

**MICROTILL LIMITED  
STANDARD TERMS AND CONDITIONS**

**Section 1 Definitions and Interpretation**

**1 Definitions**

- 1.1 In these conditions the expressions "the Company" or "the Supplier" means Microtill Limited whose registered office is at the Strachan Studios, Tabors Hill, Great Baddow, Chelmsford CM2 7BP and the expression "the Customer" means any person placing an order for goods which is accepted by the Company in accordance with these Conditions
- 1.2 The definitions and rules of interpretation in this clause 1 apply throughout this Agreement (Including Any Schedule or Contract Summaries):

**Agreement:** these terms and conditions which (to the extent noted in a Service Agreement Contract, Quotation, Sales Order, Acknowledgement or any other document which may relate to the supply of a service or product, as applying), Including any Contract Summaries, Schedules and annexure to these terms and conditions;

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks are open for business in the city of London;

**Commencement Date:** has the meaning given, the agreed date stipulated in writing between both parties;

**Confidential Information:** has the meaning given in clause 16;

**Consultancy Fees:** the consultancy fees calculated at the rates set out in a quotation, rate schedule or any document or media, as amended from time to time in accordance with the provisions of this Agreement.

**Consultancy Services:** any professional services to be provided by the Supplier pursuant to this Agreement as set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a service or product, as applying, or as otherwise agreed between the Supplier and the Customer in writing from time to time;

**Customer Contact:** the name of the representative of the Customer set out in Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a service or product, as applying;

**Contract Year:** a period of 12 months, commencing on the Commencement Date and/or each anniversary of the Commencement Date;

**Delivery Date:** the estimated delivery date(s) specified in the Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a service or product, as applying;

**Documentation:** any operating manuals, user instruction manuals, technical literature, and other related materials in human readable and/or machine readable forms supplied by the Supplier to the Customer in connection with Third Party Software or Software owned by the supplier;

**Excluded Matter:** custom software modifications, customer configurations, re-programming, day to day maintenance of customers hardware or software, head office or back office software including a Supported Software Issue and a Supported Hardware Issue;

**Fees:** means (as applicable) the Consultancy Fees, the Hardware Fees, the Hardware Maintenance Fees, the Licence Fees, the Out of Hours Support Fees, the Software Support Fees, the Travel Fees, Repair Fees, the Standard Support Fees (as applicable) and any other fees due from the Customer to the Supplier in accordance with this Agreement;

**General Conditions:** the clauses set out in (This Agreement) Section 1 and Section 2 of this Agreement;

**Group:** in relation to a company, that company, its subsidiaries, any company of which it is a subsidiary (its **holding company**) and any other subsidiaries of any such holding company; and each company in a Group is a **member of the Group and**

**Group Company** shall be construed accordingly. Unless the context requires otherwise, the application of the definition of Group to a company at any time will apply to the company as it is at that time;

**Hardware:** the hardware to be provided by the Supplier as set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product;

**Hardware Defect:** an error in the Hardware that causes it to fail to operate substantially in the opinion of the Supplier;

**Hardware Delivery Date:** the estimated date for delivery of the Hardware as set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product;

**Hardware Fees:** the fees for the provision of the Hardware, as set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product;

**Hardware Maintenance Fees:** the fees payable for the Hardware Maintenance Services as set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product, as amended from time to time in accordance with the provisions of this Agreement;

**Hardware Maintenance Services:** the hardware maintenance services provided by the Supplier to the Customer pursuant to this Agreement;

**Hardware Supply Conditions:** the clauses set out in Section 4 of this Agreement;

**Hardware Warranty Period:** the period set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product;

**Holding company and subsidiary:** as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.

**Insolvency Event:** occurs where:

- a party makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);
- any distress or execution is levied upon a party, its property or assets;
- an administrator or administrative receiver or receiver is appointed over all or part of the party's undertaking, property or assets;
- a party ceases, or threatens to cease, to carry on business;
- a party becomes unable to pay its debts as they fall due; or
- any analogous proceedings or events similar to those specified above are instituted or occur in relation to a party elsewhere than in England or Wales.

**Intellectual Property Rights:** all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;

**Licence:** the licence granted under clause 22.1;

**Licence Fees:** the licence fees for the use of the Software, as set out a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product;

**Licence Term:** the term of the Licence as set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product;

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

**Media:** the media on which the Software is recorded or printed, as provided by the Supplier to the Customer; if not delivered pre-loaded or remotely;

**Modification:** any Maintenance Release or New Version;

**Modified Software:** the standard software programs proprietary to the Supplier and/or to third parties which are to be modified by the Supplier for inclusion in the System;

**Minimum Term:** the minimum period for which the Supplier is to provide and the Customer is to receive the relevant Services as set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement or any other document which may relate to the supply of a product;

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

**Non-Urgent Hardware Issue:** any fault of the Supported Hardware other than an Urgent Hardware Issue;

**Open-Source Software:** any software licensed under any form of open-source licence meeting the Open Source Initiative's 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;

**Out of Hours Contact Details:**

- Telephone number: 01245 476666 and;
- email address: [support@microtill.com](mailto:support@microtill.com); or such other contact details as are notified from time to time by the Supplier to the Customer in writing;

**Out of Hours Support Hours:** from 5.30pm to 9.00am on a Business Day and including weekends a, Bank Holidays and including Christmas Day

**Out of Hours Support Fees:** the fees for the use of the Out of Hours Support Services as set out in the Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product;

**Out of Hours Support Services:** the out of hours services to be provided to the Customer by the Supplier pursuant to this Agreement;

**Ready for Service:** installed and tested by the Supplier and being declared ready for use by the Supplier;

**Schedules:** the schedules which form part of this Agreement and which are annexed hereto;

**Services:** the provision of Hardware Maintenance Services, Software Support Services, Standard Support Services, Out of Hours Services, Consultancy Services, training and additional services (as the case may be) provided or to be provided by the Supplier to the Customer pursuant to this Agreement;

**Service Hours:** the hours of the day when the Supplier may provide Consultancy Services, being: Monday to Friday 9am to 5pm, or such other hours as the Supplier may specify in writing to the Customer;

**Severity 1 Software Fault:** means, in the opinion of the Supplier, a fault leading to an incidence of high significance which is impacting the Customer's business and requires an immediate resolution or Workaround including:

- any incident which results in the loss of the System and the inability of a Site to trade or complete its end of day (cash up and finalise); or
- the majority of tills being inoperable; or
- online authorisation not working for the entire Site; or
- all till printers not functioning.

**Severity 2 Software Fault:** a software fault which affects the Customer's business, degrading the System in part and which will cause significant operational difficulties if not resolved promptly but which does not stop the Customer from trading immediately;

**Severity 3 Software Fault:** either:

- a minor part of the System failing which does not significantly impact the daily operation of the Customer's business but for which a Workaround has not been found, including but not limited to a single till not working in a multi-till store; or
- a request for assistance or information regarding the daily operation of the System;

**Severity 4 Software Fault:** either:

- a minor part of the System failing which does not significantly impact the daily operation of the Customer's business for which a Workaround has been found which is acceptable to the Customer, including but not limited to incorrect error messages and spelling mistakes; or
- a request for assistance or information regarding the operation of the System outside of the daily operation;

**Sites:** the locations where the Services are to be provided, and the Software and Hardware are to be delivered and/or installed (as the case may be) as set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary, or any other document which may relate to the supply of a product;

**Software:** the Supplier Software and the Third Party Software (as applicable);

**Software Defect:** an error in the Software that causes it to fail to operate substantially in accordance with the Specification or functional overview;

**Software Delivery Dates:** the estimated dates for delivery of the Software as set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product;

**Software Support Fees:** the fees due from the Customer to the Supplier for use of the Software Support Services as set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product;

**Software Support Services:** the software support services to be provided to the Customer by the Supplier pursuant to this Agreement, as set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary, or any other document which may relate to the supply of a product;

**Specification:** the document(s) detailing the Customer's functional specification, the Supplier's solution description and the technical specification of the Supplier Software, Hardware and/or the System (as the case may be), if any has been provided.

**Standard Support Hours:** between the hours of 9.00am and 5.30pm on a Business Day, or such other hours as the Supplier may notify to the Customer in writing;

**Standard Support Services:** the standard support services to be provided to the Customer by the Supplier pursuant to this Agreement;

**Standard Support Fees:** the fees for use of the Standard Support Services as set out in Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product;

**Supplier Software:** the Supplier Standard Software [and any Modified Software];

**Supplier Standard Software:** the software programs proprietary to the Supplier, as set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product, which are to be provided to the Customer without modification;

**Support Desk Contact Details** means:

- o telephone number: 01245 476666 and;
- o email address: [support@microtill.com](mailto:support@microtill.com). or such other contact details as the Supplier may notify in writing to the Customer;

**Support Hours:** means:

Monday to Friday 9am to 5.30pm, or such other hours as notified by the Supplier to the Customer;

**Supported Hardware:** such hardware identified in the Service Agreement Contract, Quotation, Sales Order, Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product.

**Supported Hardware Issue:** an Urgent Hardware Issue or a Non-Urgent Hardware Issue.

**Supported Software** means the software identified in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product, forming part of the "Supported Software" and any Modification which is provided by the Supplier to the Customer, and any other software which the Customer and the Supplier agree in writing from time to time should be Supported Software for the purposes of this Agreement.

**Supported Software Issue** means a Severity 1 Software Fault, a Severity 2 Software Fault, a Severity 3 Software Fault or a Severity 4 Software Fault.

**System** means the system consisting of the Hardware and the Software;

**System Issue** means an issue with the System;

**Third Party Licences** means any Open-Source Software licences relating to the Supplier Software, including the general public licence (if applicable) and any proprietary third-party software licences.

**Third Party Software** means the software programs proprietary to third parties as set out in a Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product which are to be provided to the Customer without modification;

**Urgent Hardware Issue** means a fault with the Supported Hardware which, in the opinion of the Supplier, has caused a significant degradation or failure of the System or rendering any major subsystem of the System inoperable or significantly degraded.

**Workaround** means a solution which enables the Customer to continue working (albeit with some reduced functionality).

**Work** means all the works, duties and obligations to be carried out by the Supplier under this Agreement.

1.3 The headings in this Agreement do not affect its interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this Agreement.

1.4 Unless the context otherwise requires:

- 1.4.1 references to the Supplier / The Company and the Customer include their personal representatives, successors and permitted assigns;
- 1.4.2 references to writing or written includes faxes but not emails;
- 1.4.3 references to statutory provisions include those statutory provisions as amended or re-enacted;
- 1.4.4 references to one gender includes a reference to the other genders;
- 1.4.5 references to "including" or "includes", or any similar expressions, shall be deemed to have the words "without limitation" inserted after them; and
- 1.4.6 references to a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 Words in the singular include the plural and those in the plural include the singular.

1.6 In the event of any conflict or inconsistency between the different Sections of this Agreement and the, the following order of precedence shall apply:

- 1.6.1 The Contract Summary or Schedule;
- 1.6.2 The Service Agreement;
- 1.6.3 The General Conditions;
- 1.6.4 The Licence Conditions;
- 1.6.5 The remainder of the provisions in this Agreement.

## Section 2 General Provisions

### 2 General

- 2.1 These conditions shall govern any sale of goods or services by the Company to the exclusion of any other terms or conditions except such as are approved in writing by a Manager, Director or other authorised officer of the Company. Any waiver shall not prejudice the Company's rights in respect of subsequent breach. Quotations are valid for only thirty days and orders placed thereon are subject to acceptance by the Company and no contracts shall be created until such time (if any) as such order is accepted by the Company. Once accepted by the company such orders cannot be cancelled by the Customer, except with the Companies written permission.
- 2.2 The Company will take all reasonable steps to ensure that the goods are in accordance with any particulars illustrations or descriptions contained in any Catalogue price list or other document of the Company. The Purchaser remains responsible for satisfying itself that the goods are appropriate for the use intended for them by the Purchaser (including incorporation into other products).
- 2.3 The Company reserves the right at any time before or after an order is placed to make reasonable amendments to any particulars descriptions prices measurements or specifications contained in its catalogues price lists brochures and other sales literature and such amendments shall be binding upon the Purchaser.
- 2.4 These conditions shall be deemed to incorporate the full contractual conditions between the parties and (save for any variation which may be agreed to in writing by or on behalf of the Company) no other statement or representation whether oral or in writing made at any time shall be a term of the contract or of any binding effect between the parties.

### 3 Pricing

- 3.1 The Company reserves the right to vary prices (Whether specifically quoted or otherwise) to take account of those quoted by our nominated finance provider, increase in the costs of supply of products, raw materials, manufacture, packaging, transport or wages arising before despatch.
- 3.2 Prices are exclusive of VAT or other tax, duty, tariff or charge arising in the U.K. or elsewhere which shall be the responsibility of the purchaser.
- 3.3 Unless otherwise agreed, prices for goods are ex-works and any charge for carriage incurred by the Company will be charged to the Customer.
- 3.4 Standard Hourly Rate prices, are charged between the hours of 9am – 5pm Monday to Friday, Out of Hours Hourly Rates are charged between the hours of 5pm to 9am Monday to Friday, weekends and bank holidays.
- 3.5 Day Rate prices may be quoted or estimated by the Company for all types of work to be undertaken on behalf of the Customer. The day rate stipulated by the Company is based on an 8 hour work period within anyone work day (Including Reasonable Travel), Monday to Friday. If for any reason and out of the control of the Company, work is not completed within the 8 hours period. The Supplier will levy additional charges based on its hourly overtime rate to recover losses arising from that particular event.

### 4 Customer Obligations

- 4.1 The Customer will:
- 4.1.1 be responsible (at the Customer's cost) for preparing the delivery Site for the delivery of the Services and the Hardware (as applicable) and for the provision of all necessary access and facilities reasonably required to deliver and install the Hardware. If the Supplier is prevented from carrying out delivery of the Services on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event;
- 4.1.2 if not specifically stated within the or agreement, that the Supplier will be providing data networking infrastructure, the customer will ensure that all Data Network cabling is installed, cables are terminated with RJ45 plugs, clearly labelled and connections to other sites are in place, where data from the system may be used or updated maybe centralised;
- 4.1.3 ensure that the power supply is clean and has its own ring main, with 240 volts AC mains supply taken from the main fuse board. The Supplier is not liable for any damage or system underperformance due to power spikes or interruptions caused by irregular power supply;
- 4.1.4 ensure that the Supplier has access to administrative rights or other passwords to enable any installation or required maintenance to be carried out and the Customer shall employ a prudent password policy;
- 4.1.5 fully co-operate with the Supplier in performing the Services and provide, at no additional charge to the Supplier, any information or data required by the Supplier that is reasonably requested in the performance of the Services, including in relation to the diagnosis of any System Issues;
- 4.1.6 at all reasonable times permit full and free access to the Sites and to the System (including, as applicable, the Supported Hardware and/or the Supported Software) to the Supplier, its employees, contractors and agents, and provide them with adequate and safe working space, and any telecommunications facilities (including a broadband connection with a static I.P. address or, if broadband is not available, an ISDN terminal adaptor (approved by the Supplier) for online problem resolution), electrical current and outlets or other facilities as are reasonably required to enable the Supplier to perform the Services while at the Sites;
- 4.1.7 take any steps reasonably necessary to ensure the safety of the Supplier's personnel when attending the Sites; and
- 4.1.8 notify the Supplier promptly of any System Issues (including, but not limited to, if the Supported Hardware is discovered to be operating incorrectly).

- 4.2 The Customer shall indemnify the Supplier against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Supplier as a result of the Customer's breach of this Agreement or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.
- 4.3 The Customer shall procure all necessary rights from third parties (including, without limitation, intellectual property licences in relation to computer software) which are from time to time required in order for the Supplier to be able legally to provide the Services.

## **5 Supplier's obligations**

- 5.1 The Supplier shall ensure that, while on the Customer's premises, its employees and all other persons who enter such premises with the authority of the Supplier for the purpose of, or in connection with, this Agreement or the provision of the Services, adhere to the Customer's security procedures and health and safety regulations, as from time to time notified to the Supplier or otherwise brought to the notice of the Supplier or such persons. The Customer may remove or refuse admission to any person who is, or has been, in material breach of such procedures and regulations. However, the Supplier shall incur no liability for any delay in performing or failure to perform its obligations under this Agreement as a result of compliance with the terms of this clause 5.1.
- 5.2 No representation or warranty is given by the Supplier that all faults will be fixed, or will be fixed within a specified period of time.
- 5.3 All conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the fullest extent permitted by law, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

## **6 Invoicing and Payment Terms**

- 6.1 In consideration of the Supplier providing the Software, the Hardware and the Services (as applicable) to the Customer, the Customer shall pay the Fees set out in the Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a product.
- 6.2 For the supply of systems, both new and reconditioned, the payment terms are a 60% Deposit of the value of the total order unless otherwise agreed by the Managing Directors of Microtill Limited, including the VAT amount, payable at the time of the order, and the remaining balance payable on delivery of the equipment. All deposits paid are non-refundable, unless agreed by the Managing Directors of Microtill Limited
- 6.3 The Supplier will invoice the Customer for all Service Fees (plus VAT) annually in advance, or if agreed by the supplier, monthly. All invoices must be paid by the Customer by Direct Debit, instalments being paid monthly, split equally over a Twelve month period. At the discretion of the Supplier the Customer may be allowed to pay Service Fees within 30 days of the date of the invoice. The Supplier is not required to provide any Services, Software or Hardware until such time as all invoices have been paid by the Customer.
- 6.4 Fees for any New Version, Consultancy Services or any variation to the Services shall be agreed in writing before performance or supply by the Supplier, and shall be charged and invoiced to the Customer by the Supplier (and paid by the Customer) following acceptance by the Supplier of the Customer's written order for such New Version or variation to the Services (as the case may be).
- 6.5 The Customer shall pay all costs (at the Supplier's then prevailing rates) and reasonable expenses incurred by the Supplier for work carried out by the Supplier in connection with any Hardware Support Issue, Software Support Issue or other System Issue which is not covered by this Agreement.
- 6.6 The Customer shall reimburse any reasonable travel or subsistence expenses incurred by the Supplier where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Services, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.
- 6.7 The Customer shall pay to the Supplier its reasonable charges in reprogramming and / or visits as a result of a breach of this Agreement or any programming error as a result of user error by the Customer at the Supplier's then prevailing rates, whether the rate being the standard hourly rate or overtime hourly rate dependant on the urgency of the correction.
- 6.8 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- 6.8.1 charge the Customer interest on the overdue amount, payable by the Customer immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 6% a year above the base rate for the time being of NatWest plc. Such interest shall accrue on a daily basis and be compounded quarterly. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and Late Payment of Commercial Debts Regulations 2002; and
- 6.8.2 suspend all Services and any Licence granted, until payment has been made in full.
- 6.9 All amounts payable under this Agreement shall be exclusive of VAT or relevant local sales tax (if any) which shall be paid at the rate and in the manner for the time being prescribed by law.
- 6.10 The Supplier may increase the Fees as from each anniversary of the date of this Agreement. Any increase shall be notified to the Customer at least three months before such anniversary.
- 6.11 The Customer may not withhold payment of any sum by reason of any set-off of any claim or dispute with the Supplier whether relating to the quality or performance of the Services, Software and/or Hardware or otherwise.

## **7 Restrictive covenants**

- 7.1 Neither party shall for the duration of this Agreement and for a period of 6 months after its termination (however caused) solicit for employment, or offer employment to, or enter into any contract for services with any person who is or has been employed by the other party during the term of this Agreement.
- 7.2 If the Customer (whether directly or indirectly) employs or retains the services of any person in breach of clause

## **8 Intellectual Property Rights**

- 8.1 The Customer acknowledges that all Intellectual Property Rights in the System (other than the Third Party Software) are and shall remain the property of the Supplier, and the Supplier reserves the right to grant a licence to use the System (or any part of it) to any other party or parties.
- 8.2 The Software and the Documentation are proprietary to the Supplier (or its licensors) and the Customer acquires no rights in or to the Software or the Documentation other than those expressly granted by this Agreement.
- 8.3 The Customer shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing that the Supplier may consider necessary or desirable to perfect the right, title and interest of the Supplier in and to the Intellectual Property Rights in the System.
- 8.4 The Customer shall use reasonable endeavours to prevent any infringement of the Supplier's Intellectual Property Rights in the System and shall promptly report to the Supplier any such infringement that comes to its attention.

## **9 Limitation of Liability**

- 9.1 Neither party excludes or limits liability to the other party for:
- 9.1.1 fraud or fraudulent misrepresentation;
  - 9.1.2 death or personal injury caused by negligence;
  - 9.1.3 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
  - 9.1.4 any matter for which it would be unlawful for the parties to exclude liability.
- 9.2 Subject to clause 9.1, the Supplier shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- 9.2.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;
  - 9.2.2 any loss or corruption (whether direct or indirect) of data or information;
  - 9.2.3 loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); or
  - 9.2.4 any loss or liability (whether direct or indirect) under or in relation to any other contract.
- 9.3 Clause 9.2 shall not prevent claims, which fall within the scope of clause 9.4, for:
- 9.3.1 direct financial loss that are not excluded under any of the categories set out in clause 9.2.1 to clause 9.2.4; or
  - 9.3.2 tangible property or physical damage.
- 9.4 Subject to clause 9.1, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract shall:
- 9.4.1 in respect of any cause of action related to the provision of the Support Services, be limited to the greater of:
- (a) the total charges paid for the Hardware Maintenance Services and the Software Support Service by the Customer to the Supplier during the 12-month period immediately before the date on which the cause of action first arose or, if the cause of action arose during any period before 12 months had elapsed from the Commencement Date, during that shorter period; and
- 9.4.2 in respect of any other cause of action related to this Agreement (including any cause of action related to the Supplier Software), be limited to the amount of Fees charged by the Supplier to the Customer during the 12-month period immediately before the date on which the cause of action first arose or, if the cause of action arose during any period before 12 months had elapsed from the Commencement Date, during that shorter period.
- 9.5 Any dates quoted for delivery of the Software, Hardware or Services are approximate only, and the time of delivery is not of the essence.

## **10 Dispute Resolution**

- 10.1 Any dispute which may arise between the parties concerning this Agreement shall be determined as provided in this clause 10.
- 10.2 For the purpose of this clause 10, a dispute shall be deemed to have arisen when one party serves on the other a notice in writing stating the nature of the dispute.
- 10.3 Unless this Agreement has already been terminated by the date of the notice of dispute, the Supplier shall, in every case, continue with providing the Services and the Hardware (as applicable) regardless of the nature of the dispute and the Customer shall continue to make payments in accordance with this Agreement.
- 10.4 After service of the notice of dispute, the following procedure shall be followed by the parties (all periods specified in this clause 10.4 shall be extendable by mutual agreement):
- 10.4.1 within two days, Customer Contact and a representative of the Supplier shall meet to attempt to settle the dispute;
  - 10.4.2 if the meeting referred to in clause 10.4.1 does not result in a settlement of the dispute within seven days from the date of service of the notice, the managing directors of each of the parties shall meet within the following seven days to attempt to settle the dispute; and
  - 10.4.3 if no settlement results from the meeting specified in clause 10.4.2 for the following 28 days the parties shall attempt to settle the dispute by mediation by an independent mediator, with costs to be shared equally between the parties.

- 10.5 If no settlement is reached under clause 10.4 the dispute shall be brought before the English High Court in the most expeditious manner possible, and the parties agree to co-operate in the speedy conduct of such legal proceedings.
- 10.6 For the avoidance of doubt, this clause 10 shall not prevent either party seeking injunctive relief in the case of any breach or threatened breach by the other of any obligation of confidentiality or any infringement by the Customer of the Supplier's Intellectual Property Rights.

## **11 Waiver**

- 11.1 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.

## **12 Force Majeure**

- 12.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control, and in such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 180 days or more, the party not affected may terminate this Agreement by giving 30 days' written notice to the other party.
- 12.2 If termination occurs under clause 12.1, all sums paid to the Supplier by the Customer under this Agreement shall be refunded to the Customer, except that the Supplier shall be entitled to payment on a quantum meruit basis for all work done before termination, provided that the Supplier takes all reasonable steps to mitigate the amount due.

## **13 Assignment and Subcontracting**

- 13.1 Subject to clauses 13.1 and 13.2, this Agreement is personal to the parties and the Customer shall not assign, transfer, mortgage, charge, subcontract or deal in any other manner with any of its rights and obligations under this Agreement, without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 13.2 The Customer hereby consents to the Supplier sub-contracting to its subcontractors provided that the Supplier shall be liable for the obligations under this Agreement that are subcontracted to any sub-contractor as if the Supplier had performed such obligations itself. This clause 13.2 shall not give any third party rights to any such subcontractor.
- 13.3 The Supplier shall be entitled to assign, novate, sub-contract or otherwise dispose of its rights and obligations under this Agreement without the consent of the Customer:
- 13.3.1 to any of the Supplier's Group Companies; or
  - 13.3.2 to any legal entity purchasing substantially the whole of the business to which the Hardware, Software and/or Services relate.

## **14 Termination**

- 14.1 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 and/or the Services with immediate effect by giving written notice to the other party if:
- 14.1.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
  - 14.1.2 the other party commits a material breach of any term of this Agreement (other than failure to pay any amounts due under this Agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 14.1.3 the other party is subject to an Insolvency Event; or
  - 14.1.4 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 14.2 The Supplier may terminate this Agreement at any time by giving not less than 30 days written notice to the Customer.
- 14.3 The Supplier may, without prejudice to its other rights or remedies, terminate this Agreement immediately by notice to the Customer if the Customer:
- 14.3.1 undergoes a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010);
  - 14.3.2 sells all or a substantial amount of its assets or is merged or re-organised in circumstances where it is not the surviving entity; or
  - 14.3.3 disputes the ownership or validity of the Supplier's Intellectual Property Rights.
- 14.4 If the Customer fails to install a Maintenance Release within one month of the Supplier's notifying the Customer that such Maintenance Release is available for installation, the Supplier may terminate this Agreement by giving one month's written notice to the Customer.
- 14.5 The Supplier shall be entitled to terminate this Agreement by giving one month's written notice to the Customer if the Supplier has released a New Version since the version which forms part of the Supported Software and the Customer has not, within 12 months of the Supplier having notified the Customer that such New Version is available, acquired and installed that New Version.]

## **15 Effect of Termination**

- 15.1 Other than as set out in this Agreement, neither party shall have any further obligation to the other under this Agreement after its termination.
- 15.2 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.



- 15.3 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 15.4 Notwithstanding its obligations in this clause 15, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.
- 15.5 On termination of this Agreement for any reason, the Customer's right to receive the Services shall cease automatically and the Customer shall as soon as reasonably practicable:
- 15.5.1 return, destroy or permanently erase (as directed in writing by the other party) any documents, handbooks, CD-ROMs or other Media or other information or data provided to it by the Supplier containing, reflecting, incorporating or based on Confidential Information belonging to the Supplier. If required by the Supplier, it shall provide written evidence (in the form of a letter signed by one of its directors) no later than 5 Business Days after termination of this Agreement that these have been destroyed and that it has not retained any copies of them (except for one copy that it may use for audit purposes only and subject to the confidentiality obligations in clause 16);
- 15.5.2 return all of the Supplier's equipment and materials, failing which, the Supplier may enter the relevant premises and take possession of them. Until these are returned or repossessed, the Customer shall be solely responsible for their safe-keeping.
- 15.5.3 pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

## **16 Confidentiality and publicity**

- 16.1 Each party shall, during the term of this Agreement and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Agreement) nor without the prior written consent of the other disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Group Companies (**Confidential Information**), unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.
- 16.2 The terms of this Agreement may not be disclosed by the Customer (other than to its legal advisors) without the prior written consent of the Supplier.
- 16.3 The Supplier may refer to the Customer as being a client of the Supplier in customer reference lists and sales presentations, but shall not refer to the Customer in any advertising or press release without the prior written consent of the Customer.
- 16.4 The provisions of this clause 16 shall remain in full force and effect notwithstanding any termination of this Agreement.

## **17 Entire Agreement**

- 17.1 This Agreement constitutes the whole Agreement between the parties and supersedes any previous arrangement, understanding or Agreement between them relating to the subject matter of this Agreement.
- 17.2 Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (**Representation**) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement.
- 17.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as provided in this Agreement.

## **18 Variation**

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

## **19 Severance**

- 19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.
- 19.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **20 Notices**

- 20.1 Any notice 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 as set out below:
- 20.1.1 Supplier: to the Supplier representative named, and at the address set out, in the Contract Summary; and
- 20.1.2 Customer: to the Contact Name stated in, and at the address set out in, the Contract Summary, or as otherwise specified by the relevant party by notice in writing to each other party.

- 20.2 Any notice shall be deemed to have been duly received:
- 20.2.1 if delivered personally, when left at the address and for the contact referred to in this clause;
  - 20.2.2 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or
  - 20.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 20.3 A notice required to be given under this Agreement shall not be validly given if sent by e-mail.
- 20.4 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## **21 Governing Law and Jurisdiction**

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

## **Section 3 Software Supply and Licence**

### **22 Provision of Software and Licence Fees**

- 22.1 In consideration of the Customer's payment of the Licence Fees, the Supplier grants, subject to the terms of this Agreement, the Customer a non-exclusive, non-transferrable licence to use the Software on the Hardware for the Licence Term.
- 22.2 The Supplier may only use the Software at the Site(s). If the Customer transfers the whole of its business to another site, the Software may be used at the new site by the Customer, provided that the Supplier is informed in writing of the change of site before use of the Software commences at the new site. Any assistance transferring the software and licensing between sites will be chargeable at the prevailing rate.
- 22.3 Any Third Party Software provided by the Supplier to the Customer, shall be subject to the standard terms of such third parties. The Customer shall comply with the Third Party Licences 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. The Supplier may treat the Customer's breach of any Third Party Licence as a breach of this Agreement.
- 22.4 The Customer's use of the Software shall be restricted to use:
- 22.4.1 of the Software in object code form for the purpose of processing the Customer's data for the normal business purposes of the Customer (which shall not include allowing the use of the Software by, or for the benefit of, any person other than an employee of the Customer); and
  - 22.4.2 loading the Software into temporary memory or permanent storage on the relevant Hardware;
- 22.5 The Customer may not use the Software other than as specified in clauses 22.1 and 22.4 without the prior written consent of the Supplier, and the Customer acknowledges that additional fees may be payable on any change of use approved by the Supplier (including in accordance with clause 22.9).
- 22.6 The Customer may make as many backup copies of the Software as may be reasonably necessary for its lawful use in accordance with this Agreement and for the purposes of backup and security. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying.
- 22.7 Except as expressly stated in this clause 22, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer.
- 22.8 The Customer may not use any such information provided by the Supplier or obtained by the Customer during any such reduction permitted under clause 22.7 to create any software whose expression is substantially similar to that of the Software nor use such information in any manner which would be restricted by any copyright subsisting in it.
- 22.9 The Customer shall:
- 22.9.1 ensure that the Software is installed on the Hardware only;
  - 22.9.2 keep a complete and accurate record of the Customer's copying and disclosure of the Software and its users, and produce such record to the Supplier on request from time to time;
  - 22.9.3 notify the Supplier as soon as it becomes aware of any unauthorized use of the Software by any person;
  - 22.9.4 pay, for broadening the scope of the licences granted under this Agreement to cover the unauthorized use, an amount equal to the fees which the Supplier would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for in clause 6.8, from such date to the date of payment.
- 22.10 The Customer shall permit the Supplier to inspect and have access to any premises (and to the computer equipment, Hardware or other hardware located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that the Supplier provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times.

- 22.11 The Customer shall not:
- 22.11.1 sub-licence, assign or novate the benefit or the burden of this Licence in whole or in part;
  - 22.11.2 allow the Software to become the subject of any charge, lien or encumbrance; and
  - 22.11.3 deal in any other manner with any or all of its rights and obligations under this Agreement.

## **23 Delivery, acceptance and installation**

- 23.1 Subject to the Customer's compliance with the terms of this Agreement, the Supplier shall use its reasonable endeavours to deliver and install (where applicable) the Software at the Sites on the Software Delivery Date(s), but any such date(s) are approximate only. If no dates are specified, delivery shall be within a reasonable time of acceptance of the order.
- 23.2 The Licence Fees shall be inclusive of the cost of delivery but not of installation (which shall form part of the Consultancy Services).
- 23.3 The Software may be delivered by the Supplier in advance of the Software Delivery Date(s) on giving reasonable notice to the Customer.
- 23.4 Delivery shall be made to the Sites during normal business hours on Business Days. If the Customer requests that any deliveries are made outside such hours the Supplier may levy additional charges.
- 23.5 The Supplier will endeavour to deliver the Software, configured, on the agreed installation date. In order for Software to be configured and delivered within the agreed time line, the Customer is required to provide the final data no later than ten working days before the date of installation. If the data has not been received, ten working days before the agreed install date, the Supplier, at its discretion may levy additional charges at its overtime rate. If the customer requires delivery sooner than the working ten day period, after delivering the required data, the Company will levy additional charges as its overtime rate.
- 23.6 If new sets of data are received by the Supplier from the Customer, after the Customer has confirmed the received final data sets have been delivered, any changes required may result in the Supplier charging for the additional time work undertaken. The Supplier will also levy additional charges for any programming changes onsite during installation.
- 23.7 The Customer shall be responsible (at the Customer's cost) for preparing the delivery Site(s) for the delivery of the Software and for the provision of all necessary access and facilities reasonably required to deliver and install the Software. If the Supplier is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover any loss arising.
- 23.8 The customer shall be responsible for checking the delivery documents and ensuring that serial numbers and licence numbers match the software and equipment being delivered.
- 23.9 If within 7 days of the Software Delivery Date the Customer discovers a Software Defect, the Customer shall notify the Supplier immediately.
- 23.10 On confirmation of a Software Defect by the Supplier, the Supplier shall, at its option and expense, either repair or replace the part or parts of the Software which contain the Software Defect (the **Defective Software**) or, where this is not possible or practicable, terminate the Licence and refund the portion of the Licence Fees paid in relation to the Defective Software. The Supplier shall have no further liability in respect of the Defective Software and no other remedy shall be available to the Customer.
- 23.11 The Customer shall be deemed to have accepted the Software on the earlier of the following:
- 23.11.1 more than 7 days have passed since the Software Delivery Date and the Customer has not made any notification to the Supplier in accordance with clause 23.9 or such notification is not justified ; or
  - 23.11.2 the Customer uses the Software in the course of its business, (the **Acceptance Date**).

## **24 Risk**

- 24.1 Risk in the Media shall pass to the Customer on delivery. If any part of the Media shall thereafter be lost, destroyed or damaged the Supplier shall at the request of the Customer replace the same promptly subject to the Customer paying the reasonable cost of such replacement prior to delivery.

## **25 Fees**

- 25.1 The Supplier shall pay the Licence Fees to the Supplier on the dates and in the manner set out in the Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule, Contract Summary or any other document which may relate to the supply of a service or product and clause 6.

## **26 Modifications and Maintenance Releases**

- 26.1 The Supplier will provide the Customer with all Maintenance Releases generally made available to its customers.
- 26.2 The Supplier shall inform the Customer of any New Versions and shall offer to sell such New Versions to the Customer on the terms on which they are generally made available by the Supplier to its customers.

## **27 Supplier's warranties**

- 27.1 the Supplier warrants that the Supplier Software will conform in all material respects to the Specification or Functional Overview for a period of 90 days from the date of this licence (**Warranty Period**). If, within the Warranty

Period, the Customer notifies the Supplier in writing of any Software Defect in consequence of which it fails to conform in all material respects to the Specification, the Supplier shall, at the Supplier's option, do one of the following:

- 27.1.1 repair the Software;
- 27.1.2 replace the Software; or
- 27.1.3 terminate the Licence immediately by notice in writing to the Customer and refund any of the Licence Fees paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof, provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the Software Defect, including a documented example of the Software Defect, or sufficient information to enable the Supplier to re-create the Software Defect.

27.2 The warranties in clause 27.1, do not apply if:

- 27.2.1 such Software Defect results from the Customer, or anyone acting with the authority of the Customer, having amended the Software or used it outside the terms of the Licence for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier; or
- 27.2.2 where the Software has not been loaded onto equipment other than Hardware provided by the Supplier.

27.3 The Supplier does not warrant that the use of the Software will be uninterrupted or error-free.

27.4 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not, unless otherwise specifically agreed in writing, been developed to meet the individual requirements of the Customer.

27.5 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 27.6.

27.6 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this licence or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including (to the extent permitted by law) the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

## 28 Intellectual Property Rights

28.1 The Customer shall have no rights in or to the Software other than the right to use it in accordance with the terms of the Licence.

28.2 The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession, use, development, modification or maintenance of the Software (or any part thereof) in accordance with the terms of this Agreement infringes the UK Intellectual Property Rights of a third party (a **Claim**) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses properly incurred by or the Customer as a result of such Claim. For the avoidance of doubt, the provisions of this clause shall not apply where the Claim in question is attributable to possession, use, development, modification or maintenance of the Software (or any part thereof) by the Customer other than in accordance with the terms of this licence, use of the Software in combination with any hardware or software not supplied or specified by the Supplier if the infringement would have been avoided by the use of the Software not so combined, or use of a non-current release of the Software.

28.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, the Supplier's obligations under clause 28.2 are conditional on the Customer:

- 28.3.1 as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
- 28.3.2 not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed);
- 28.3.3 giving the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
- 28.3.4 taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

28.4 If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:

- 28.4.1 procure for the Customer the right to continue using, developing, modifying or maintaining the Software (or any part thereof) in accordance with the terms of the Licence;
- 28.4.2 modify the Software so that it ceases to be infringing;
- 28.4.3 replace the Software with non-infringing software; or
- 28.4.4 terminate the Licence immediately by notice in writing to the Customer and refund any of the Licence Fees paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof, provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 27 and the Customer shall have the same rights in respect thereof as it would have had under those clauses had the references to the date of the Licence been references to the date on which such modification or replacement was made.

- 28.5 Notwithstanding any other provision in this Agreement, clause 28.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software incorporated into the Software or through the breach of any Third- Party Licence relating to any Open-Source Software so incorporated.
- 28.6 This clause 28 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 9.

## Section 4 Hardware Supply Conditions

### 29 Provision of Hardware

- 29.1 In consideration of the Customer's payment of the Hardware Fees, the Supplier shall supply the Hardware to the Customer at the Site(s) on or around the Hardware Delivery Date(s).
- 29.2 The Supplier will provide the Hardware with all related documentation provided by third-party manufacturers (if any).
- 29.3 The Customer shall provide all cabling and other equipment needed for the installation of the Hardware at the Site(s), (as described in clause 4) unless otherwise agreed by the company.

### 30 Delivery and acceptance

- 30.1 The Supplier shall use its reasonable endeavours to deliver and install the Hardware on the Hardware Delivery Date(s), but any such date is approximate only. If no dates are specified, delivery shall be within a reasonable time of the date of this Agreement.
- 30.2 The Hardware Fees shall be inclusive of the cost of delivery but not of installation (which shall form part of the Consultancy Services).
- 30.3 The Hardware may be delivered by the Supplier in advance of the Hardware Delivery Date(s) on giving reasonable notice to the Customer.
- 30.4 Delivery shall be made to the Sites during normal business hours on Business Days. If the Customer requests that any deliveries are made outside such hours the Supplier may levy additional charges.
- 30.5 The Customer shall be responsible (at the Customer's cost) for preparing the delivery Site for the delivery of the Hardware and for the provision of all necessary access and facilities reasonably required to deliver and install the Hardware. If the Supplier is prevented from carrying out delivery or installation on the specified date because no such preparation has been carried out, the Supplier may levy additional charges to recover its loss arising from this event.
- 30.6 If within 7 days of the Hardware Delivery Date the Customer discovers a Defect with the Hardware, the Customer shall notify the Supplier immediately. In addition, the Supplier shall be responsible for any damage, shortage or loss in transit, provided that the Customer notifies it to the Supplier (or its carrier, if applicable) within three days of delivery of the Hardware and that the Hardware has been handled in accordance with the Supplier's stipulations. Any remedy under this clause 30.6 shall be limited, at the option of the Supplier, to the replacement or repair of any Hardware which is proven to the Supplier's satisfaction to have been lost or damaged in transit.
- 30.7 On confirmation of a Defect by the Supplier, the Supplier shall, at its option and expense, either repair or replace the part or parts of the Hardware which contain the Defect (the **Defective Parts**) or, where this is not possible or practicable, refund the portion of the Hardware Fees paid in relation to the Defective Parts. The Supplier shall have no further liability in respect of the Defective Parts and no other remedy shall be available to the Customer.
- 30.8 The Customer shall be deemed to have accepted the Hardware on the earlier of the following:
- 30.8.1 more than 7 days have passed since the Hardware Delivery Date and the Customer has not made any notification to the Supplier in accordance with clause 30.6 or such notification, if made, is not justified; or
  - 30.8.2 the Customer uses the Hardware in the course of its business, (the **Acceptance Date**).

### 31 Title and Risk

- 31.1 Title to the Hardware shall not pass to the Customer until the Hardware Fees and any other outstanding sums due under this Agreement have been paid by the Customer in full and cleared funds.
- 31.2 Risk in the Hardware shall pass to the Customer on delivery of the Hardware to the Site(s).

### 32 Fees

- 32.1 The Customer shall pay the Hardware Fees to the Supplier in accordance with the Service Agreement Contract, Quotation, Sales Order Acknowledgement, Schedule or Contract Summary or any other document which may relate to the supply of a service or product and clause 6.

### 33 Supplier's warranties

- 33.1 the Supplier warrants to the Customer that the Hardware is of satisfactory quality and free from defects of workmanship and materials for the Hardware Warranty Period. The Supplier undertakes (subject to the remainder of this clause 33) at its option, to repair or replace the Hardware (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within the Hardware Warranty Period.
- 33.2 The Supplier shall not in any circumstances be liable for a breach of the warranty contained in clause 33.1 unless:
- 33.2.1 the Customer gives written notice of the defect to the Supplier within the Hardware Warranty Period; and

- 33.2.2 after receiving the notice, the Supplier is given a reasonable opportunity of examining the Hardware and the Customer (if asked to do so by the Supplier) returns the Hardware to the Supplier's place of business, in accordance with the procedure set out in clause 33.5, for examination to take place there.
- 33.3 The Supplier shall not in any circumstances be liable for a breach of the warranty in clause 33.1 if:
- 33.3.1 the Customer makes any subsequent use of the Hardware in respect of which it has given written notice under clause 33.2.1; or
- 33.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Hardware or (if there are none) good trade practice; or
- 33.3.3 the Customer alters or repairs the relevant Hardware without the prior written consent of the Supplier; or
- 33.3.4 the Hardware Defect is caused by improper use of the Hardware or outside its normal application.
- 33.4 As far as it is able the Supplier will pass onto the Customer the benefit of any warranties given by any third party manufacturer of the Hardware.
- 33.5 The following process shall be followed by both parties in relation to the return of Hardware to the Supplier:
- 33.5.1 if the Supplier decides that the Hardware should be returned to the Supplier, the Supplier will provide the Customer with a request number. The request number should be included on any further correspondence and noted on the outside of the packaging of the Hardware being returned.
- 33.5.2 the Customer shall ensure that the Hardware being returned is securely packaged, sufficiently to withstand robust courier transportation, and, where possible, will return the Hardware in its original packaging.
- 33.5.3 the Customer shall return the Hardware to:
- Microtill Limited**  
**The Strachan Studios**  
**Tabors Hill**  
**Great Baddow**  
**Chelmsford, Essex**  
**CM2 7BP**
- (or such other address as is notified to it in writing by the Supplier from time to time) ensuring that a return address is enclosed.
- 33.6 The Supplier shall refund to the Customer the reasonable return costs incurred by the Customer in returning the Hardware save where the Hardware Defect is as a result of one or more of the circumstances listed in clause 33.3.

## Section 5 Consultancy Services

### 34 Consultancy Services

- 34.1 On the terms and conditions set out in this Agreement, the Supplier agrees to:
- 34.1.1 install the Hardware and the Software at the Site(s);
- 34.1.2 integrate the Hardware and Software to form the System;
- 34.1.3 provide the System Ready for Service; and
- 34.1.4 if requested by the Customer, and accepted by the Supplier:
- (a) provide training at the rates provided for in the Contract Summary; and
- (b) make available to the Customer suitably qualified personnel to carry out additional tasks on a consultancy basis at the rates provided for in the Contract Summary.

### 35 Consultancy Warranties

- 35.1 The Supplier warrants that the Consultancy Services will be provided with reasonable skill and care.
- 35.2 The above warranty is, to the extent permitted by law, in lieu of all other express or implied warranties, terms or conditions.

### 36 Consultancy Fees

- 36.1 The Customer shall pay to the Supplier the Consultancy Fees in accordance with the Quote, Schedule or Contract Summary and clause 28.
- 36.2 Unless otherwise agreed in the Quote, Schedule or Contract Summary, the Consultancy Fees are exclusive of:
- 36.2.1 reasonable travel and accommodation expenses required for the Supplier to attend at the relevant Site(s); and
- 36.2.2 all reasonable expenses of the Supplier in connection with the provision of the Consultancy Services (including cost of materials and third party services), which shall be payable by the Customer in addition to the Consultancy Fees.
- 36.3 Any Consultancy Services provided outside of normal Service Hours will be subject to additional charges over and above the Consultancy Fees as the Supplier may, from time to time, notify the Customer.

### 37 Training Charge

- 37.1 The Supplier will undertake the Training to the Customer in consideration of the payment of the Training Fees.
- 37.2 Any additional training required by the Customer shall be provided by the Supplier at the Supplier's standard rates then in force.
- 37.3 Training shall be carried out at the Customers Site(s), By Remote Training or whichever form is agreed between Customer and Supplier.