



140 Software development

Version 10



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This document explains the detailed terms and how to get the best from our software development service and should be read in conjunction with our Terms of Business available at <http://tob.hubkengroup.com>. In the event of any inconsistency between the provisions of this document and our Terms of Business, the terms contained within this document (in respect of such inconsistency) shall prevail.

This is a living document and is subject to updates and changes as and when required by us.

1 Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Acceptance Certificate: the certificate to be signed by the Customer under 7.1(a).

Acceptance Date: the date on which the Acceptance Certificate is issued by the Customer under 7.1(b).

Acceptance Tests: the tests of the Supplier Software after installation to be agreed in accordance with clause 6.1.

Actual Software Delivery Date: the date on which the Supplier makes the relevant Software Module available online to the Customer.

Agreement / agreement: means these Conditions and the Order.

Bespoke Software: software programs developed by the Supplier specifically for the Customer as part of the Supplier Software and listed in the Order.

Business Requirements Specification: the specification agreed between the Customer and the Supplier which sets out the Customer's business requirements regarding the Supplier Software, as annexed to or referred to in the Order.

Change Agreement: an agreement made under clause 10.3.

Commencement Date: the date on which this agreement becomes effective, as specified in 2.2.

Completion Date: the estimated date specified in the Implementation Plan (which may be varied in accordance with clause 8) by which the Supplier is to provide the Supplier Software Ready for Service.

Computer Hardware: the computers and other equipment to be used by the Customer in conjunction with the Supplier Software.

Conditions: means the terms and conditions set out in this document.

Cybersecurity Laws: all applicable laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or note), international and national standards, industry schemes and sanctions relating to security of network and information systems and security breach and incident reporting requirements, including the Data Protection Legislation, the Cybersecurity Directive (EU) 2016/1148, Commission Implementing Regulation (EU) 2018/151, the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party.

Defect: an error in the Supported Software that causes it to fail to operate substantially in accordance with the relevant Documentation.

Documentation: the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by the Supplier as specified in the Order.

Force Majeure Event: any event, circumstance or cause beyond either party's reasonable control, including, but not limited to, terrorist activity, shortage of raw materials, power or fuel, failures and delays in the banking or



payment collections or payment transfer systems, any breakdown of plant or machinery, any failure of any computer software or hardware, or any failure in a communications network.

General Public License: as described by the Free Software Foundation and set out at <http://www.gnu.org/licenses/gpl.html>)

Good Industry Practice: the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector.

Implementation Plan: the time schedule and sequence of events for the performance of this agreement agreed between the parties (acting in good faith), which may be varied in accordance with clause 8.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) 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, including the right to sue for and recover damages for past infringements.

Modified Software: the standard software programs proprietary to the Supplier and/or third parties listed in the Order modified or to be modified by the Supplier under this agreement.

Modified Software (Third Party): those elements of the Modified Software listed in the Order and identified as such.

Normal Working Hours: the hours 9am to 5pm GMT, Monday to Friday, except English Bank Holidays.

Order: means the Customer's order for the Supplier Software, Documentation and/or Services, as the same is accepted by the Supplier under clause 2.1.

Open-Source Software: any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (<http://www.opensource.org/docs/definition.php>) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at <http://www.gnu.org/licenses/gpl.html>), or anything similar, included or used in, or in the development of, the Supplier Software, or with which the Supplier Software is compiled or to which it is linked.

Named Application: the software in relation to which the Supplier develops the Bespoke Software as specified in the Order

Price: the aggregate price for the Work (other than Training) and any license provided under this agreement, as specified in the Order.

Project Manager: the Supplier employee who has overall responsibility for the Work.

Ready for Service: installed, tested and having passed or deemed to have passed the Acceptance Tests under clause 7.

Services: the services to be provided by the Supplier under this agreement, as detailed in the Order.

Site(s): means the Customer's premises

Software Delivery Date: the estimated delivery date specified in the Implementation Plan on which the Supplier will make a Software Module available to the Customer.

Software Module: any one of the individual software programs in the Supplier Software.

Supplier Software: the Third-Party Software, the Modified Software, the Open-Source Software, the Tools and the Bespoke Software.

Support Staff: those officers, employees, agents or subcontractors of the Supplier connected with this



agreement, including those individuals who perform the Supplier's obligations under this agreement.

Technical Specification: the specification of the Supplier Software annexed to the Order and agreed between the Supplier and the Customer to meet the Business Requirements Specification.

Terms of Business: means the Supplier's standard terms and conditions of supply, available at <https://tob.hubkengroup.com> and as amended from time to time by the Supplier.

Third-Party Licences: the proprietary third-party software licenses relating to the Third-Party Software.

Third-Party Software: the software programs proprietary to third parties, which are to be provided to the Customer without modification.

Tools: any tools and know-how developed, and methods invented, by the Supplier in the course of or as a result of carrying out the Work, whether or not developed or invented specifically or used exclusively to carry out the Work.

Training: the training as specified in the Order, to be provided by the Supplier as part of the Services.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by *Directive 2009/136/EC*) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended.

VAT: value added tax chargeable under the Value Added Tax Act 1994 and any similar additional tax and any similar additional tax or any other similar turnover, sales or purchase tax or duty levied in any other jurisdiction.

Virus: any thing or device (including any software, code, file or program) which may:

(a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;

(b) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or

(c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

Vulnerability: any weakness in the computational logic (for example, code) found in software and hardware components that, when exploited, results in a negative impact to confidentiality, integrity, or availability, and the term Vulnerabilities shall be construed accordingly.

Work: all the works, duties and obligations to be carried out by the Supplier under this agreement.

1.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.3 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 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.

2 Basis of contract and scope

2.1 No Order shall be deemed as accepted by the Supplier, until such time as both parties have signed the order form relating to that Order or the Supplier commences work under the Order (whichever is the sooner).

2.2 The agreement between the parties shall come into force upon signature of the order form, under clause 2.1



above or commencement of work under the Order by the Supplier (whichever is the sooner) (**Commencement Date**).

2.3 The Supplier shall supply the Supplier Software, the Documentation and the Services to the Customer in accordance with this agreement.

2.4 The supply under clause 2.3 and Price are subject to the terms and conditions set out in this agreement and the Terms of Business. The Customer shall comply with the Terms of Business as if they are a term of this agreement.

2.5 In the event of any inconsistency or conflict between a provision of this agreement and a provision of the Terms of Business, the provision this agreement shall prevail to the extent of any such inconsistency or conflict.

3 Software and documentation

3.1 The Supplier shall carry out the Work with reasonable diligence and despatch, and with reasonable skill and expertise, to use its reasonable endeavours to provide the Supplier Software in accordance with the Technical Specification by the Completion Date.

3.2 The Supplier shall provide any Third-Party Software and any Modified Software (Third Party) to the Customer under the standard licence terms provided by the relevant third parties, copies of which shall be provided to the Customer, and the Customer agrees to be bound to the relevant third parties by such licence terms.

3.3 The Supplier shall provide the Bespoke Software and any Modified Software (Supplier) under the terms of this agreement.

3.4 The Supplier shall provide to the Customer, from time to time, copies of the Documentation containing up-to-date information for the proper use of the Supplier Software. Such Documentation may be supplied in electronic form.

3.5 The Customer may make such further copies of the Documentation as are reasonably necessary for the use of the Supplier Software and for training the Customer's personnel in use of the Supplier Software. The Customer shall ensure that all of the Supplier's proprietary notices are reproduced in any such copy.

4 Services

4.1 The Supplier shall develop the Bespoke Software and make the modifications to any Modified Software in accordance with the requirements of the Technical Specification in all material respects.

4.2 The Supplier agrees:

(a) to provide the Supplier Software online;

(b) to carry out, in conjunction with the Customer, the Acceptance Tests; and

(c) subject to clause 8.3 use its reasonable endeavours to provide the Supplier Software Ready for Service by the Completion Date,

on the terms and conditions set out in this agreement.

4.3 If requested by the Customer and where the Supplier agrees to do so, the Supplier shall:

(a) enter into a software maintenance and support agreement on the Supplier's standard terms;

(b) provide the Training specified in the Implementation Plan at the rates provided for in that plan; and

(c) make available to the Customer suitably qualified personnel to carry out such tasks on a consultancy basis concerning the Work as the Customer may specify.

4.4 Time shall not be of the essence regarding any date for delivery by the Supplier of any software or service specified in this agreement and the Completion Date under clause 3.1.



5 Software delivery and delays

5.1 Subject to clause 8.3, the Supplier shall use its reasonable endeavours to provide the Customer with access to each Software Module by the applicable Software Delivery Date.

5.2 The Supplier shall supply to the Customer, within a reasonable time before any relevant Actual Software Delivery Date, such information and assistance as may be necessary to enable the Customer to access the relevant Software Module.

5.3 Subject to clause 8.3, the Supplier shall use its reasonable endeavours to provide access to each Software Module to the Customer on or before the Delivery Date for that item.

5.4 Subject to clause 8.3, the Supplier shall use its reasonable endeavours to provide access to each Software Module by the date agreed between the parties for that Software Module.

5.6 If any delivery is delayed at the request of the Customer, or because of its acts or omissions, the Implementation Plan shall be amended to take account of such delay in accordance with clause 8.5. If the delay has resulted in an increase in cost to the Supplier of carrying out its obligations under this agreement, the Supplier may, at its sole discretion, notify the Customer that it wishes to increase the Price. The Supplier may invoice the Customer for any additional monies that become payable in this way, within 30 days of notifying the Customer of the increase in costs.

6 Acceptance tests

6.1 The Supplier shall specify in writing the scope of any Acceptance Tests for the Supplier Software. The criteria and data agreed for the scope of any Acceptance Tests shall be such as are reasonably required to show that the Supplier Software complies with the Technical Specification.

6.2 The Supplier shall carry out the agreed Acceptance Tests for each Software Module within the time frame mutually agreed between the parties and the Acceptance Tests shall be started as soon as reasonably possible after installation of the Supplier Software.

6.3 If any Software Module fails to pass the Acceptance Tests, the Customer shall, within 5 days from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Supplier shall as soon as it is reasonably practicable to do so, remedy the defects and/or deficiencies and the relevant test(s) shall be repeated within a reasonable time.

6.4 If any Software Module fails in some material respect to pass any repeated Acceptance Tests within 4 weeks from the date of its second submission to the Acceptance Tests, then the Customer may, by written notice to the Supplier, choose at its sole discretion:

(a) to fix a new date for carrying out further tests on the Software Module on the same terms and conditions. If the Software Module fails such further tests then the Customer may request a repeat test under this clause 6.4(a);

(b) to permit installation of the Software Module subject to such change of acceptance criteria, amendment of the Business Requirements Specification and/or reduction in the Price as, after taking into account all the relevant circumstances, is reasonable; or

(c) if the Supplier is unable to correct material defects within a period of 3 months from the commencement of Acceptance Tests under clause 6.2 to reject the Supplier Software as not being in conformity with the agreement, in which event the Customer may terminate this agreement.

7 Acceptance

7.1 Acceptance of the Supplier Software shall be deemed to have occurred on whichever is the earliest of:

(a) the signing by the Customer of an Acceptance Certificate for the final Software Module to pass the Acceptance Tests;

(b) the expiry of five days after the completion of all the Acceptance Tests, unless the Customer has given any



written notice under clause 6.3

(c) the expiry of ten days after the actual installation date of the final Software Module if the Acceptance Tests for that module have not started, or have not been pursued with due diligence; or

(d) the use of the Supplier Software by the Customer in the normal course of the Business.

8 Implementation plan and extension of time

8.1 Both parties shall use their reasonable endeavours to perform their obligations under this agreement in accordance with the Implementation Plan.

8.2 The Supplier shall use its reasonable endeavours to complete the Work in each stage of the Implementation Plan by the date specified in the Implementation Plan, subject to clause 8.3

8.3 The Supplier shall be given an extension of the timetable of any one or more of the stages in the Implementation Plan, or any of its other performance obligations under this agreement, if one of more of the following events occurs:

(a) a variation to the Supplier Software is made at the Customer's request under the change control procedures set out in clause 10.

(b) a Force Majeure Event occurs; or

(c) a delay is caused in whole or in part by an action or omission of the Customer or its employees, agents or third-party contractors.

8.4 The Customer Representative and the Project Manager shall use best endeavours to agree in writing, what extension of time is reasonable in the circumstances. The Implementation Plan, or performance obligation, shall be deemed amended accordingly.

9 Payment

9.1 The Supplier shall submit invoices in accordance with the invoicing terms set out in the Order. The Customer shall make payment of each invoice by the due date stated in that invoice or within 30 days of receipt of the invoice, whichever is earlier.

9.2 The Price and all other payments stated in the Order are net of tax. The Customer shall, in addition, pay to the Supplier the amount of any tax, duty or assessment, including any applicable VAT, which the Supplier is obliged to pay and/or collect from the Customer in respect of any supply under the agreement (other than tax on the Supplier's income).

9.3 Reasonable out-of-pocket expenses may be charged by the Supplier on production of reasonable evidence of expenditure to the Customer.

9.4 If the Supplier visits the Site at the Customer's request to investigate a failure of the Supplier Software, which proves in the Supplier's reasonable opinion not to have been caused by a Defect, the Supplier may charge the Customer:

(a) for the time spent on such visit and all such other time that the Supplier spends dealing with the Customer's request on a time-and-materials basis (subject to a minimum charge of 1 working day and charged subsequently in 1 working day increments);

(b) travel time, where the travel involved exceeds two hours; and

(c) all reasonable expenses incurred by the Supplier.

The time charged under this clause 9.4 shall be charged at the Supplier's consultancy rates then in force.

10 Change control and technology substitution



10.1 The Customer may, by giving written notice to the Supplier at any time during the term of this agreement, request a change to the Supplier Software.

10.2 Within 7 working days of receipt of such notice, the Supplier shall, at its standard rates then in force, prepare for the Customer a written estimate of any increase or decrease in the Price, and of any effect that the requested change would have on the Implementation Plan.

10.3 Within 7 working days of receipt of the written estimate referred to in clause 10.2, the Customer shall inform the Supplier in writing of whether or not the Customer wishes the requested change to be made. If the change is required, the Supplier shall not make the requested change until the parties have agreed and signed a written agreement (**Change Agreement**) specifying, in particular, any changes to the Implementation Plan and Price.

10.4 The Supplier shall in its sole discretion offer to the Customer, and the Customer may at any time before the Actual Software Delivery Date choose to obtain from the Supplier, any item of software in substitution for any corresponding item of Supplier Software where the substitute item contains new technology or has better performance characteristics than such Supplier Software. As part of the offer, the Supplier shall notify the Customer of any change in the Price which would result from such substitution. If the Customer chooses to obtain any such substitute item, the Supplier shall only be obliged to provide it once the parties agreed and executed a Change Agreement in accordance with clause 10.3.

11 Ownership

11.1 The Intellectual Property Rights in the Supplier Software (other than where it is Open-Source Software and the Third-Party Software) shall be owned by the Supplier, in accordance with the provisions of the Terms of Business.

11.2 It is accepted and understood by the parties that (subject to clause 11.1) the Supplier Software is created using Open-Source Software. Accordingly, the Open-Source Software shall be licensed to the Customer on and subject to the provisions of the General Public License.

11.3 To the extent that the Supplier Software contains any Third-Party Software, the Customer accepts and acknowledges that the Third-Party Software shall be licensed on and subject to the provisions of each and any applicable Third-Party License. The Customer shall comply with the Third-Party Licenses and 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 such terms howsoever arising.

11.4 The Documentation is the property of the Supplier (or the appropriate third-party rights-owner(s)) and the Customer acquires no rights in or to the Documentation other than those expressly granted by this agreement and the Terms of Business.

11.5 The Supplier may treat the Customer's breach of any Third-Party License as a breach of this agreement.

11.6 If the Customer wishes to make copies of the Supplier Software, it shall comply with the provisions of the Third-Party Licenses and the General Public License in relation to the copying and/or use of the Supplier Software.

12 Use and adaptation of supplier software

12.1 The Customer may only use the Software and/or make adaptations or variations of it in accordance with the terms of this agreement, the General Public License and the applicable Third Party Licenses.

12.2 The Customer may not disassemble, decompile, reverse translate or in any other manner decode the Supplier Software, except as permitted by law, the General Public License and the applicable Third-Party Licenses

13 Training

13.1 The Supplier undertakes to provide the Training to the Customer in consideration of the Training charges specified in the Order.



13.2 Any additional training required by the Customer shall be provided by the Supplier at the Supplier's standard rates then in force.

13.3 Training shall be carried out at location(s) as agreed with the Customer.

14 Supplier software: project management

14.1 No later than five days after the Commencement Date, the Customer shall notify the Supplier of the name of the person appointed as the Customer Representative.

14.2 The Supplier shall appoint the Project Manager, who shall have the responsibility and commensurate authority for the overall progress of the Work and to whom all questions regarding this agreement can be referred. The name of the appointed individual shall be notified in writing to the Customer Representative.

14.3 The Customer Representative shall co-operate with the Project Manager and shall attend meetings scheduled by the Project Manager at reasonable intervals to advise and assist the Supplier on all matters relating to the Work.

14.4 The provision of employees, subcontractors and agents of the Supplier to carry out the Work shall be at the discretion of the Supplier.

15 Warranties

15.1 The Supplier warrants that:

(a) the Bespoke Software, and Documentation are proprietary to the Supplier (except where otherwise stated in the Order) and that, as far as it is aware, it has the right to license all UK Intellectual Property Rights in and to the Bespoke Software, and Documentation to the Customer; and

(b) the Supplier Software at the Acceptance Date, and for 6 months after that date, will perform in all material respects in accordance with the Technical Specification in relation to the version of the Named Application for which it was developed.

15.2 The sole remedies for breach of the warranty in clause 15.1(a) are set out in clause 16.

15.3 The sole remedy for breach of the warranty under clause 15.1(b) shall be correction of Defects by the Supplier within a reasonable time from notification by the Customer of the Defect that constitutes such breach.

15.4 The warranties set out in clause 15.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this agreement. Without limitation, the Supplier specifically denies any implied or express representation that the Supplier Software will be fit:

(a) to operate in conjunction with any hardware items or software products other than with those that are identified in the Documentation as being compatible with the Supplier Software; or

(b) to operate uninterrupted or error-free.

15.5 The Supplier does not warrant or guarantee that it will be able to rectify all Defects,.

15.6 Any unauthorised modifications, use or improper installation of the Supplier Software by, or on behalf of, the Customer shall render all the Supplier's warranties and obligations under this agreement null and void.

15.7 The Supplier shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of the Supplier.

15.8 The Customer acknowledges that the only warranties in relation to the Third-Party Software and the Modified Software (Third Party), or the supply thereof, are those contained in the Third-Party Licences from the third-party supplier(s) of the same, and that to the extent that any of such warranties are given to the Supplier, it will pass on the benefit of such warranties to the Customer..



15.9 Any Open-Source Software provided by the Supplier may be used according to the terms and conditions of the specific licence under which the relevant Open-Source Software is distributed, but is provided “as is” and expressly subject to the disclaimer in clause 15.4.

15.10 Save in respect of any specific warranties given elsewhere in this agreement, the Supplier does not warrant or guarantee that the System, when taken in whole or in part, will:

(a) comply with Cybersecurity Laws, or

(b) contain no Vulnerabilities,

And it shall be the Customer’s sole responsibility to ensure that the Business Requirements Specification and/or the Technical Specification detail all of the Customer’s cybersecurity requirements, including any requirements that might be imposed on the Customer’s business, operations or systems under Cybersecurity Laws, in sufficient detail so they can be implemented by the Supplier as part of the Work.

15.11 The Customer:

(a) warrants to the Supplier that it will at all times comply with all applicable laws and regulations with respect to its activities under this agreement and in connection with any part of the Supplier Software;

(b) shall take reasonable steps not to introduce any Virus or Vulnerability to the Supplier Software or the network and information systems of the Supplier;

(c) shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of any non-compliance by the Customer with this clause 15.11.

15.12 Each party warrants that it has full capacity and authority, and all necessary licences, permits and consents to enter into and perform this agreement and that those signing this agreement are duly authorised to bind the party for whom they sign.

16 Intellectual property rights indemnity

16.1 Without prejudice to clause 15.6 the Supplier shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:

(a) caused or contributed to by the Customer’s use of the Supplier Software in combination with software not supplied or approved in writing by the Supplier (other than the operating system of any Computer Hardware, provided that the Supplier was notified in writing of the identity of this operating system before this agreement was entered into);

(b) based on use of any version of the Supplier Software other than the latest version supplied by the Supplier, if such claim could have been avoided by the use of such supplied version; or

(c) where the claim for infringement arises in respect of a feature of the Supplier Software which was specified by the Customer in the Business Requirements Specification.

16.2 If use of the Supplier Software becomes, or in the opinion of qualified legal counsel is likely to become, the subject of any such claim, the Supplier may:

(a) replace all or part of the Supplier Software with functionally equivalent software or documentation without any charge to the Customer;

(b) modify the Supplier Software as necessary to avoid such claim, provided that the Supplier Software (as amended) functions in substantially the same way as the Supplier Software before modification;

(c) procure for the Customer a licence from the relevant claimant to continue using the Supplier Software.

16.3 If:



(a) use of the Supplier Software is determined in a court of law to be infringing;

(b) the Supplier is advised by a barrister of at least ten years' call that use or possession by the Customer of the Supplier Software and/or the Documentation in accordance with this agreement is likely to constitute infringement of a third party's rights; or

(c) if an injunction or similar order is granted which prevents or restricts the use or possession by the Customer of the Supplier Software and/or the Documentation in accordance with this agreement;

and the Supplier is unable, after best efforts, to procure for the Customer the right to continue using the Supplier Software or to provide the Customer with functionally equivalent non-infringing software, this agreement will be terminated.

17 Limitation of liability

17.1 Except as expressly provided in this agreement and to the fullest extent permitted by applicable law:

(a) the Customer shall be solely responsible, as against the Supplier, for any opinions, recommendations, forecasts or other conclusions made or actions taken by the Customer, any client of the Customer or any other third party based (wholly or in part) on the results obtained from the use of the Software or the Services by the Customer;

(b) the Supplier shall have no liability for any damage caused by errors or omissions in any information or instructions provided to the Supplier by the Customer in connection with the Services; and

(c) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are excluded from this agreement.

17.2 The parties accept and acknowledge the limitation of liability provisions set out in the Terms of Business shall apply to this agreement and neither party excludes or limits liability to the other party for:

(a) fraud or fraudulent misrepresentation;

(b) death or personal injury caused by negligence;

(c) a breach of any 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 matter for which it would be unlawful for the parties to exclude liability.

18 Assignment and subcontracting

The Supplier shall have the right to assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the other Customer. The Customer shall have the right to assign, transfer or sub-contract its rights and obligations under this agreement with the prior written consent of the Supplier.

19 Duration

This agreement shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 20, until Acceptance.

20 Termination

20.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement in accordance with the termination provisions set out in the Terms of Business and any other termination provisions set out in this agreement.

20.2 On termination of this agreement, the Customer shall either return to the Supplier or, at the Supplier's option, destroy all material copies of the Supplier Software (excluding any Open-Source Software) and Documentation, and shall ensure that any copies of the Supplier Software (excluding any Open-Source Software)



on hard discs or other storage means associated with any computer equipment owned or controlled by the Customer are permanently deleted.

20.3 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.

20.4 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

20.5 On termination of this agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

21 Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

22 Rights and remedies

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

23 Entire agreement

23.1 This agreement and the Terms of Business constitute the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

23.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement and/or the Terms of Business.

24 Variation

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

25 Severance

25.1 If any provision or part-provision of this 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 this agreement.

25.2 If any provision or part-provision of this agreement is deemed deleted under clause 25.1 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.

26 Third-party rights

No person other than a party to this agreement shall have any rights to enforce any term of this agreement.

27 Notices



27.1 Any notice or other communication required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice or communication as set out in the Order or as otherwise specified by the relevant party by notice in writing to each other party.

27.2 Any notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause;
- (b) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

27.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

28 Governing law

This 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.

29 Jurisdiction

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