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.

Maintenance Release: a release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

New Version: any new version of the Software which from time to time is publicly marketed and offered for sale by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Open-Source Software: any software programs which are licensed under any form of open-source licence meeting the Open Source Initiative's

open-source definition from time to time.

Periodic Maintenance: such maintenance and updating of Supplier Infrastructure or any applicable third-party infrastructure as the Supplier and/or such third-party deems necessary or prudent to implement from time to time.

Services Fee: the fee payable by the Customer to the Supplier for the Services as set out in the Agreement.

SLA: the service level agreement describing the respective rights and obligations of the parties as set out in **Error! Reference source not found..**

Software: the computer programs detailed in the SLA and any Maintenance Release which is acquired by the Customer during the subsistence of the Agreement.

Supplier Infrastructure: the computer hardware and systems of or available to the Supplier excluding the Customer Infrastructure.

Supplier Hosting: the hosting of certain elements of the Software and Customer Data on Supplier Infrastructure.

UK GDPR: has the meaning given in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

Third-Party Software: any third-party software required for the correct operation of the Software, and which has been notified by the Supplier to the Customer on or prior to the Commencement Date including the

computer programs detailed in the SLA.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 Unless the context otherwise requires:

- (a) words in the singular include the plural and in the plural include the singular;
- (b) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;
- (c) a reference to one gender includes a reference to the other genders; and
- (d) any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.4 In the case of conflict or ambiguity between any provision contained in the body of this agreement and any provision contained in the schedules or appendices, the provision in the body of this agreement shall take precedence.

1.5 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal

personality) and that person's personal representatives, successors and permitted assigns.

1.6 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.7 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.8 A reference to writing or written excludes fax and email.

2. **Delivery and installation of the Software**

2.1 The Supplier shall deliver or otherwise make available to the Customer one working copy of the Software within 3 Business Days of the date of completion of the Entry Migration Services (as defined in clause 2.4) (**Delivery**).

2.2 If Customer Hosting applies:

- (a) within the time period specified in the SLA, the Customer shall instal the Software and the Third-Party Software on the Customer Infrastructure in accordance with the instructions and directions given by the Supplier to the Customer; and

- (b) the Supplier shall provide the Customer with the support, advice and assistance described in the SLA on and subject to the terms and conditions of the SLA.

2.3 If Supplier Hosting applies:

- (a) within the time period specified in the SLA:
 - (i) the Customer shall instal the required elements of the Software and the Third-Party Software on the Customer Infrastructure in accordance with the instructions and directions given by the Supplier to the Customer; and
 - (ii) the Supplier shall provide the Customer with such remote access to the Supplier Infrastructure as is required to enable the correct operation of the Software; and
- (b) the Supplier shall provide the Customer with the support, advice and assistance described in the SLA on and subject to the terms and conditions of the SLA.

2.4 Subject to clause 2.5, the support, advice and assistance referred to in clause 2.2(b) and clause 2.3(b) shall as applicable be the **Entry Migration Services**.

2.5 The Customer:

- (a) shall promptly comply with its obligations under or in connection with the Entry Migration Services as set out in the SLA;
- (b) shall promptly provide the Supplier with such information and assistance as the Supplier reasonably requires to perform its obligations under or in connection with the Entry Migration Services; and
- (c) acknowledges and agrees that the Supplier:
 - (i) shall have no liability to the Customer for any delay in the completion of the Entry Migration Services in circumstances where such delay is caused directly or indirectly by any failure of the Customer to comply with any of its obligations under or in connection with the Entry Migration Services; and
 - (ii) may suspend its performance of the Entry Migration

Services until the Supplier remedies such failure to the reasonable satisfaction of the Supplier.

2.6 If Supplier Hosting applies, the Customer shall not and shall procure that its employees, officers, representatives, contractors and subcontractors shall not use or access any Supplier Infrastructure for any purpose other than to use the Software in the manner contemplated by and in accordance with the terms of the Agreement.

3. Licence

3.1 In consideration of the Services Fee, the Supplier grants to the Customer:

- (a) a non-exclusive, non-transferrable, royalty-free, perpetual licence to use the Software; and
- (b) a non-exclusive, non-transferrable, royalty-free licence to use the Supplier Infrastructure (if applicable) for the Services Term,

together the **Licence**.

3.2 In relation to scope of use:

- (a) for the purposes of clause 3.1, use of the Software shall be restricted to use in object code form;
- (b) the Customer may not use the Software other than for the purposes of the

- Agreement without the prior written consent of the Supplier;
- (c) the Customer may make as many backup copies of the Software and the Customer Data as may be necessary for its lawful use. The Customer shall record the number and location of all copies of the Software and take reasonable steps to prevent unauthorised copying;
 - (d) except as expressly permitted by clause 3.2(c), the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part;
 - (e) the Customer's use of the Third-Party Software shall be subject to the terms and conditions of any licence applicable to the Third-Party Software (**Third-Party Software Licence**);
 - (f) the Customer acknowledges and agrees its sole responsibility to obtain and install on the Customer Infrastructure validly licensed copies of the Third-Party Software and to comply in all respects with the terms and conditions of each Third-Party Software Licence; and
 - (g) the Customer shall indemnify and hold the Supplier harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of any Third-Party Software Licence howsoever arising.
- 3.3 The Customer may not use any information provided by the Supplier to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 3.4 The Customer shall not:
- (a) sub-license, assign or novate the benefit or burden of the Licence in whole or in part;
 - (b) allow the Software to become the subject of any charge, lien or encumbrance; or
 - (c) deal in any other manner with any or all of its rights and obligations under the Agreement,
- in each case without the prior written consent of the Supplier.
- 3.5 The Supplier may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under the Agreement, provided it gives written notice to the Customer.

3.6 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

3.7 Notwithstanding clause 7, a party assigning any or all of its rights under the Agreement may disclose to a proposed assignee any information in its possession that relates to the Agreement or its subject matter, the negotiations relating to it and the other party which is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this clause 3.7 shall be made until notice of the identity of the proposed assignee has been given to the other party.

3.8 The Customer shall:

- (a) keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time; and
- (b) notify the Supplier as soon as it becomes aware of any unauthorized use of the Software by any person.

3.9 The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with the Agreement, for the purposes of

ensuring that the Customer is complying with the terms of the Agreement, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

3.10 The Licence does not extend to any New Version. If and to the extent that the Customer requires the use of any New Version, such use shall be subject to such terms and conditions (including financial terms) as the Customer and the Supplier shall have agreed in writing in advance of the provision of such use.

4. Provision of the Services

4.1 In consideration of the Services Fee and with effect from the Commencement Date, the Supplier shall supply the services specified in clause 4.2 to the Customer for the Services Term (**Services**).

4.2 The Services shall comprise:

- (a) the provision of the services to be supplied by the Supplier described in the SLA; and
- (b) the provision of all Maintenance Releases generally made available by the Supplier to its customers.

4.3 The Supplier shall perform the Services with reasonable skill and care in accordance with the generally

recognised standards and practices in its industry.

Periodic Maintenance is performed outside of Business Hours.

4.4 The Supplier shall use reasonable endeavours to meet any performance times for the Services, but these times are estimates only and the time for performance is not of the essence of the Agreement.

4.5 The Supplier shall maintain all licences, consents and permissions needed to supply the Services in accordance with the Agreement, excluding any licences, consents and permissions that the Customer is expressly responsible for maintaining under the Agreement or should reasonably be responsible for maintaining.

5. Periodic Maintenance

5.1 The Customer acknowledges and accepts that Supplier Infrastructure and the normal operation of the Software may be unavailable during periods of Periodic Maintenance.

5.2 the Supplier shall:

- (a) give the Customer as much advanced notice of periods of Periodic Maintenance as is reasonably practicable, such notice to include the Supplier's reasonable estimate of the anticipated period of unavailability; and
- (b) use reasonable endeavours to ensure that where reasonably practicable,

6. Services Fee

6.1 The Customer shall pay the Services Fee to the Supplier on the basis described in the Quotation.

6.2 All payments made by the Customer under this agreement are exclusive of VAT. The Supplier shall provide the Customer with a valid VAT invoice.

6.3 The Services Fee does not include:

- (a) any Customer site visits or Customer training required or requested by the Customer unless specifically included in the Quotation; or
- (b) any element of the Services required to be performed outside of Business Hours,

together the **Excluded Services**.

6.4 The cost of the applicable Excluded Services shall be payable in addition to the Services Fee at such rate and subject to such payment terms as the Customer and the Supplier shall have agreed in writing in advance of the provision of the applicable Excluded Services.

6.5 If the Customer fails to make any payment due to the Supplier under the Agreement by the due date for payment, then, without limiting the Supplier's remedies, the Customer shall pay interest on the overdue

amount at the rate of 4% per annum above Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

7. Confidentiality and publicity

7.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party except as permitted by clause 7.2.

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

- (a) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 7; and
- (b) as may be required by law, a court of competent

jurisdiction or any governmental or regulatory authority.

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

7.4 No party shall make, or permit any person to make, any public announcement concerning the Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

8. Supplier's warranties

8.1 The Supplier warrants that the Software will conform in all material respects to any description given by the Supplier to the Customer in any quotation, promotional literature or otherwise (**Software Description**) for a period of 90 days from the date of completion of the Entry Migration Services (**Warranty Period**). If, within the Warranty Period, the Customer notifies the Supplier in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Software Description, and such defect or fault does not result from

the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of the Agreement for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, or it has not been loaded onto Supplier-specified or suitably configured equipment, the Supplier shall, at the Supplier's option, do one of the following:

- (a) repair the Software;
- (b) replace the Software; or
- (c) terminate the Agreement immediately by notice in writing to the Customer and refund any of the Services Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,

provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.

- 8.2 The Supplier warrants that no Maintenance Release will adversely affect the then existing facilities or functions of the Software provided

that the Customer has installed all Maintenance Releases as soon as reasonably practicable after receipt in accordance with the instructions and directions of the Supplier.

- 8.3 The Supplier does not warrant that the use of the Software or the Supplier Infrastructure (if applicable) will be uninterrupted or error-free.

- 8.4 The Customer acknowledges and agrees that the Supplier has no control over or oversight of Customer Infrastructure and accordingly that the Supplier shall have no liability under or in connection with the Agreement for any loss or damage suffered or incurred by the Customer arising in consequence of any defect, breakdown or unavailability of Customer Infrastructure howsoever arising.

- 8.5 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges and agrees that the Software has not been developed to meet the individual requirements of the Customer.

- 8.6 The Customer acknowledges and agrees that any Open-Source Software provided by the Supplier is provided "as is" and expressly subject to the disclaimer in clause 8.7.

- 8.7 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Agreement or any collateral contract, whether by

statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

9. Limits of liability

9.1 Except as expressly stated in clause 9.2:

(a) the Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

- (i) special damage even if the Supplier was aware of the circumstances in which such special damage could arise;
- (ii) loss of profits;
- (iii) loss of anticipated savings;
- (iv) loss of business opportunity or contract;
- (v) loss of goodwill;

(vi) loss or corruption of data; or

(vii) wasted expenditure;

(b) the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with the Agreement or any collateral contract, shall in no circumstances exceed a sum equal to 100% of the Services Fee; and

(c) the Customer agrees that, in entering into the Agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in the Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in the Agreement) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall have no liability in any circumstances otherwise than in accordance with the express terms of the Agreement.

9.2 The exclusions in clause 8.7 and clause 9.1 shall apply to the fullest extent permissible at law, but the Supplier does not exclude liability for:

(a) death or personal injury caused by the negligence of

the Supplier, its officers, employees, contractors or agents;

- (b) fraud or fraudulent misrepresentation;
- (c) breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
- (d) any other liability which may not be excluded by law.

9.3 All dates supplied by the Supplier for the delivery of the Software or the provision of Services shall be treated as estimates. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such estimated dates.

9.4 All references to "the Supplier" in this clause 9 shall, for the purposes of this clause and clause 19 only, be treated as including all employees, contractors, subcontractors, representatives and suppliers of the Supplier, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 19.

10. Intellectual property rights

10.1 The Customer acknowledges and agrees that all Intellectual Property Rights in the Software and any Maintenance Releases belong and shall belong to the Supplier or the relevant third-party owners (as the

case may be), and the Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of the Agreement.

10.2 The Supplier shall defend the Customer against any claim that the Customer's use of the Software in accordance with the Agreement infringes any Intellectual Property Rights of a third party (**Claim**) and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such Claim. For the avoidance of doubt, this clause 10.2 shall not apply where the Claim in question is attributable to possession or use of the Software (or any part thereof) by the Customer other than in accordance with the terms of the Agreement, use of the Software in combination with any hardware or software not supplied or specified by the Supplier if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.

10.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Supplier's obligations under clause 10.2 are conditional on the Customer:

- (a) as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

- (b) not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);
- (c) giving the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
- (d) subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

to be made, against the Customer, the Supplier may at its sole option and expense:

- (a) procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this agreement;
- (b) modify the Software so that it ceases to be infringing;
- (c) replace the Software with non-infringing software; or
- (d) terminate this agreement immediately by notice in writing to the Customer and refund any of the Services Fee paid by the Customer as at the date of termination (less the proportion of the Services Fee which relates to the Customer's use of the Software and receipt of the Services to the date of termination) on return of the Software and all copies thereof,

provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 8.1 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of the Agreement been references to the date on which such modification or replacement was made.

10.4 If any Claim is made, or in the Supplier's reasonable opinion is likely

10.5 Notwithstanding any other provision in this Agreement, clause 10.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any Third-Party Software or through the breach of any Third-Party Software Licence by the Customer.

10.6 This clause 10 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 9.1.

10.7 In using the Supplier Infrastructure under or in connection with the Agreement, the Customer does not acquire any proprietary or other rights in or to the Supplier Infrastructure which shall at all times remain vested in the Supplier or the relevant third-party owners (as the case may be).

11. Data protection

Each party shall comply in all respects with its respective obligations under the Data Protection Legislation in all matters under or in connection with the Agreement.

12. Termination

12.1 Unless extended or renewed by the parties, the Agreement shall automatically terminate on the expiry of the Services Term.

12.2 Without affecting any other right or remedy available to it, either party

may terminate the Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under the Agreement on the due date for payment and remains in default not less than 10 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of the Agreement and (if such breach is remediable) fails to remedy that breach within a period of 10 days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or

more other companies or the solvent reconstruction of that other party;

- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership); or
- (g) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12.3 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

12.4 Termination or expiry of the Agreement shall not affect any rights, remedies, obligations or liabilities of

the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

12.5 Subject to clause 12.6, on termination for any reason or expiry of the Agreement:

- (a) all rights granted to the Customer under the Agreement shall cease;
- (b) the Customer shall cease all activities authorised by the Agreement;
- (c) the Customer shall immediately pay to the Supplier any sums due to the Supplier under the Agreement;
- (d) the Customer shall immediately destroy or return to the Supplier (at the Supplier's option) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier that it has done so; and
- (e) the Customer shall immediately cease all use of Supplier Infrastructure.

12.6 On termination or expiry of the Agreement:

- (a) the Customer may continue to use the version of the

Software in use by the Customer as at the date of termination or expiry in the absence of the Services and without access to Supplier Infrastructure (if applicable) without limitation in time; and

- (b) subject to clause 12.7, clause 12.8, clause 12.9 and clause 12.10, if Supplier Hosting applies, the Supplier shall provide the Customer with the support, advice and assistance described in the SLA on and subject to the terms and conditions of the SLA **(Exit Migration Services)**.

12.7 The provision of the Exit Migration Services shall be subject to the prior agreement in writing of the Customer and the Supplier of the fees and the associated payments terms and conditions applicable to such provision.

12.8 The Customer:

- (a) shall promptly comply with its obligations under or in connection with the Exit Migration Services as set out in the SLA;
- (b) shall promptly provide the Supplier with such information and assistance as the Supplier reasonably requires to perform its obligations under or in connection with the Exit Migration Services; and

- (c) acknowledges and agrees that the Supplier shall have no liability to the Customer for any delay in the completion of the Exit Migration Services in circumstances where such delay is caused by any direct or indirect failure of the Customer to comply with any of its obligations under or in connection with the Exit Migration Services.

12.9 If the Customer unreasonably fails to perform its obligations in accordance with clause 12.8, then the Supplier shall be entitled to invoice the Customer for a proportionate part of the amount agreed pursuant to clause 12.7 representing the work done by the Supplier under or in connection with the Exit Migration Services up to and including the point where the Supplier is prevented from performing its obligations under or in connection with the Exit Migration Services in consequence of the Customer's failure.

12.10 If clause 12.9 applies:

- (a) the Supplier shall determine such proportionate part on a fair and reasonable basis and shall provide the Customer with reasonable details of the basis for its determination on request; and
- (b) any invoice issued by the Supplier shall be payable within 30 days of receipt.

13. Waiver

13.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

13.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy does not waive that or any other right or remedy, nor does it prevent or restrict the further exercise of that or any other right or remedy.

14. Remedies

Except as expressly provided in the Agreement, the rights and remedies provided under the Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

15. Entire agreement

15.1 The Agreement and the Schedules contain the whole agreement between the parties relating to the subject matter hereof and supersede all previous and contemporaneous agreements, arrangements and understandings between them, whether written or oral, relating to that subject matter.

15.2 Each party acknowledges that, in entering into the Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to the Agreement or not) (**Representation**)

other than as expressly set out in the Agreement.

15.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in the Agreement.

15.4 Nothing in this clause shall limit or exclude any liability for fraudulent misrepresentation.

16. Variation

No variation of the Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. Severance

17.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.

17.2 If any provision or part-provision of the Agreement is deemed deleted under clause 17.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

18. Counterparts

The Agreement may be executed in any number of counterparts, each of which when executed constitutes a

duplicate original, but all the counterparts together constitute the one agreement.

19. Third-party rights

19.1 Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

19.2 The rights of the parties to rescind or vary the Agreement are not subject to the consent of any person.

20. No partnership or agency

20.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

20.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

21. Force majeure

21.1 Neither party shall be liable for any delay or failure in the performance of its obligations for so long as and to the extent that such delay or failure results from events, circumstances or causes beyond its reasonable control including without limitation the interruption, breakdown or unavailability of third-party communication systems, networks or

other infrastructure applicable to the functioning of the Software, the Supplier Infrastructure or the Customer Infrastructure.

21.2 If the period of delay or non-performance continues for 30 days, the party not affected may terminate the Agreement by giving not less than 10 days' written notice to the affected party and following such notice the applicable provisions of clause 12 shall apply.

22. Notices

22.1 Any notice given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

22.2 Any notice shall be deemed to have been received:

(a) if delivered by hand, at the time the notice is left at the proper address; or

(b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or other method of dispute resolution. For the purposes of this clause, "writing" shall not include e-mail.

23. Governing law

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

24. Jurisdiction

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).