

BestPath Limited - Sales Terms and Conditions

Definitions.

Definitions and Interpretation

- 1) The following definitions and rules of interpretation apply in these terms
- 2) and conditions

Acceptance Criteria: in respect of any functionality within a software Deliverable, the acceptance criteria set out in the relevant Order or otherwise agreed in writing between you and us from time to time.

BestPath Code Libraries: any standard code snippets or code libraries which we develop for re-use (whether developed before or during the provision of the Services) and which are incorporated in the Deliverables.

BestPath Standard Documents: any generic documentation not produced specifically for you.

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 9am to 6pm on any Business Day.

Change Control Provisions: the detailed change control provisions set out in the Order, or if there are none, the provisions of clause "Change control".

Charges: the sums payable for the Hardware or Services, determined as set out in each Order.

Client Materials: all documents, information and materials (including software programs and software code) in any form, whether owned by you or a third party, which are provided by you to us in connection with the Services, including the items provided pursuant to clause 27.b.

Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical measures: as defined in the Data Protection Legislation.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Deliverables: any output of the Services to be provided by us to you as specified in an Order or as otherwise agreed between you and us in accordance with these terms and conditions but excluding for the avoidance of doubt any Third Party Proprietary Software.

Hardware: any hardware, equipment or other goods to be supplied to you pursuant to the terms of an Order.

Incumbent Supplier: any third party providing services to you who is to be replaced (in whole or in part) by us upon the commencement of Services under an Order.

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, rights in computer software, moral rights, 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.

IT Support Services: the IT support services described in the relevant Order.

Milestone: an event, task or part of the Services described in an Order together with (where applicable) the estimated date by which such milestone is to be completed.

New Supplier: any third party providing services to you in succession to us upon the

termination or expiry of Services under an Order.

Services: the provision by us to you of network design services, software development services, IT Support Services, consultancy services or any other services described within an Order, or the procurement by us on your behalf of any Third Party Proprietary Software licence.

Order: your order for the supply of Hardware and/or Services, as set out in your purchase order form or your written acceptance of our quotation, as the case may be.

Third Party Proprietary Software: proprietary software licensed by a third party directly to you, where we procure the licence on your behalf under the terms of an Order.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

UK: the United Kingdom.

VAT: value added tax chargeable in the UK.

2) Clause headings will not affect the interpretation of these terms and conditions.

3) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

4) A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.

5) Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.

6) A reference to a party includes its successors and permitted assigns.

7) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

8) A reference to a statute or statutory provision includes all subordinate legislation made from time to time under that statute or statutory provision.

9) A reference to **writing** or **written** includes (but is not limited to) fax, email and direct messages as well as any messages or acknowledgements sent using issue tracking products or team collaboration tools and applications.

10) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

11) References to clauses are to the clauses of these terms and conditions.

12) Any words following the terms **including, include, in particular, for example** or any similar expression are to be construed as illustrative and will not limit the sense of the words, description, definition, phrase or term preceding those terms.

13) Where your Order takes the form of an acceptance of our quotation, any reference to an **Order** within these terms and conditions shall, where the context allows, include the details set out in our quotation.

Basis of contract

14) The Order constitutes an offer by you to purchase Hardware and/or Services in accordance with these terms and conditions.

15) The Order shall only be deemed to be accepted when we issue written acceptance of the Order or make any other clear statement that we have accepted the Order, at which point and on which date a contract shall come into existence between us for the supply of Hardware and/or Services in accordance with these terms and conditions.

16) Any samples, drawings, descriptive matter or advertising issued by us and any descriptions of Hardware or descriptions of the Services contained in our website or any literature supplied by us are issued or published for the sole purpose of giving an approximate idea of the Hardware and Services described in them. They shall not form part of the contract between us nor have any contractual force.

17) These terms and conditions apply to the Order to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

18) Any quotation given by us shall not constitute an offer, and (unless stated otherwise) is only valid for a period of 7 days from its date of issue. We may withdraw a quotation at any time (including where our pricing is affected by exchange rate fluctuations).

19) All of these terms and conditions shall apply to the supply of both Hardware and Services except where application to one or the other is specified.

20) You waive any right you might otherwise have to rely on any term endorsed upon, delivered with or contained in any of your documents that is inconsistent with these terms and conditions.

21) Subject to any rights to terminate earlier set out in an Order or in these terms and conditions, we will provide the relevant Services from the date specified in, and for the period set out in, each Order (or if the Order has no period specified then we will provide the Services until they are complete).

Our responsibilities

22) We will provide the Services, and deliver any applicable Deliverables to you:

- a. in accordance with (in all material respects) each Order and any agreed service level agreement attached to it; and
- b. in a professional and workmanlike manner using sufficient numbers of adequately trained staff and with all reasonable skill and care.

23) We will use industry standard software to detect and prevent the introduction of viruses and other malicious software into any Deliverables produced by us, but we will not be responsible for the introduction of viruses or malicious software into your software or systems that does not result from our wilful conduct, negligence or that of any third parties under our control.

24) We will use reasonable endeavours to meet any performance dates specified in an Order (or any document attached to an Order) but (unless specifically agreed otherwise in an Order) any such dates will be estimates only.

25) We will use reasonable endeavours to ensure that any of our employees and other representatives attending your premises observe all reasonable health and safety and security requirements that apply and which have been communicated to us under clause 27.d. We will observe any security or other policy identified in the Order.

26) We will have the right to make any changes to the Services which are necessary to comply with any applicable law or which do not materially affect the nature or quality of the Services, and we will notify you in any such event.

Your obligations

27) You will:

- a. co-operate reasonably with us in all matters relating to the Services;
- b. provide, for us and our employees and other representatives, at no charge, access to your premises, office accommodation, data and other facilities as we reasonably require to provide the Services (including as may be specified in any Order);
- c. provide to us in a timely manner all documents, information and materials in any form required under an Order or otherwise reasonably required by us in connection with the Services and ensure that they are accurate and complete in all material respects;
- d. ensure that your business systems, and all network connections and telecommunications links from such systems to our systems and/or data centres, comply with the relevant specifications provided by us from time to time;
- e. inform us of all health and safety and security requirements that apply at any of your premises; and
- f. comply in all material respects with any of your additional responsibilities as may be set out in the relevant Order.

28) If the performance of our obligations under any Order is prevented or delayed by anything done or not done by you or your employees, representatives or subcontractors then any actual or estimated performance dates agreed by us will be adjusted accordingly and we may increase the Charges to reflect any additional costs reasonably incurred by us.

Software development – testing and warranty

29) The provisions of this clause ‘Software development – testing and warranty’ apply only to Orders for software development.

30) You will use all reasonable endeavours to test each incremental release of a Deliverable that we supply to you against the relevant Acceptance Criteria and in the timescale set out in any agreed test plan and you will notify us of any defects as soon as you become aware of them.

31) You will not unreasonably withhold your acceptance of any Deliverable subject to the Acceptance Criteria being satisfied in all material respects.

32) We warrant that for a period of 30 days after the supply of any software Deliverable, the Deliverable will in all material respects perform in accordance with the Acceptance Criteria and any other agreed specification. Your sole remedy for a breach of the warranty in this clause 31 will be the correction by us (within a period of 3 months of your notification) of any errors that cause the Deliverable not to comply with this warranty, subject to you notifying us within the 30 day period referred to above.

Supply of Hardware

33) Where we supply Hardware to you we will have no liability to you whatsoever for any delays in the supply of such Hardware caused (in whole or in part) by a delay of our suppliers.

34) We will provide you with the benefit of any warranty offered by our suppliers in respect of the Hardware but all other terms, conditions or warranties implied by statute, law or otherwise in respect of the Hardware are excluded.

Charges and payment

35) In consideration of the provision of the Services and/or Hardware by us, you will pay the Charges.

36) Where the Charges are calculated on a time and materials basis, our daily fee rates for each individual person or role will be set out in the Order and are calculated on the basis of an 8 hour day, worked during Business Hours. We may charge overtime at the rates set out in the Order for any time worked by individuals whom we engage on the Services outside Business Hours.

37) Where the Charges are calculated on a fixed price basis, Milestone basis or recurring basis, the amount of those charges (and where applicable, any Milestones) will be as set out in the Order.

38) We will be entitled to charge you for any expenses reasonably and properly incurred by the individuals whom we engage in connection with the Services, including travelling expenses, hotel costs, subsistence and any associated expenses and will normally invoice for such expenses at the end of the month in which they are incurred. We will obtain your prior approval for such expenses whenever reasonably practicable.

39) We may increase the Charges payable under any Order as follows, subject to giving you reasonable notice of any such increase:

- a. at any time, to reflect any increase in the cost of supplying the Hardware or Services which is due to any factor beyond our reasonable control (including foreign exchange fluctuations, increases in taxes and duties, increases in labour costs and increased Hardware costs); and
- b. in addition to any increase under clause 39.a, no more than once per year (and not during the first 12 months of the term of an Order) by an amount to be notified by us to you on not less than 30 days' notice. If you notify us during such notice period that you do not agree the increase to our Charges, you and we will negotiate the Charges in good faith and if we fail to reach agreement, you may terminate the applicable Order on 30 days' notice to us (and our previous Charges will apply until such termination).

40) We will invoice you for the Charges at the intervals specified (or on completion of the applicable Milestones) in the Order. If no intervals or Milestones are specified in the Order, we will invoice you at the end of each month for Services provided during that month.

41) You will pay each invoice submitted to you by us within the timescale indicated in the Order (or if no timescale is indicated, within 30 days of receipt) to a bank account nominated in writing by us from time to time.

42) If you dispute any invoice, you must immediately notify us in writing. You and we will then negotiate in good faith to attempt to resolve the dispute promptly. We will provide all evidence as may be reasonably necessary to verify the disputed invoice. Where only part of an invoice is disputed, the undisputed amount must be paid on the due date. The disputed amount must be paid within 2 Business Days of resolution of the dispute (if later than the original due date).

43) Without prejudice to any other right or remedy that we may have, if you fail to pay us any undisputed sum due under an Order on the due date (where an "undisputed sum" means a sum

not disputed prior to its applicable due date):

a. you will pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time or at 4% if such base rate is below 0%; and

b. we may (after first informing you that payment is overdue and providing you with a further 7 days in which to make payment) suspend part or all of the Services until payment has been made in full.

44) All sums payable to us under any Order are exclusive of VAT, and you will in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice. You may not withhold any amount from sums due to us, other than as permitted by clause 42.

Intellectual property rights

45) Subject to your payment of the Charges under the relevant Order, you will own and we hereby assign to you (by way of present and, where appropriate, future assignment) all Intellectual Property Rights in the Deliverables but excluding:

a. any third-party code libraries which are incorporated in the Deliverables, for which we will obtain for you a non-exclusive licence permitting their use within the Deliverables;

b. any BestPath Code Libraries; and

c. any BestPath Standard Documents.

46) Subject to your payment of the Charges under the relevant Order, we grant to you an irrevocable, perpetual, worldwide, royalty-free, non-exclusive licence to use and make such copies of as are reasonably necessary for your internal business purposes:

a. the BestPath Code Libraries, solely to allow the use of the Deliverables which incorporate them; and

b. the BestPath Standard Documents, solely in connection with the receipt of the Services or use of the Deliverables to which they relate.

You may not adapt or vary any BestPath Code Libraries or BestPath Standard Documents, nor may you disassemble, decompile, reverse translate or in any other manner decode any BestPath Code Libraries, except as permitted by law. The licence granted in this clause 46 is non-transferable except that you may transfer it to any transferee of your business and assets on a business sale or corporate restructure, if the assets transferred include the relevant Deliverables.

47) To the extent that you provide any Client Materials to us:

a. you and your licensors will retain ownership of all Intellectual Property Rights in such Client Materials; and

b. you grant to us a non-exclusive, royalty-free, non-transferable licence to copy and modify such Client Materials for the term of the relevant Order for the purpose of providing the Services to you.

48) We:

a. warrant that the receipt or use of the Services or the Deliverables by you will not infringe the Intellectual Property Rights of any third party;

b. will indemnify you against all liabilities, costs, expenses, damages and losses suffered or incurred or paid by you arising out of or in connection with any breach of the warranty at clause 48.a; and

c. will not be in breach of the warranty at clause 48.a, and you will have no claim under the indemnity at clause 48.b to the extent the infringement arises from:

- i. the use of Client Materials in the development of the Services or any Deliverable;
- ii. any modification of the Services or any Deliverable, other than by or on behalf of us or otherwise approved by us;
- iii. the use of any version of a Deliverable other than the latest version supplied by us, if any infringement could have been avoided by the use of the latest version; or
- iv. any visual element or “look and feel” design specified by you.

49) You:

- a. warrant that the receipt and use in the performance of any Order by us, our agents, subcontractors or consultants of Client Materials will not infringe the Intellectual Property Rights of any third party; and
- b. will indemnify us against all liabilities, costs, expenses, damages and losses suffered or incurred or paid by us arising out of or in connection with any breach of the warranty at clause 49.a.

50) If either you or we (**Indemnifying Party**) are required to indemnify the other party (**Indemnified Party**) under this clause ‘**Intellectual property rights**’, the Indemnified Party will:

- a. notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 48.b or clause 49.b (as applicable) (**IPR Claim**);
- b. allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPR Claim, always provided that the Indemnifying Party must obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld;
- c. provide the Indemnifying Party with such reasonable assistance regarding the IPR Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's costs so incurred; and
- d. not, without prior consultation with the Indemnifying Party, make any admission relating to the IPR Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPR Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.

51) If any Deliverable infringes or, in the opinion of qualified legal counsel, is likely to infringe the Intellectual Property Rights of a third party, or any person makes or threatens a claim alleging such infringement, you will allow us:

- a. to replace all or part of the Deliverable with a functionally equivalent Deliverable without any charge to you; and/or
- b. to modify the Deliverable as necessary to avoid such infringement, provided that the Deliverable (as amended) functions in substantially the same way as the Deliverable before modification; and/or
- c. to obtain for you a licence from the relevant complainant to continue using the Deliverable.

Non-solicitation

52) Neither of us may (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by the other party in the provision of the Services or (in your case) in the receipt of the Services at any time during the term of an Order or for a further period of 12 months after the termination of the Order other than by means of a bona

vide national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.

53) If either of us commits any breach of clause 52, the breaching party will, on demand, pay to the innocent party a sum equal to one year's basic salary or the annual fee that was payable by the innocent party to that employee, worker or independent contractor plus the recruitment costs incurred in replacing such person.

Change control

54) Clause 55 applies only where the Order does not include detailed change control provisions.

55) You may, by giving written notice to us at any time during the term of an Order, request a change to the Services and/or any relevant specification of the Deliverables. As soon as reasonably practicable we will prepare for you a written estimate of any increase or decrease in the Charges and of any effect that the requested change would have on the provision of Services. If you wish the requested change to be made then:

- a. where the change is to a specification of the Deliverables then the change may be confirmed in writing between you and us and will take effect on the effective date confirmed between you and us (or if no effective date is stated, then immediately on the change being agreed); and
- b. in all other cases, you and we will endeavour to agree a revised Order and the changes will take effect from the date or dates specified in the revised Order.

Compliance with laws and policies

In performing our respective obligations under any Order, both you and we will comply with all applicable legislation in the UK.

Data protection

56) Both you and we will comply with all applicable requirements of the Data Protection Legislation. This clause '**Data protection**' is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

57) You and we acknowledge that for the purposes of the Data Protection Legislation, you are the controller and we are the processor. Where applicable, each Order sets out the scope, nature and purpose of processing by us, the duration of the processing and the types of personal data and categories of data subject.

58) You will ensure that you have all necessary appropriate consents and notices in place to enable the lawful transfer of any personal data to us for the duration and purposes of any Order.

59) We will, in relation to any personal data processed in connection with the performance by us of our obligations under any Order:

- a. process that personal data only on your documented written instructions or as required by an Order, unless we are required by applicable laws to otherwise process that personal data. Where we are relying on the laws of the UK or the laws of a member of the European Union as the basis for processing personal data, we will promptly notify you of this before performing the processing required by the relevant laws unless those laws prohibit us from notifying you;
- b. ensure that we have 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;

c. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential;

d. not transfer any personal data outside of the UK or the European Economic Area unless permitted by the terms of an Order or your prior written consent has been obtained and the following conditions are fulfilled:

i. you or we have provided appropriate safeguards in relation to the transfer;

ii. the data subject has enforceable rights and effective legal remedies;

iii. we comply with our obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and

iv. we comply with reasonable instructions notified to us in advance by you with respect to the processing of the personal data;

e. assist you, at your cost, in responding to any request from a data subject and in ensuring compliance with your obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

f. notify you without undue delay on becoming aware of a personal data breach;

g. at your written direction, delete or return to you personal data and copies thereof on termination of the Order unless required by applicable laws to store the personal data; and

h. maintain complete and accurate records and information to demonstrate our compliance with this clause '**Data protection**' and allow for audits by you or your designated auditor (to be carried out at your cost, during reasonable hours, on reasonable notice and in a manner that does not disrupt our business) and immediately inform you if, in our opinion, an instruction infringes the Data Protection Legislation.

60) You consent to us appointing any third-party processors of personal data identified under any Order or otherwise agreed in writing by you. We confirm that we have entered or (as the case may be) will enter with the third-party processor into a written agreement which:

a. where practicable, incorporates terms which are substantially similar to those set out in this clause '**Data protection**'; or

b. is otherwise substantially on that third party's standard terms of business,

and in either case which we undertake will reflect and will continue to reflect the requirements of the Data Protection Legislation. As between you and us, we will remain fully liable for all acts or omissions of any third-party processor appointed by us pursuant to this clause '**Data protection**'.

Confidentiality and publicity

61) Each party undertakes that it will not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 62.a.

62) Each party may disclose the other party's confidential information:

a. to its employees, officers, representatives 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 any Order. Each party must ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause '**Confidentiality and publicity**'; and

b. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

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

64) We acknowledge that the Client Materials form part of your confidential information. You acknowledge that the BestPath Code Libraries and BestPath Standard Documents form part of our confidential information.

65) With your prior consent (which you will not unreasonably withhold subject to our satisfactory performance under the relevant Order(s)) we may refer to you as being our client in our client reference lists and sales presentations and we may refer to you in any advertising or press release (in all cases subject to the terms of clause 61 above).

Anti-bribery and anti-corruption

66) Each party must:

a. comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010 (**Relevant Requirements**);

b. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

c. have and maintain in place throughout the term of any Order its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and

d. promptly report to the other party any request or demand for any undue financial or other advantage of any kind received by it in connection with the performance of any Order.

67) Each party must ensure that any person associated with it who is performing services in connection with any Order does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed in this clause '**Anti-bribery and anti-corruption**'.

68) For the purpose of this clause '**Anti-bribery and anti-corruption**', the meaning of adequate procedures and whether a person is associated with another person will be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act) and section 8 of that Act respectively. For the purposes of this clause '**Anti-bribery and anti-corruption**' a person associated with a party includes any subcontractor of it.

Compliance with anti-slavery and human trafficking laws

69) In performing our obligations under any Order, we will:

a. comply with all applicable anti-slavery and human trafficking laws, statutes and regulations from time to time in force including the Modern Slavery Act 2015;

b. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and

c. where reasonably practicable and proportionate, include in contracts with our direct

subcontractors and suppliers provisions which are at least as onerous as those set out in this clause '**Compliance with anti-slavery and human trafficking laws**'.

70) We warrant that we have not been convicted of any offence involving slavery and human trafficking; nor have we been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

TUPE

71) You must organise your employees so that none of their contracts of employment are deemed to transfer to us pursuant to TUPE upon the commencement of Services under an Order (and where applicable, you must ensure that any Incumbent Supplier does the same). You will indemnify us in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by us including all legal expenses and other professional fees (together with any applicable VAT) in relation to any claim made at any time by any employee of you (or the relevant Incumbent Supplier) who claims to have become an employee of or have rights against us by virtue of TUPE.

72) We will organise our employees so that none of their contracts of employment are deemed to transfer to you (or to a New Supplier) pursuant to TUPE upon the termination or expiry of Services under an Order. We will indemnify you (both for yourself and any New Supplier) in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by you and/or a New Supplier including all legal expenses and other professional fees (together with any applicable VAT) in relation to any claim made at any time by any of our employees who claim to have become an employee of or have rights against you and/or any New Supplier by virtue of TUPE.

Limitation of liability

73) Nothing in these terms and conditions limits any liability which cannot legally be limited, including liability for:

- a. death or personal injury caused by negligence;
- b. fraud or fraudulent misrepresentation; and
- c. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

74) Subject to clause 73, neither of us will be liable to the other, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any special, indirect or consequential loss, loss of goodwill, loss of business, loss of anticipated savings, loss of goods, loss of use or any destruction or corruption of data (whether or not such losses were in the contemplation of either of us at the date of the Order) arising under or in connection with the Services.

75) Subject to clause 73, each party's total liability to the other in respect of all losses arising under or in connection with any Order, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, will not exceed:

- a. in the case of any claim relating to Hardware, the Charges paid by you in respect of such Hardware; and
- b. in all other cases, the Charges paid by you in respect of the Services under the Order during

the previous 12 months (or anticipated to be paid during the first 12 months where the Services have not yet been provided for such period).

The limit in this clause will not apply to your obligation to pay any Charges or other sums due under an Order.

76) You must ensure that you have in place adequate public liability insurance before we or our personnel enter your premises. This insurance must cover any injury suffered by our personnel at your premises.

77) Any remedy stated within an Order for non-compliance with the terms of a service level agreement will be your sole remedy against us for such non-compliance.

78) In respect of any Order for Third Party Proprietary Software, you acknowledge that you will enter into an end user licence agreement (**EULA**) directly with the relevant software licensor. We will have no liability whatsoever in respect of the operation or proper functioning of the Third Party Proprietary Software and you agree that your sole remedies in respect of any defects or non-availability of such software will be as set out within the EULA and will be enforceable against the software licensor and not against us.

Termination

79) Without affecting any other right or remedy available to it (including any right of termination that may be stated in any Order) either of us may terminate an Order with immediate effect by giving written notice to the other party if:

- a. the other party commits a material breach of any term of that Order and that breach is irremediable or (if the breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- b. the other party is (or is deemed to be) insolvent or it suspends (or threatens to suspend) payment of its debts or is unable to pay (or admits inability to pay) its debts as they fall due;
- c. any insolvency-related steps are taken against the other party (including the appointment of a receiver, administrator or administrative receiver, or the filing of a winding up petition) or any person becomes entitled to take such action; or
- d. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

Consequences of termination

80) On termination or expiry of any Order:

- a. in respect of any Services supplied under that Order but for which no invoice has been submitted, we may submit an invoice;
- b. where we terminate an Order under clause 79, you will immediately pay to us all of our outstanding unpaid invoices and interest in respect of that Order (including any invoices raised under clause 80.a; and
- c. any clauses of these terms and conditions which are stated to (or which by implication are intended to) continue in force following termination of an Order will continue in force.

81) Termination or expiry of an Order will 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 Order which existed at or before the date of termination or expiry.

General

82) Neither of us will be liable to the other as a result of any delay or failure to perform our obligations under any Order as a result of any event beyond our reasonable control including strikes, lock-outs or other industrial disputes, failure of a utility service, act of God, pandemic, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, failure of suppliers or subcontractors, accident, fire, flood and epidemics.

83) Neither party may assign, transfer, mortgage, charge or declare a trust over any of its rights and obligations under an Order without the prior written consent of the other (not to be unreasonably withheld or delayed in relation to any transfer of business pursuant to a solvent corporate restructure).

84) Subject to the Change Control Provisions, no variation of these terms and conditions or the terms of any Order will be effective unless it is in writing and signed by the parties (or their authorised representatives).

85) A waiver of any right under an Order is only effective if it is in writing and will not be deemed to be a waiver of any subsequent breach or default. No failure or delay by either party in exercising any right or remedy under an Order or by law will constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise.

86) If any provision or part-provision of these terms and conditions or any Order is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of these terms and conditions or the Order.

87) These terms and conditions and the terms of each Order constitute the entire agreement between you and us (and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between you and us, whether written or oral) relating to the subject matter of the Order. Neither party will have any remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Order or these terms and conditions. Each party agrees that it will have no claim for innocent or negligent misrepresentation based on any statement in these terms and conditions or any Order.

88) Nothing in these terms and conditions or the terms of any Order is intended to, or will 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.

89) Except as expressly provided, neither these terms and conditions nor any Order will give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of an Order.

90) Any notice to be served in respect of any Order must be in writing and must be sent by email (to the contact email addresses stated in the Order) or served by hand or recorded delivery and in the case of a company or limited liability partnership must be served at its registered office for the time being. Notices sent to our registered office must also be sent to our trading address from time to time. Service will take effect, if given by hand, on the date of delivery. If given by post, it will take effect 2 Business Days after posting. If sent by email, it will take effect on the first Business Day after transmission.

91) These terms and conditions, any Order and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation will be governed by and construed in accordance with the law of England and Wales. The courts of England and Wales will have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with any Order or its subject matter or formation.