

TERMS AND CONDITIONS

These terms and conditions ("**Terms**") apply between eDiscovery UK Limited ("**EDT**") and the client ("**Client**") who provides an **Order Form** to use the EDT Solution to EDT and is granted access to the EDT Solution, in which case these Terms govern the Client's access to and use of the EDT Solution.

1. DEFINITIONS

1.1 In these Terms, unless a contrary intention appears, the definitions set out below shall apply:

- 1.1.1 **Acceptable Use Policy:** means EDT's acceptable use policy set out in Schedule A. EDT reserves the right to amend or vary the acceptable use policy at any time;
- 1.1.2 **Account:** means any accounts or instances created by or on behalf of Client or Client Users within the EDT Solution;
- 1.1.3 **Affiliate:** means, with respect to a party, any entity that directly or indirectly controls, is controlled by, or is under common control with such party, whereby "control" (including, with correlative meaning, the terms "controlled by" and "under common control") means the possession, directly or indirectly, of the power to direct, or cause the direction of the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise;
- 1.1.4 **Applicable Data Protection Law:** means the Data Protection Act 2018 (UK), the General Data Protection Regulation 2016/679 (EU) or any other applicable privacy, data protection and information security laws, regulations and binding codes of practice (as amended, replaced or re-enacted from time to time);
- 1.1.5 **API:** means the application programming interfaces developed and enabled by EDT that permit the Client and its users to access certain functionality provided by the EDT Solution, including, without limitation, the API that enables the interaction with the EDT Solution automatically through hyper-text transfer protocol ('HTTP') requests and the application development API that enables the integration of the EDT Solution with other web applications;
- 1.1.6 **AWS Services** means Amazon Web Services used to host EDT Solution as part of the EDT Solution; the Client acknowledges and accepts the AWS terms defined at <https://aws.amazon.com/service-terms/>;
- 1.1.7 **Client Data:** means electronic data, text, messages, communications or other materials submitted to and stored within the EDT Solution by the Client and Client Users in connection with the Client's use of such Service, which may include, without limitation, Personal Data (but shall not include the Personal Data of the Client's Client Users in the context of Account Information as described in the Privacy Policy);
- 1.1.8 **Client User:** means any individual (including those of the Client's Affiliates) using the EDT Solution through the Client's Account as an agent and/or administrator as identified through a unique login;
- 1.1.9 **Commencement Date** means the date of these Terms or the date upon which the Client is first provided access to the EDT Solution, whichever is the earlier;
- 1.1.10 **Confidential Information:** means all information disclosed by the Client to EDT or by EDT to the Client which is in tangible form and labelled "confidential" (or with a similar legend) or is information, regardless of form, which a reasonable person would understand to be confidential given the nature of the information and circumstances of disclosure, including, but not limited to, information relating to EDT's security policies and procedures. For purposes of these Terms, these Terms as well as Client Data shall be deemed Confidential Information. Notwithstanding the foregoing, Confidential Information shall not include information that:
 - (a) was already known to the receiving Party at the time of disclosure by the disclosing Party;
 - (b) was or is obtained by the receiving Party from a third party not known by the receiving Party to be under an obligation of confidentiality with respect to such information;
 - (c) is or becomes generally available to the public other than by violation of these Terms or another valid agreement between the Parties; or
 - (d) was or is independently developed by the receiving Party without the use of the disclosing Party's Confidential Information;
- 1.1.11 **Data Under Management** means the total volume of data stored within the EDT Solution;
- 1.1.12 **Documentation:** means any written or electronic documentation, images, video, text or sounds specifying the functionalities of the EDT Solution, as applicable, provided or made available by EDT to the Client via any channel including the EDT support portal and including all user manuals, training materials, support information, technical documentation, white papers, release notes, system requirements and guidelines;
- 1.1.13 **EDT** means eDiscovery UK Limited;
- 1.1.14 **EDT Solution** means the combination of EDT Software hosted on AWS Services to deliver the EDT Solution;
- 1.1.15 **EDT Group** means EDT, together with all its Affiliates;
- 1.1.16 **EDT Software** means object or otherwise executable code of all and any EDT Group's software products, subsequent software releases, evaluation versions, Community Preview Release versions, APIs and associated Documentation in addition to the dedicated, secure datacentre infrastructure that will be deployed and managed by EDT to host Client's EDT Solution instance for Client's exclusive use;
- 1.1.17 **Fees** means the fees set out in an Order Form or otherwise as agreed between EDT and the Client;
- 1.1.18 **Force Majeure Event** means in relation to either party (**Affected Party**), an event or circumstance beyond the reasonable control of the Affected Party, including:
 - (a) an act of God;
 - (b) an act of public enemy, or declared or undeclared war or threat of war;
 - (c) major power outage;
 - (d) pandemic or other global health event; or
 - (e) a terrorist act, blockade, revolution, riot, insurrection, civil commotion or public demonstration (other than one caused by the Affected Party),

- (f) but not including any event or circumstance, or any failure to comply with any term of these Terms, arising from such event or circumstance, that could have been avoided by the Affected Party's exercise of business continuity or other practices in accordance with best practice;
- 1.1.19 **Maintenance Services** means the services required to upgrade and maintain the EDT Solution, including patch and vulnerability management;
- 1.1.20 **Malicious Software** means any malicious program that causes harm to a computer system or network and includes (but is not limited to) viruses, worms, trojans, spyware, adware or rootkits;
- 1.1.21 **Order Form**: means an order places by the Client for use of the EDT Solution for the Fees (as agreed with EDT);
- 1.1.22 **Personal Data**: means any information relating to an identified or identifiable natural person where an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity, or otherwise as defined by the Applicable Data Protection Law;
- 1.1.23 **Personnel**: means employees and/or non-employee service providers and contractors of the EDT Group engaged by the EDT Group in connection with performance hereunder;
- 1.1.24 **Process**: means any operation or set of operations which is performed upon Personal Data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction;
- 1.1.25 **Scheduled Maintenance**: means planned downtime for Maintenance Services;
- 1.1.26 **Support and Maintenance**: means support and maintenance for the EDT Solution and the associated AWS Services;
- 1.1.27 **Term** means the term of these Terms, commencing on the Commencement Date and ending upon expiry of the term set out in any Order Form or where these Terms are otherwise terminated in accordance with these Terms; and
- 1.1.28 **Third Party Services**: means third party products, applications, services, software, networks, systems, directories, websites, databases, key management services and information which a service links to, or which the Client may connect to or enable in conjunction with a service, including, without limitation, Third Party Services which may be integrated directly into the Client's Account by the Client or at the Client's direction; third party services include AWS Services.

2. SUBSCRIPTION AND SERVICES

- 2.1 In consideration of payment to EDT by the Client of the Fees, EDT:
 - 2.1.1 grants the Client a non-exclusive, non-transferable licence to access and use the EDT Solution during the Term;
 - 2.1.2 will provide the EDT Solution via an Amazon Web Services (AWS) data centre (subject to any Scheduled Maintenance or Force Majeure Events);
 - 2.1.3 will provide Support and Maintenance; and
 - 2.1.4 will provide Maintenance Services.
- 2.2 During the Term and subject to compliance by the Client and Client Users with these Terms, the Client has the right to access the EDT Solution for the Client's internal business purposes. The Client may extend the Client's rights, benefits and protections to the Client's Affiliates and to contractors or service providers acting on the Client's or the Client's Affiliates' behalf, so long as the Client remains responsible for the Client's compliance pursuant to these Terms.

3. CLIENT OBLIGATIONS

- 3.1 In order to access the EDT Solution, the Client must ensure it meets system requirements as advised by EDT from time to time.
- 3.2 A high-speed Internet connection is required for proper transmission of the EDT Solution. The Client is responsible for procuring and maintaining the network connections that connect the Client's network to the EDT Solution, including, but not limited to, "browser" software that supports protocols used by EDT, including the Transport Layer Security (TLS) protocol or other protocols accepted by EDT, and to follow procedures for accessing services that support such protocols. EDT is not responsible for notifying the Client or Client Users of any upgrades, fixes or enhancements to any such software or for any compromise of data, including Client Data, transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned, operated or controlled by EDT. EDT assumes no responsibility for the reliability or performance of any connections as described in this clause.
- 3.3 In addition to complying with the other terms, conditions and restrictions set forth below in these Terms, the Client agrees to EDT's Acceptable Use Policy.
- 3.4 In the Client's use of the EDT Solution the Client agrees not to:
 - 3.4.1 license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the EDT Solution available to any third party, other than Client Users in furtherance of the Client's internal business purposes as expressly permitted by these Terms;
 - 3.4.2 use the EDT Solution to Process data on behalf of any third party other than Client Users;
 - 3.4.3 modify, adapt, or hack the EDT Solution or otherwise attempt to gain unauthorised access to the EDT Solution or related systems or networks;
 - 3.4.4 falsely imply any sponsorship or association with EDT or the EDT Group,
 - 3.4.5 use the EDT Solution in any unlawful manner, including, but not limited to, violation of any person's privacy rights;
 - 3.4.6 use the EDT Solution to send unsolicited or unauthorised bulk mail, junk mail, spam, other forms of duplicative or unsolicited messages, or messages that directly or indirectly support pyramid schemes or other fraudulent activities;
 - 3.4.7 use the EDT Solution to store or transmit files, materials, data, text, audio, video, images or other content that infringes on any person's intellectual property rights;
 - 3.4.8 use the EDT Solution in any manner that interferes with or disrupts the integrity or performance of the EDT Solution and its components;
 - 3.4.9 attempt to decipher, decompile, reverse engineer or otherwise discover the source code of any EDT Solution making up the EDT Solution;

- 3.4.10 use the EDT Solution to knowingly post, transmit, upload, link to, send or store any content that is (or directly or indirectly supports activities that are) unlawful, racist, hateful, abusive, libellous, obscene, or discriminatory;
- 3.4.11 use the EDT Solution to knowingly post transmit, upload, link to, send or store any Malicious Software;
- 3.4.12 use or launch any automated system that accesses a service (i.e., bot) in a manner that sends more request messages to a service server in a given period of time than a human can reasonably produce in the same period by using a conventional online web browser;
- 3.4.13 allow Client Users to share access credentials with any person; or
- 3.4.14 attempt to use, or use the EDT Solution in violation of these Terms.
- 3.5 As between the Client and EDT, the Client is responsible for compliance with the provisions of these Terms by Client Users and for any and all activities that occur under the Client's Account. Without limiting the foregoing, the Client is solely responsible for ensuring that the use of the EDT Solution to store and transmit Client Data is compliant with all applicable laws and regulations as well as any Applicable Data Protection Laws, privacy policies, agreements or other obligations the Client may maintain or enter into with Client Users. The Client also maintains all responsibility for determining whether the EDT Solution or the information generated within the EDT Solution is accurate or sufficient for the Client's purposes. Subject to any limitation on the number of individual Client Users to which the Client subscribed, access to and use of the EDT Solution is restricted to the specified number of individual Client Users permitted under the Client's subscription to the applicable Service.
- 3.6 The Client agrees and acknowledges that each Client User will be identified by a unique username and password ("Login") and that a Client User Login may only be used by one (1) individual. Traditional or full-time Client User subscriptions are for designated individuals only and a Login cannot be shared or used by more than one individual but may be reassigned to new individuals replacing former individuals who no longer require ongoing use of the EDT Solution.
- 3.7 The Client and the Client's Client Users are responsible for maintaining the confidentiality of all Login information for the Client's Account. The Client agrees and acknowledges that the Client may not use the EDT Solution, including but not limited to APIs, to circumvent the requirement for an individual Client User Login for each individual who uses the EDT Solution; Processes data; or absent a license from EDT or otherwise, Processes data related to interactions originating from a Third Party Service that provides functionality similar to functionality provided by the EDT Solution and which would, pursuant to these Terms, require an individual Client User Login if utilising the EDT Solution for such interaction.
- 3.8 EDT reserves the right to periodically verify that the Client's use of the EDT Solution complies with the Agreement including, without limitation, by accessing the Client's Account. Should EDT discover that the Client's use of an EDT Service is not in compliance with these Terms, EDT reserves the right to charge the Client, and the Client agrees to pay for, said usage in addition to other remedies available to EDT.
- 3.9 The Client acknowledges that EDT may modify the features and functionality of the EDT Solution during the Term.
- 3.10 The Client may not access the EDT Solution if the Client is a direct competitor of the EDT Group, except with EDT's prior written consent. The Client may not access the EDT Solution for competitive purposes.

4. SUSPENSION OF SERVICE

- 4.1 EDT reserves the right, in EDT's reasonable discretion, to temporarily suspend the Client's access to and use of the EDT Solution if:
 - 4.1.1 the Client has not paid any invoice and such invoice remains unpaid for a period of fourteen (14) days;
 - 4.1.2 EDT suspect or detect any Malicious Software connected to the Client's Account or the EDT Solution by the Client or Client Users.

5. CONFIDENTIALITY AND PRIVACY

- 5.1 Each Party will protect each other's Confidential Information from unauthorised use, access or disclosure in the same manner as each protects its own Confidential Information.
- 5.2 Except as otherwise expressly permitted pursuant to these Terms, each Party may use each other's Confidential Information solely to exercise its respective rights and perform its respective obligations under these Terms and shall disclose such Confidential Information:
 - 5.2.1 solely to the employees and/or non-employee service providers and contractors who have a need to know such Confidential Information and who are bound by terms of confidentiality intended to prevent the misuse of such Confidential Information;
 - 5.2.2 as necessary to comply with an order or subpoena of any administrative agency or court of competent jurisdiction; or
 - 5.2.3 as reasonably necessary to comply with any applicable law or regulation.
- 5.3 As between the Parties, all Client Data Processed under the terms of these Terms shall remain the property of the Client. Except for where EDT collects:
 - 5.3.1 the contact information of the Client's Client Users, which may include Personal Data, in the ordinary course of EDT providing the EDT Solution to the Client; and
 - 5.3.2 Personal Data about visitors to EDT's Site, under no circumstances will EDT act, or be deemed to act as a "controller" (or equivalent concept) of the EDT Solution Data Processed within the EDT Solution under Applicable Data Protection Law.
- 5.4 The Client agrees that the Client is responsible for notifying Client Users that Personal Data collected, stored, used and/or processed by the EDT Group, as described in these Terms, is collected, stored, used and/or processed in compliance with the Applicable Data Protection Laws.
- 5.5 The Client agrees that the EDT Group and the third-party service providers that are utilised by the EDT Group to assist in providing the EDT Solution to the Client shall have the right to access the Client's Account and to use, modify, reproduce, distribute, display and disclose Client Data and the Personal Data of the Client's Client Users to the extent necessary to provide or improve the EDT Solution, including, without limitation, in response to the Client's support requests. Any third-party service providers utilised by the EDT Group will only be given access to the Client's Account and Client Data as is reasonably necessary to provide the EDT Solution and will be subject to confidentiality obligations which are commercially reasonable. Each party (notifying party) agrees to promptly notify the other party once the notifying party becomes aware of a breach affecting the other party's Confidential Information.
- 5.6 EDT receives and stores any information that the Client knowingly provides to EDT. For example, through the registration process

for the EDT Solution and/or through the Client's Account settings, EDT may collect Personal Data such as the Client's name, email address, phone number and third-party account credentials. In addition, EDT may communicate with the Client and the Client's Client Users.

5.7 This clause survives expiry or termination of these Terms.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 Each Party shall retain all rights, title and interest in and to all its Intellectual Property Rights.

6.2 EDT grants to the Client a non-exclusive, non-transferable subscription licence to use the EDT Solution during the Term in accordance with these Terms.

6.3 The rights granted to the Client and Client Users to use the EDT Solution under these Terms do not convey any additional rights in the EDT Solution or in any Intellectual Property Rights associated with the EDT Solution of the Intellectual Property Rights.

6.4 Subject only to limited rights to access and use the EDT Solution as expressly stated in these Terms, all rights, title and interest in and to the EDT Solution and all hardware, EDT Solution and other components of or used to provide the EDT Solution, including all related Intellectual Property Rights, will remain with the EDT Group and belong exclusively to the EDT Group.

6.5 The Client shall not attempt to decipher, decompile, reverse engineer or otherwise discover the source code of the EDT Solution.

6.6 The EDT Group shall have a fully paid-up, royalty- free, worldwide, transferable, sub-licensable (through multiple layers), assignable, irrevocable and perpetual license to implement, use, modify, commercially exploit, and/or incorporate into the EDT Solution or otherwise use any suggestions, enhancement requests, recommendations or other feedback EDT receive from the Client, Client Users, End- Users, or other third parties acting on the Client's behalf.

6.7 EDT names and logos used or displayed in or on the EDT Solution are registered or unregistered trademarks of EDT (collectively, "Marks"), and the Client may use applicable Marks provided the Client does not attempt, now or in the future, to claim any rights in the Marks, degrade the distinctiveness of the Marks, or use the Marks to disparage or misrepresent EDT, EDT's services or products.

6.8 This clause survives expiry or termination of these Terms.

7. THIRD PARTY SERVICES

7.1 The Client may not enable, access or use Third Party Services without EDT's express written consent. If the Client decides to enable, access to or use of Third Party Services without EDT's express written consent, the Client's access and use of such Third Party Services are governed solely by the terms and conditions of such Third Party Services, and EDT does not endorse, is not responsible or liable for, and make no representations as to any aspect of such Third Party Services, including, without limitation, their content or the manner in which they handle, protect, manage or Process data (including Client Data) or any interaction between the Client and the provider of such Third Party Services.

7.2 EDT cannot guarantee the continued availability of such Third Party Service features, and may cease enabling access to them without entitling the Client to any refund, credit, or compensation, if, for example and without limitation, the provider of a Third Party Service ceases to make the Third Party Service available for interoperability with the corresponding Service in a manner acceptable to EDT. The Client irrevocably waives any claim against EDT with respect to such Third Party Services.

7.3 EDT is not liable for any damage or loss caused or alleged to be caused by or in connection with the Client's enablement, access or use of any such Third Party Services, including any key management services (and where any data is lost due to loss of encryption keys or where encryption keys are not effective to decrypt data), or the Client's reliance on the privacy practices, data security processes or other policies of such Third Party Services. The Client may be required to register for or log into such Third Party Services on their respective websites.

7.4 By enabling any Third Party Services, the Client is expressly permitting EDT to disclose the Client's Login, as well as Client Data as necessary to facilitate the use or enablement of such Third Party Services.

8. BILLING AND PAYMENTS

8.1 EDT will invoice the Client for the Fees, which are payable within fourteen (14) days from the date of the invoice.

8.2 If the Client fails to pay an invoice when it is due, EDT may suspend or terminate access to and use of such Service by the Client, Client Users and End-Users.

8.3 If the Client chooses to upgrade the Client's current subscription or increase the amount of Data Under Management and/or the number of Client Users authorised to access and use the EDT Solution during the Term (a 'Subscription Upgrade'), any incremental Subscription Fees associated with such Subscription Upgrade shall be charged from the date upon which the Client advises EDT in writing, that it wishes to undertake a Subscription Upgrade, for the remaining period of the Client's then current Term, charged to the Client's Account and due and payable upon implementation of such Subscription Upgrade. In any future Term, the Client's Subscription Charges will reflect any such Subscription Upgrades.

8.4 No refunds or credits for Subscription Fees or other fees or payments will be provided to the Client if the Client elects to downgrade the Client's subscription. Downgrading the Client's subscription may cause loss of content, features, or capacity of the EDT Solution as available to the Client under the Client's Account, and EDT does not accept any liability for such loss.

8.5 Unless otherwise stated, EDT's charges do not include any taxes, levies, duties or similar governmental assessments, including value-added, sales, use or withholding taxes assessable by any local, state, provincial or foreign jurisdiction (collectively "Taxes"). The Client is responsible for paying Taxes except those assessable against the EDT Group measured by its net income. EDT will invoice the Client for such Taxes if EDT believe EDT have a legal obligation to do so and the Client agree to pay such Taxes if so invoiced.

8.6 For the purposes of this clause, "CPI" means the Consumer Price Index (all groups), UK, published by the Office for National Statistics (ONS) (or equivalent). Upon each anniversary of the Commencement Date, the Fees shall be subject to annual CPI increases, calculated on each anniversary of the Commencement Date ("Adjustment Date"). The calculation shall be done by multiplying the Fees (payable at the Adjustment Date) by the percentage increase in the CPI in the four quarters immediately preceding the Adjustment Date ("CPI Percentage") and adding this amount to the Fee.

9. TERM AND TERMINATION

9.1 These Terms shall terminate on expiry of the Term or on termination in accordance with this clause.

- 9.2 Either party may terminate these Terms:
- 9.2.1 upon written notice to the other Party of a material breach if such breach remains uncured at the expiration of fourteen (14) days from the date of the breaching Party's receipt of such notice;
 - 9.2.2 if the other party becomes the subject of an insolvency event, receivership, liquidation or assignment for the benefit of creditors; or
 - 9.2.3 in any other case by providing the other party with ninety (90) days' written notice.
- 9.3 If these Terms are terminated by the Client in accordance with this clause, EDT will, to the extent permitted by applicable law, refund the Client any prepaid fees covering the remainder of the Term following termination. If these Terms are terminated by EDT in accordance with this clause, the Client will pay any unpaid fees covering the remainder of the Term. In no event will termination relieve the Client of the Client's obligation to pay any fees payable to EDT for the period prior to termination.

10. REPRESENTATIONS, WARRANTIES

- 10.1 Each Party represents that it has validly entered into these Terms and has the legal power to do so.
- 10.2 EDT warrants that during an applicable Term the EDT Solution will perform materially in accordance with the applicable Documentation.
- 10.3 Except as specifically set forth in clause 12.2, the the EDT Solution, including all server and network components, are provided on an "as is" and "as available" basis, without any warranties of any kind to the fullest extent permitted by law, and EDT expressly disclaims any and all warranties, whether express or implied, including, but not limited to, any implied warranties of merchantability, title, fitness for a particular purpose, and non- infringement. The Client acknowledges that EDT does not warrant that the EDT Solution will be uninterrupted, timely, secure, error-free or free from viruses or other malicious software, and no information or advice obtained by the Client from EDT or through the EDT Solution shall create any warranty not expressly stated in these Terms.
- 10.4 This clause survives expiry or termination of these Terms.

11. LIMITATION OF LIABILITY

- 11.1 Under no circumstances, whether in contract, tort, negligence or otherwise, will:
- 11.1.1 EDT or the EDT Group be liable to the Client or any Client Affiliate for any lost profits, lost sales or business, lost data, business interruption, loss of goodwill, costs of cover or replacement, or for any type of indirect, incidental, special, exemplary, consequential or punitive loss or damages, or any other indirect loss or damages incurred by the Client or any Client Affiliate in connection with these Terms regardless of whether EDT has been advised of the possibility of or could have foreseen such damages; or
 - 11.1.2 Notwithstanding anything to the contrary in these Terms, the EDT Group's aggregate liability to the Client, any affiliate, or any third party arising out of these Terms, the EDT Solution or Consulting Services, shall in no event exceed the Fees paid by the Client during the twelve (12) months prior to the first event or occurrence giving rise to such liability. The Client acknowledges and agrees that the essential purpose of this clause 13 is to allocate the risks under these Terms between the parties and limit potential liability given the Fees, which would have been substantially higher if EDT were to assume any further liability other than as set forth in these Terms. EDT has relied on these limitations in determining whether to provide the Client with the rights to access and use the EDT Solution provided for in these Terms. The limitation of liability provided for in these Terms will apply in aggregate to the Client and its Affiliates and shall not be cumulative.
- 11.2 Any claims or damages that the Client may have against EDT shall only be enforceable against EDT and not any other entity or its officers, directors, representatives or agents.
- 11.3 This clause survives expiry or termination of these Terms.

12. INDEMNIFICATION

- 12.1 EDT will indemnify and hold the Client harmless from and against any claim brought by a third party against the Client by reason of the Client's use of the EDT Solution as permitted hereunder, alleging that such Service infringes or misappropriates a third party's valid patent, copyright, trademark or trade secret (an 'IP Claim'). EDT shall, at EDT's expense, defend such IP Claim and pay damages finally awarded against the Client in connection therewith, including the reasonable fees and expenses of the attorneys engaged by EDT for such defence, provided that:
- 12.1.1 the Client promptly notifies EDT of the threat or notice of such IP Claim;
 - 12.1.2 EDT will have the sole and exclusive control and authority to select defence lawyers, and defend and/or settle any such IP Claim; and
 - 12.1.3 the Client fully cooperates with EDT in connection therewith. If use of the EDT Solution by the Client or Client Users has become, or, in EDT's opinion, is likely to become, the subject of any such IP Claim, EDT may, at EDT's option and expense, procure for the Client the right to continue using the EDT Solution as set forth hereunder;
 - 12.1.4 replace or modify the EDT Solution to make it non-infringing; or
 - 12.1.5 if options 14.1.3 or 14.1.4 are not commercially reasonable or practicable as determined by EDT, terminate the Client's subscription to the EDT Solution and repay the Client, on a pro-rata basis, any Subscription Fees previously paid to EDT for the corresponding unused portion of Term for such Service.
- 12.2 EDT will have no liability or obligation under this clause with respect to any IP Claim if such claim is caused in whole or in part by:
- 12.2.1 compliance with designs, data, instructions or specifications provided by the Client;
 - 12.2.2 modification of the EDT Solution by anyone other than EDT; or
 - 12.2.3 the combination, operation or use of the EDT Solution with other hardware or software where the EDT Solution would not by itself be infringing.
- 12.3 The provisions of clause state the sole, exclusive and entire liability of EDT to the Client and constitute the Client's sole remedy with respect to an IP Claim brought by reason of access to or use of the EDT Solution by the Client or Client Users.
- 12.4 The Client will indemnify and hold EDT harmless against any claim arising from or related to use of the EDT Solution by the Client or Client Users in breach of these Terms.

12.5 This clause survives expiry or termination of these Terms.

13. INSURANCE

13.1 EDT shall maintain insurance coverages and limits with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by such companies engaged in similar industries.

14. NOTICE

14.1 Where a notice is served personally, service of the notice is taken to be effected when delivered.

14.2 Where a notice is sent by post, service of the notice is taken to be effected on the fourth day after the date of postage.

14.3 Where a notice is sent by electronic mail, or through other electronic means, service of the notice is taken to be effected on the day after the day on which it is sent, unless the party receives notification that delivery has failed.

15. DISPUTE RESOLUTION

15.1 Any dispute arising out of or in connection with these Terms (a Dispute) shall be referred by either party to the other party for resolution.

15.2 If the Dispute cannot be resolved by the persons referred to in clause 17.1 within ten Business Days after the Dispute has arisen, either party may give written notice to the other party that a Dispute has arisen (the Notice). If the Dispute is not resolved by agreement in writing between the parties within ten Business Days after the date of the Notice, the Dispute shall be resolved in accordance with clause 17.3.

15.3 A Dispute may at the request of the Supplier, the Client or the EDT Solution Recipient be referred to mediation. Any reference to mediation shall be made in accordance with the procedures of the International Dispute Resolution Centre (IDRC). The mediation shall be conducted by a single mediator appointed by the parties or, if the parties to the dispute are unable to agree on the identity of the mediator within 21 days after the date of the request that the Dispute be resolved by mediation, or if the person appointed is unable or unwilling to act, the mediator shall be appointed by the IDRC on the application of either party. The mediation shall be conducted in the capital city of the country specified in the Jurisdiction, in English. Mediation is without prejudice to the rights of the parties in any future proceedings. The costs of the mediation, including the fees and expenses of the mediator shall be borne equally by the parties.

15.4 This clause 17 is without prejudice to either party's right to seek interim relief (such as an injunction) against the other party through the courts within the Jurisdiction to protect its rights and interests, or to enforce the obligations of the other party.

15.5 This clause survives expiry or termination of these Terms.

16. GOVERNING LAW

16.1 These Terms shall be governed by the laws of England. Any disputes under these Terms shall be resolved in a court of general jurisdiction within England. The Client agrees to submit to the exclusive personal jurisdiction of the courts of England for the purpose of resolving any dispute relating to these Terms or access to or use of the EDT Solution by the Client or Client Users.

16.2 This clause survives expiry or termination of these Terms.

17. INTERPRETATION

17.1 The following rules apply to the interpretation of these Terms unless the context requires otherwise:

17.1.1 Headings are for convenience only and do not affect interpretation.

17.1.2 The singular includes the plural and vice versa.

17.1.3 If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

17.1.4 A reference to a party to these Terms includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal representatives).

17.1.5 A reference to legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

17.1.6 A reference to an amount is in the Currency, unless otherwise indicated in these Terms.

17.2 This clause survives expiry or termination of these Terms.

18. GENERAL

18.1 Assignment: The Client may not, directly or indirectly, by operation of law or otherwise, assign all or any part of these Terms or the Client's rights under these Terms or delegate performance of the Client's duties under these Terms without EDT's prior written consent, which consent will not be unreasonably withheld. EDT may, without the Client's consent, assign these Terms to any member of the EDT Group or in connection with any merger or change of control of EDT or the EDT Group or the sale of all or substantially all of EDT's assets provided that any such successor agrees to fulfill its obligations pursuant to these Terms. Subject to the foregoing restrictions, these Terms will be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

18.2 Entire Agreement: These Terms constitute the entire agreement, and supersede any and all prior agreements between the Client and EDT with regard to the subject matter hereof. These Terms shall apply in lieu of the terms or conditions in any purchase order or other order documentation the Client or any Entity which the Client represent provides (all such terms or conditions being null and void), and, except as expressly stated herein, there are no other agreements, representations, warranties, or commitments which may be relied upon by either Party with respect to the subject matter hereof. There are no oral promises, conditions, representations, understandings, interpretations, or terms of any kind between the Parties, except as may otherwise be expressly provided herein.

18.3 Variation: These Terms may be amended by agreement between the parties in writing.

18.4 Severability: If any provision in these Terms are held by a court of competent jurisdiction to be unenforceable, such provision shall be modified by the court and interpreted so as to best accomplish the original provision to the fullest extent permitted by law, and the remaining provisions of these Terms shall remain in effect.

18.5 Relationship of the Parties: The Parties are independent contractors. These Terms does not create a partnership, franchise, joint

venture, agency, fiduciary or employment relationship between the Parties.

- 18.6 Survival: The obligations of confidentiality and protection of Intellectual Property Rights shall survive termination of these Terms.
- 18.7 Counterparts: These Terms may be signed in any one or more counterparts, each of which shall be deemed to be an original and all of which, taken together, constitute one and the same instrument. These Terms may be signed and exchanged electronically.
- 18.8 Force Majeure: A party will not be liable if delayed in or prevented from performing its obligations hereunder due to Force Majeure Event, provided that it promptly notifies the other of the Force Majeure Event and its expected duration and uses reasonable endeavours to minimise the effects of that event. If, due to Force Majeure Event, a party is unable to perform a material obligation, is delayed in or prevented from performing its obligations for a continuous period of more than ninety (90) days, the other party may, within a further seven (7) days terminate these Terms on notice, otherwise these Terms shall continue in full force and effect.
- 18.9 This clause survives expiry or termination of these Terms.

19. SCHEDULE A - EDT'S ACCEPTABLE USE POLICY

1. EDT provides the EDT Solution to a wide variety of Clients.
2. It is important for EDT's Clients to be fully informed about their responsibilities with respect to the use of the EDT Solution.
3. The purpose of this Acceptable Use Policy is to define those responsibilities in plain English for Clients and Client Users.
4. This Policy recognises the fact that no one owns or controls the internet. EDT does not have the ability to monitor and control all of the activities of EDT's Clients, and EDT does not intend to actively screen, review, censor, edit or take responsibility for the activities or content of its Clients. EDT's Clients, not EDT, are solely responsible for and assume all liability relating to their internet activities, including:
 - (a) all aspects of the Client's business;
 - (b) all technology, content and data provided by or through a Client for use with the EDT Solution;
 - (c) all results obtained from using the EDT Solution;
 - (d) Compliance with all applicable laws and governmental regulations regarding the Client's business or use of the EDT Solution;
 - (e) use of the EDT Solution by the Client and Client Users;
 - (f) compliance with this Acceptable Use Policy by the Client and Client Users.
5. Activities conducted on the internet are subject to many of the same laws and regulations applicable to the offline environment. In addition, a Client's activities on the internet may affect other internet users, EDT, its suppliers, or the safety or security of the EDT Solution. Consequently, EDT's Clients must exercise a high degree of judgement and responsibility with respect to their use of the EDT Solution, including the responsibility to comply with this Acceptable Use Policy.
6. Clients will violate this Policy when they or their affiliates engage in any of the following activities:
 - (a) using the EDT Solution to violate any law, statute, ordinance or regulation governing the Client's business or activities, including without limitation the laws and regulations governing export control, unfair competition, false advertising, consumer protection, issuance or sale of securities, child pornography, obscenity, trade in firearms, spamming, privacy, data transfer, and telecommunications;
 - (b) using the EDT Solution in a manner which presents a material security risk or will interfere materially with the continued operation of a data centre or the EDT Solution;
 - (c) using the EDT Solution in a manner that infringes another's copyrights, patents, trademarks, service marks, trade names, trade secrets or other intellectual property rights or rights of publicity, including failing to obtain all required permissions to receive, upload, download, display, distribute, or execute programs or perform other works or derivative works protected by intellectual property laws or removing or altering applicable copyright, trademark or patent notices;
 - (d) using the EDT Solution in a tortious manner, including without limitation engaging in libel, defamation, harassment, misappropriation of trade secrets, intentional misrepresentation or fraud, or publication of private information without the permission of the person(s) involved;
 - (e) introducing Malicious Software into the EDT Solution; and/or
 - (f) Intentionally omitting, deleting, forging or misrepresenting transmission information, including headers, return addressing information and IP addresses, in violation of applicable law; using the EDT Solution to gain illegal or unauthorised access to other computers or networks through hacking or other means; assisting in or permitting any persons to engage in any of the activities described above.
7. Upon becoming aware of harmful activity, EDT reserves the right to take remedial action, up to and including termination of the Client's use of the EDT Solution. Clients agree to cooperate with EDT in any reasonable corrective action that EDT deems necessary to ensure compliance or prevent further harm. Failure to cooperate with such corrective or preventive measures is a violation of this Policy.
8. By using the EDT Solution Clients agree to comply with this Policy and also agree to indemnify EDT against any claims by third parties arising from violation of this Policy. EDT reserves the right to make changes to this Acceptable Use Policy at any time, and any changes will be effective immediately.
9. Continued use of the EDT Solution following notification of any changes shall constitute acceptance of the changes.