TERMS AND CONDITIONS – SERVICES AND CONSULTANCY

M.A.C. Solutions (UK) Limited (company number 03762835) ("**Company**") and the customer named in an Order Acknowledgement ("**Client**") acknowledge and agree that, by the Company sending an Order Acknowledgement to the Client, a contract for the Company to supply Services is made between them upon (a) these terms and conditions; (b) any additional terms and conditions set out in such Order Acknowledgement; and (c) the terms of any Service Level Document (collectively an "Agreement") to the exclusion of all other terms and conditions.

No terms or conditions endorsed upon, delivered with or contained in any document or other communication (electronic or otherwise) supplied or sent by the Client relating to an Agreement shall form part of such Agreement and the Client waives any right which it otherwise might have to rely on such other terms or conditions. No order or other offer made by the Client for services shall be deemed accepted by the Company until an Order Acknowledgement issued by the Company or (if earlier) provision of such services is undertaken by the Company.

1. TERM

1.1 An Agreement shall commence on the Commencement Date and remain in full force and effect for the Term unless terminated in accordance with its terms.

2. PAYMENT & INVOICING

2.1 Save where otherwise provided in these terms and conditions, the Client will pay to the Company the Fees and Expenses within thirty (30) days of receipt of an invoice for the same valid for Value Added Tax purposes.

2.2 Unless otherwise stated in an Order Acknowledgment overtime working is not included as standard in the Fees. Should the Company agree to work beyond Business Hours it reserves the right to charge the Client additional amounts (on a time and materials basis) and Expenses at its then current uplifted overtime rates.

2.3 The Company may increase the Fees payable in respect of Services at its sole discretion with effect from the first and each subsequent anniversary of an Agreement (including any Fees for unused Services ordered in the prior Contract Year).

2.4 All payments by the Client in respect of the Fees and Expenses shall be made in full and cleared funds to a bank account nominated in writing by the Company without any deduction or withholding other than as required by Applicable Law. The Client shall not be entitled to assert any credit, set-offs or counterclaim against the Company in order to justify withholding payment of any such amount in whole or in part.

2.5 Without prejudice to any other right or remedy that it may have, if the Client fails to pay the Company on the due date, the Company may suspend all Services until payment has been made in full.

2.6 Time for payment shall be of the essence of an Agreement. In the event of late payment, the Company may at its sole discretion charge the Client daily interest pursuant to the Late Payment of Commercial Debts (Interest) Act 1998 from time to time for the period beginning on the date on which payment is due and ending on the date on which payment is made.

2.7 The Company shall be entitled to withhold performance of any services under an Agreement if the Client fails to pay any amount to the Company when due under an Agreement or a Related Agreement. This provision shall apply notwithstanding any provision to the contrary in an Agreement or a Related Agreement, and without prejudice to any other remedy available to the Company.

2.8 If the Client receives an invoice from the Company which it reasonably believes specifies Fees and/or Expenses which are (in whole or in part) not valid and properly due ("**Disputed Charge**"), Client shall notify the Company in writing within ten (10) Business Days of receipt of the invoice, of the nature of the existence of the Disputed Charge and the parties shall promptly commence to resolve such dispute. If no such notice is received by the Company within such period the relevant invoice shall be deemed correct and payable in accordance with the foregoing provisions of this clause 2. Client shall pay the Company any part of the Fees and/or Expenses (as applicable) under the relevant invoice which is/are not a Disputed Charge, in accordance with the foregoing provisions of this clause 2.

2.9 To the extent that the Company provides Services:

   (a) in circumstances where:

      (i) it is not required to do so under an Agreement; or

      (ii) a delay contemplated by clause 9 has occurred; or

   (b) at the request of the Client but which the Company subsequently determines are unnecessary;

   (c) the Company shall be entitled to charge the Client additional Fees (on a time and materials basis) at its then current rates and Expenses.

3. GENERAL OBLIGATIONS

3.1 Each of the parties warrants and undertakes that:

   (a) in performing its obligations under an Agreement in respect of the Services, it shall:

      (i) use reasonable skill and care; and

      (ii) provide the other party with such reasonable information (including, in the case of the Client only, the Client Data) and assistance as the other party shall reasonably request;

   (b) it has, and shall continue to have for the duration of an Agreement and for such reasonable time after the expiry or termination of an Agreement as is necessary for the proper performance of its obligations under an Agreement, full capacity, power and authority to enter into and to perform an Agreement; and

   (c) it is and shall continue to be duly incorporated, validly existing and in good standing under the laws of jurisdiction of its incorporation.

3.2 The Client warrants and undertakes that:

   (a) no act or omission of the Company in accordance with an Agreement, or any instructions of the Client provided pursuant to an Agreement, will result in the Company failing to comply with Applicable Law;

   (b) any information (including without limitation any Client Data) which it has provided or shall provide to the Company in connection with the subject matter of an Agreement (whether such provision occurs before or after the Commencement Date) is materially complete and accurate, and it shall immediately notify the Company if there is any material inaccuracy or change in any such information so provided;

(c) it shall allow the Company and its permitted agents and sub-contractors to have full, safe and uninterrupted access (including remote access) to: (i) the Client Architecture and any consumables, data and other systems, (ii) any of the Client's employees and agents (iii) any documentation in the Client's possession and (iv) the Client Sites (upon reasonable notice from the Company), in each case for such time and from time to time as is necessary for the Company to perform its rights and obligations herein or to allow the Company to investigate any suspected breach of an End User Licence Agreement; and

(d) it will provide:

    (i) a reasonably safe working environment for any person authorised by the Company to attend the Client Sites; and

    (ii) without prejudice to sub-clause (i) immediately above, furnish such safety and other equipment to such person as is reasonably required given the nature of the Client Sites and the work being undertaken, to ensure a reasonably safe working environment for that person, or pay the reasonable costs incurred by the Company in furnishing the same (which shall be charged as Expenses).

3.3 Where the Services are to be performed at any of the Client Sites, the Client shall provide adequate working space and office facilities (including parking). Where remote access is required by the Company, the Client shall facilitate such remote access by promptly installing and running any remote access tools reasonably required and provided by the Company.

3.4 If, during the Term, the Company receives written notice from the Client of any breach by the Company of the undertaking and warranty contained in Clause 3.1(a)(i) the Company shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate the applicable Agreement immediately on written notice to the Client and repay to the Client all sums which the Client has paid to the Company under an Agreement during the calendar year in which the termination occurs, less a charge for the Services performed up to the date of termination. This clause sets out the Client's sole remedy and the Company's entire liability for breach of Clause 3.1(a)(i).

3.5 Except as otherwise stated in an Order Acknowledgment or Service Level Document, no representation or warranty is given by the Company that all faults relating to the Software and/or Hardware will be fixed, or will be fixed within a specified period of time.

3.6 ALL OTHER CONDITIONS, WARRANTIES OR OTHER TERMS WHICH MIGHT HAVE EFFECT BETWEEN THE PARTIES OR BE IMPLIED OR INCORPORATED INTO AN AGREEMENT OR ANY COLLATERAL CONTRACT, WHETHER BY STATUTE, COMMON LAW OR OTHERWISE, ARE HEREBY EXCLUDED, INCLUDING THE IMPLIED CONDITIONS, WARRANTIES OR OTHER TERMS AS TO SATISFACTORY QUALITY, FITNESS FOR PURPOSE AND THE USE OF REASONABLE SKILL AND CARE.

4. SERVICES

Obligations of the Company and the Client

4.1 The Company shall:

(a) supply the Services (including the Deliverables (if any)) in accordance with the terms set out in an Order Acknowledgment; and

(b) with effect from the Service Level Start Date, use reasonable endeavours to supply the Services in a manner that meets or exceed the service levels set out in each Service Level Document.

4.2 Unless otherwise specified in an Order Acknowledgment, the Client:

(a) shall perform the Client Obligations in accordance with such timescales as the parties shall agree from time to time; and

(b) shall use adequate numbers of individuals who are appropriately experienced, qualified and trained and who have the requisite knowledge and skills to perform its obligations under an Agreement.

Support and Maintenance Services

4.3 Where the Company is to perform Support Services and/or Maintenance Services (as applicable), the Client acknowledges and agrees that:

(a) the Client is responsible for:

    (i) the provision, operation and maintenance of the Client Architecture, and in particular shall ensure that it:

        (1) meets or exceeds each Minimum Architecture Specification;

        (2) is fully operational as and when required in order for the Company to perform the Services;

    (ii) all communication links (together with any related cabling) and data transfer between (i) the Hardware and Software and (ii) any other devices or software (whether networked or otherwise) comprised in the Client Architecture;

    (iii) the maintenance of such environmental conditions as are necessary for the proper functioning of the Hardware and Software;

    (iv) making all necessary backup and security copies of the Software (to the extent consistent with any End User Licence Agreement) and Client Data, and of such other software and data as is comprised in the Client Architecture;

    (v) (save where the Company is to undertake the same pursuant to a Related Agreement) ensuring that the staff of the Client are trained in the proper use and operation of the Software and Hardware; and

(b) the Client shall:

    (i) (save where the Company is to undertake the same pursuant to a Service) promptly implement all new versions, releases, updates, upgrades, patches, fixes or other software programs or code supplied to it in respect of the Software;

    (ii) fully comply with and implement the instructions and procedures of the Company for remote diagnostics of which it is notified from time to time; and

    (iii) not:

        (1) request, permit or authorise anyone other than the Company to provide any support or maintenance services in respect of Hardware or Software;

        (2) modify, repair or attempt to modify or repair the Hardware or Software itself; or

        (3) not disconnect any individual Hardware device from any other individual Hardware or other device, cabling or communication link, without the prior consent of the Company; and

    (iv) notify the Company should it become aware of an actual or suspected breach of an End User Licence Agreement during the Term.

4.4 The Company shall not be required to provide Support Services and/or Maintenance Services (as applicable):

(a) where any failure, defect or malfunction of the relevant Hardware or Software is directly or indirectly caused by:

    (i)   any (1) modification, adjustment, or repair to, or (2) neglect, misuse or abuse of or wilful or accidental damage to, in each case such Software or Hardware by any party other than the Company and its permitted agents;

    (ii)   any damage to, failure, fluctuation, intermittent operation, or inadequacy of (1) electrical power or related connections, (2) bandwidth or communication connections or (3) air conditioning;

    (iii)   environmental factors including excessive dust, humidity, heat, cold or moisture;

    (iv)   any Force Majeure Event;

    (v)   the use of information technology hardware or software other than that provided by the Company under an Agreement;

    (vi)   any relocation or transportation of such Hardware or Software save where (1) the Company is aware of and has consented to the same in writing, and (2) the Client has complied in full with any directions of the Company in relation to the same;

    (vii)   the Client failing to:

        (1)   comply with all supporting documents supplied to an end user as standard by the relevant software publisher and/or manufacturer or with any supplementary instructions provided by the Company or the relevant software publisher or manufacturer; or

        (2)   maintain good housekeeping practices, including keeping the hardware clean and replenishing all consumables (if any) as reasonably required;

        (3)   (save where the Company is to undertake the same pursuant to a Service) promptly implement all new versions, releases, updates, upgrades, patches, fixes or other software programs or code supplied to it by the Company in respect of the Software;

    (viii) the Client being breach of an Agreement;

    (ix)   the Client's negligence; or

    (x)   operator error:

    (xi)   in respect of any Client Data; or

    (xii)   in respect of Hardware only, exterior casing or parts, save where the functionality of the Hardware is affected by damage to the same.

5. AGENTS & SUB-CONTRACTORS

5.1   The Company may use third party agents and sub-contractors in the course of providing some or all of the Services. The Company acknowledges that the Client may use third party agents, professional advisers and consultants in the course of its business. Each party shall co-operate with such third parties in accordance with any reasonable written instructions provided by the other party from time to time.

5.2   Notwithstanding clause 5.1, the Company shall be and remain liable to the Client for compliance with its obligations under an Agreement.

6. COMPLIANCE & DATA PROTECTION

6.1   The parties acknowledge and agree that for the purposes of an Agreement the Client is the Controller and the Company is the Processor in respect of any Personal Data Processed pursuant to the Agreement.

6.2   The Client shall comply with its obligations under Data Protection Laws in respect of all Personal Data Processed pursuant to an Agreement.

6.3   The Client warrants and represents that:

    (a)   all Personal Data which it transmits to the Company is accurate and up to date and transmitted in accordance with Applicable Law, including Data Protection Laws; and

    (b)   it has and shall maintain throughout the term of an Agreement all appropriate, lawful bases to use such Personal Data in accordance with an Agreement, including ensuring the provision of appropriate Privacy Notices to any relevant Data Subjects covering the Processing of such Personal Data by the Company pursuant to an Agreement.

6.4   The Company shall only Process Personal Data for the purpose of performing the Data Processing Services on reasonable written instructions that the Client may give to the Company from time to time concerning such Processing. The Client shall ensure that any such instructions comply with all Applicable Law and that the Data Processing Services as set out in Schedule 1 are accurate and up to date. The Company shall notify the Client if, in the Company's opinion, any instruction given by or on behalf of the Client breaches Data Protection Laws and may refuse to comply with any such instruction.

6.5   Notwithstanding any provision to the contrary within this clause 6, the Company may take any steps that the Company (acting reasonably and in good faith) determines are necessary in order for it to comply with Data Protection Laws. This shall include without limitation the Company having the right to notify any relevant Supervisory Authority of any circumstance that has arisen in relation to the Processing of Personal Data under an Agreement to the extent that the Company (acting reasonably and in good faith) believes that this is necessary in order to comply with Data Protection Laws.

6.6   The Company shall maintain appropriate technical and organisational security measures in accordance with Data Protection Laws.

6.7   Each party shall provide the other with such information as such other party reasonably requests from time to time to enable such other party to satisfy itself that the party providing the information is complying with its obligations under this clause 6.

6.8   Each party, at its own expense, may inspect the other party's compliance with this clause 6. The Company reserves the right to reasonably limit the scope of such audits or inspections, and require that such inspections:

    (a)   must be preceded by advance written request of no less than thirty (30) Business Days prior to the anticipated start date and may occur no more than once in any twelve (12) month period, barring exceptional circumstances, such as the Client's reasonable concern of an actual security, incident in which case an inspection may be performed in response to such circumstance;

    (b)   must take place at a time mutually agreed by the Company and the Client;

    (c)   if to be conducted by a third party, the third party must be:

        (i)   approved in writing by the Company and the Client (such approval not to be unreasonably withheld or delayed);

        (ii)   subject to appropriate confidentiality and non-disclosure provisions; and

        (iii)   must not unreasonably disrupt the Company's normal business or IT operations.

6.9   The Company may cause or allow Personal Data to be transferred to and/or otherwise Processed in a Non-adequate Country, provided that such transfer or Processing complies with Data Protection Laws.

6.10 The Client acknowledges and agrees that the Company shall be entitled to use sub-processors to Process Personal Data pursuant to the Agreement. Such sub-processors shall be subject to contractual obligations which are substantially similar to the terms of this clause 6and the Company shall be liable for all acts and omissions of such sub-processors in relation to the Processing of such Personal Data. If the Company wishes to appoint additional or replacement sub-processors during the term of an Agreement, it shall inform the Client of such proposed appointment in advance and give the Client the opportunity to object to the appointment. The Company shall take into account any objections communicated to the Company by the Client when deciding whether to make the appointment, but the Company shall not be bound by such objections. Where the Company are not reasonably able to appoint an alternative sub-processor, the Company may terminate the Agreement within thirty (30) days of receiving an objection from the Client.

6.11 The Company shall, at the Client's expense, provide reasonable assistance to the Client for the fulfilment of the Client's obligation to respond to requests relating to Data Subjects' rights under Data Protection Laws.

6.12 The Company shall notify the Client without undue delay if the Company becomes aware of an actual Personal Data Breach involving the Personal Data of the Client.

6.13 The Company shall, at the Client's expense, provide such assistance, as reasonably requested by the Client from time to time, in undertaking any data protection impact assessments and/or consultation with a Supervisory Authority that the Client may reasonably undertake pursuant to Data Protection Laws.

6.14 The Company shall ensure that its personnel, to the extent that they are involved in the Processing of Personal Data in connection with an Agreement shall be subject to appropriate binding obligations to protect the confidentiality of such Personal Data.

6.15 The Company's obligations under this clause 6exclude any Personal Data relating to its personnel engaged in the performance of the Company's obligations under an Agreement generated by the Company solely for the purposes of its internal human resources procedures and records.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 Any Intellectual Property Rights in pre-existing materials provided by the Company to the Client in the course of the Services shall be and remain the property of the Company. The Company hereby grants to the Client a revocable, non-exclusive licence to use such materials, and take a reasonable number of copies of the same, in each case for its own internal business purposes during the Term.

7.2 Any Intellectual Property Rights in pre-existing materials provided by the Client to the Company in the course of the Services shall be and remain the property of the Client. The Client hereby grants to the Company a revocable, non-exclusive licence to use such materials, and take a reasonable number of copies of the same, in each case as reasonably necessary in order for the Company to perform the Services during the Term.

7.3 Any Intellectual Property Rights in Deliverables shall be and remain the property of the Company. The Client hereby assigns to the Company with full title guarantee and free from all liens, charges, encumbrances and third party rights, all present and future Intellectual Property Rights the Client has or may have (if any) in any Deliverables, with the intention that the same vest immediately upon coming into existence. The Client hereby waives any Moral Rights it may have in respect of such Intellectual Property Rights. The Company hereby grants to the Client a revocable, non-exclusive licence to use the Deliverables, and (where such Deliverables are in the form of documents) take a reasonable number of copies of the same, in each case for its own internal business purposes during the Term.

7.4 The Intellectual Property Rights in the Software and Hardware are, and shall remain, the property of the relevant software publisher identified in the applicable End User Licence Agreement, or manufacturer respectively.

7.5 The Client warrants that the Company's use of the Client Data and the Deliverables (to the extent that the Client would have Intellectual Property Rights in the same, but for the above assignment) as contemplated above, in each case will not be subject and give rise to any claim for infringement of any Intellectual Property Rights of any third parties.

7.6 The Client shall not remove, alter, cover or obfuscate any patent, copyright, trademark, tradename, or other proprietary notices, labels or marks of the Company or any third party software publisher on the Software Media or Hardware or any related documentation, and shall reproduce such notices, labels and marks on any permitted copies of the same that the Client makes.

7.7 The Client shall promptly notify the Company of any unauthorised use, disclosure, reproduction, or distribution of the Software or any related documentation which comes to its attention, or which its reasonably suspects.

7.8 Neither party will make use of any logo, trademarks or trade name or Intellectual Property Rights of the other (save those expressly licensed herein) without the other's prior written consent. For the avoidance of doubt, the Client shall not use any trade name or logo or trademark associated with any Software, except to the extent expressly permitted by the applicable End User Licence Agreement.

8. TERMINATION

General rights of termination for cause

8.1 Either party may terminate an Agreement at any time:

(a) immediately upon giving written notice to the other party to such effect where:

    (i) the other party commits a material breach of any provision of an Agreement which is capable of remedy and fails to remedy such breach within thirty (30) days of receipt of a notice from the innocent party specifying the breach;

    (ii) the other party commits a material breach of any provision of an Agreement which is not capable of remedy; or

    (iii) an Act of Insolvency occurs with respect to the other party; or

(b) on giving five (5) Business Days' notice in writing to such effect where a delay or failure pursuant to a Force Majeure Event persists for more than a continuous period of three (3) months.

8.2 Each party shall notify the other in writing if any Act of Insolvency occurs in relation to itself.

Specific rights of termination for cause

8.3 The Company may terminate an Agreement immediately upon providing written notice to such effect to the Client where:

(a) the Client fails to make payment of any amount when due under an Agreement or a Related Agreement, and the same is not remedied within thirty (30) days of the due date;

(b) the Client commits a material breach of any provision of a Related Agreement which is capable of remedy and fails to remedy such breach within thirty (30) days of receipt of a notice from the innocent party specifying the breach, or commits a material breach of any provision of a Related Agreement which is not capable of remedy; or

(c)   a Related Agreement is terminated in accordance with its terms;

(d)   any End User Licence Agreement is terminated in accordance with its terms by the Client or any relevant third party; or

(e)   the Client fails to execute or confirm acceptance in the manner prescribed of, or otherwise indicates to the Company that it does not or shall not agree to the terms of any relevant End User Licence Agreement; or

(f)   it becomes aware of any breach of an End User Licence Agreement by the Client and may immediately notify the relevant third party software publisher of such breach (and of any related information in the Company's possession) notwithstanding the terms of clause 11.

Consequences of expiry and/or termination

8.4   Upon termination or expiry of an Agreement other than by the Client pursuant to clause 8.1(a): the Client shall immediately pay to the Company all Fees and Expenses previously invoiced by the Company which remain outstanding (if any) save for Disputed Charges; and

(b)   the Client shall pay to the Company within ten (10) Business Days of receipt of an invoice for the same valid for VAT purposes, the balance of all Fees (calculated on a pro-rata basis where such Fees are fixed and on a time and materials basis in all other cases) and Expenses accrued in respect of the Company's performance of the Services to the relevant date of termination.

8.5   The termination or expiry of an Agreement by either party for any reason shall not prejudice any rights or obligations existing or that may have accrued prior to the date of such expiry or termination.

8.6   On the expiry or earlier termination of an Agreement in accordance with its terms, either party may require the other party to return or destroy or otherwise render unusable to itself or any third party all Confidential Information, Deliverables, materials, documents, data and information (regardless of the format in which such other party holds the same) that relates to or is the property of the party making such request, and to provide a certificate in agreed form signed by an officer or senior manager, certifying that the same has been completed. For the avoidance of doubt, either party is entitled to retain a copy of any Personal Data:

(a)   where necessary to comply with any continuing obligations that either party may have following termination or expiry of an Agreement; or

(b)   which Data Protection Laws requires to be stored.

8.7   Notwithstanding the termination of an Agreement, all the provisions of an Agreement which are expressed or intended to have effect on, or at any time after, such termination shall survive such termination, and the parties shall perform and observe their respective obligations and discharge their respective liabilities under all such provisions of an Agreement.

8.8   Without prejudice to clause 8.7, this clause and clauses 2.4, 2.6, 2.7, 3.1(b) and 3.1(c), 3.2, 5.2, 6, 7, 8.4-8.8 (inclusive) and 9-19 (inclusive), shall survive termination of an Agreement.

9.   DELAY & FORCE MAJEURE

9.1   The Client acknowledges and agrees that the Company's ability to perform the Services in a timely manner is contingent upon timely completion by the Client of each Client Obligation.

9.2   The Client shall immediately advise the Company as soon as it becomes aware of any developments that may delay or otherwise render it unable to perform a Client Obligation by any applicable target date agreed between the parties.

9.3   If the Company's performance of any of its obligations under an Agreement is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (including a Client Obligation) (**"Client Default"**):

(a)   without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays the Company's performance of any of its obligations;

(b)   the Company shall not be liable for any costs or Losses sustained or incurred by the Client arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 9.3; and

(c)   the Client shall reimburse the Company on written demand for any costs or Losses sustained or incurred by the Company arising directly or indirectly from the Client Default.

9.4   The Client will be responsible for, and assumes the risk of delays resulting from, any issues or problems concerning the Client Data.

9.5   Any timescales agreed with the Client for performance of the Services shall be adjusted in writing in the event of: (a) any delay caused by Client's failure or inability to perform a Client Obligation, save to the extent that the same is a direct result of the Company not fulfilling an obligation; or (b) any delay due to Client's request for changes to the Services that are made after the same has been agreed, or (c) any delay contemplated by clause 9.3. For the avoidance of doubt, no such delay will relieve or suspend the Client's obligation to pay the Company under an Agreement.

9.6   Neither party will be liable for any delay in performing or its failure to perform its obligations under an Agreement if such delay or failure results from a Force Majeure Event. Such delay or failure shall not constitute a breach of an Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented.

9.7   Unless otherwise agreed in writing, with respect to the obligations of the Company under an Agreement:

(a)   any timescale agreed by the parties is an estimate only; and

(b)   time shall not be of the essence.

10.   LIABILITY & INDEMNITY

Scope of liability

10.1   References to liability in this clause 10 includes every kind of liability arising under or in connection with the Agreement including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

10.2   Nothing in this Agreement limits or excludes any liability for:

(a)   death or personal injury caused by negligence;

(b)   fraud or fraudulent misrepresentation;

(c)   breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or

(d)   any other liability that legally cannot be limited.

General provisions

10.3 Subject to clause 10.2 and 10.7, the Company's aggregate liability under an Agreement shall in no event exceed 100% of the total Fees paid and payable in the relevant Contract Year.

10.4 Subject to clause 10.2, the Company shall not be liable for any indirect or consequential Losses.

10.5 Subject to clause 10.2, the Company shall not be liable for Losses in respect of:

   (a) loss of or damage to or errors in data (including costs and expenses associated with its recovery and/or reconstruction);

   (b) loss of profits;

   (c) loss of contracts;

   (d) loss of business revenue;

   (e) loss of goodwill;

   (f) loss of anticipated savings; or

   (g) delays in the provision of access to the Software Service or Maintenance Services; or

   (h) loss arising from any claim made against the Client by any third party.

10.6 The Client acknowledges and agrees that it is its responsibility to insure itself against (a) indirect Losses, (b) the above categories of Loss, and (c) Losses in excess of the liability caps set out in this clause 10.

10.7 Subject to clause 10.2, where the Company attends a Client Site in the course of performing the Services, the Company's maximum liability for physical damage to the Client's tangible personal or real property resulting from the Company's negligence shall not exceed £5 million per event or series of events.

Indemnity

10.8 The Client shall indemnify, defend and hold harmless, the Company and its employees and agents and sub-contractors from any and all Losses arising from or in connection with:

   (a) any claim or any threatened claim, action, proceeding, demand or allegation that the use by the Company of the Client Data or Deliverables (to the extent that the Client would have Intellectual Property Rights in the same, but for the assignment in clause 7.3) in accordance with an Agreement infringes a third party's Intellectual Property Rights;

   (b) any breach by the Client of clause 6; and

   (c) any breach by the Client of an End User Licence Agreement;

Handling of claims

10.9 For any third party claims the Company receives falling within the scope of clause 10.8;

   (a) it shall, subject to clauses 10.9(b) to (d) (inclusive) give the Client conduct and control of all negotiations and litigation resulting from such claim or action and the Company shall, at the request and expense of the Client, afford to the Client all reasonable assistance for the purpose of contesting any such claim or action;

   (b) the Client shall consult regularly and fully with the Company in relation to the handling of such claim or action and shall give all due consideration and weight to the Company's recommendations. The Client shall keep the Company fully advised of the progress of such claim or action including by providing the Company with copies of all court and other legal documents relating to it;

   (c) the Client shall not settle any such claim or action without the Company's prior written consent such consent not to be unreasonably withheld or delayed; and

   (d) where the Client has care and conduct of a matter pursuant to this clause 10 it shall on request from the Company immediately provide the Company's with security for costs and damages for which the Company has a potential legal liability on terms acceptable to the Company (acting reasonably).

11. CONFIDENTIALITY

11.1 This clause 11, applies in respect of all Confidential Information disclosed by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") pursuant to an Agreement.

11.2 The Receiving Party shall use the Disclosing Party's Confidential Information solely for the purposes of performing its obligations and exercising its rights under an Agreement. Subject to clause 11.6, the Receiving Party shall not disclose any Confidential Information of the Disclosing Party to any third parties save to those employees, officers, permitted agents, subcontractors and professional advisers of the Receiving Party (the "**Representatives**") who are required to have the information in order for the Receiving Party to perform its obligations and exercise its rights under an Agreement. If the Receiving Party is required by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction to make any disclosure that is prohibited or otherwise constrained by an Agreement, the Receiving Party shall (where permitted to do so by law) provide the Disclosing Party with prompt written notice of such requirement prior to such disclosure so that the Disclosing Party may seek a protective order or other appropriate relief. Subject to the foregoing sentence, the Receiving Party may furnish that portion (and only that portion) of the Confidential Information that it is legally compelled or is otherwise legally required to be disclosed; provided, however, that the Receiving Party provides such assistance as the Disclosing Party may reasonably request in obtaining such order or other relief at the Disclosing Party's option and expense.

11.3 The Receiving Party shall use at least the same effort to prevent unauthorised use or disclosure of the Disclosing Party's Confidential Information as it uses to protect its own confidential information of a similar nature, but in no event less than a reasonable degree of care.

11.4 Each party's obligations under clauses 11.1and 11.2are of a unique character and each agrees that any breach may result in irreparable and continuing damage to the other party for which there may be no adequate remedy in damages. In the event of such a breach, the damaged party will be entitled to seek injunctive relief and/or a decree for specific performance and such further relief as may be proper.

11.5 Confidential Information shall not, however, include any information that: (a) was in the public domain prior to the time of disclosure by the Disclosing Party; (b) enters the public domain after disclosure by the Disclosing Party through no act or omission of the Receiving Party in breach of this clause 11; (c) was already in the possession of the Receiving Party on a non-confidential basis at the time of disclosure; (d) is obtained by the Receiving Party on a non-confidential basis from a third party who, to the Receiving Party's knowledge, is not bound by a confidentiality agreement with the

Disclosing Party or otherwise prohibited from disclosing the information to the Receiving Party; (e) is independently developed by the Receiving Party without use of or reference to other Confidential Information; or (f) the parties agree in writing is not confidential; or (g) is in the Company's possession that relates to a breach or suspected breach of an End User Licence Agreement.

11.6 A party may disclose the other party's Confidential Information to those of its Representatives referred to in clause 11.1, provided that:

(a)   it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and

(b)   at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause;

11.7 The provisions of this clause 11 shall survive for a period of five years from termination or expiry of an Agreement.

12. NOTICES & POINTS OF CONTACT

12.1 All notices in respect of an Agreement shall:

(a)   be communicated to the other party by email post or by hand; and

(b)   be valid if (a) marked for the attention of the persons, and delivered to the address(es) or email address(es) set out in an Order Acknowledgment or otherwise in accordance with such other directions as may be prescribed in writing by the receiving party from time to time; and

(c)   be deemed to be served:

(i)   in respect of notices delivered by post or by hand, if delivered during Business Hours on a Business Day, when so delivered; and if delivered outside Business Hours, at the start of Business Hours on the next Business Day; and

(ii)   in respect of notices delivered by email, at the time when in the ordinary course of the means of transmission it would first be received by the addressee, provided that, where such time does not fall within Business Hours on a Business Day, such notice shall be deemed served at the start of Business Hours on the next Business Day.

13. THIRD PARTY RIGHTS

13.1 No person who is not a party to an Agreement has any right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999.

14. DISPUTE RESOLUTION PROCEDURES

14.1 All disputes between the parties shall be referred to the parties' respective representatives for resolution. The respective representatives shall meet as soon as possible should a dispute arise (and in any event within fourteen (14) Business Days of the dispute being notified in writing by one party to the other) and shall negotiate in good faith and use all reasonable endeavours to resolve the dispute.

14.2 A party shall be entitled (by giving the other party notice in writing) to withdraw from the dispute resolution process set out in clause 14.1above and commence court proceedings relating to any dispute arising from an Agreement.

14.3 Save where otherwise required by Applicable Law, each party shall keep confidential all discussions and negotiations relating to any dispute unless and until the matter is referred for resolution by a court.

15. GOVERNING LAW AND JURISDICTION

15.1 An Agreement shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English courts.

16. COUNTERPARTS

16.1 An Agreement may be executed in any number of counterparts and by the parties on separate counterparts, but shall not be effective until each of the parties has executed at least one counterpart.

16.2 Each counterpart shall constitute an original agreement but all the counterparts together shall constitute one and the same instrument.

17. ENTIRE AGREEMENT

17.1 An Agreement and any appendix, schedule or annex to the same constitute the entire agreement and understanding of the parties and supersede any previous agreements between the parties relating to the same subject matter.

17.2 Each of the parties acknowledges and agrees that in entering into an Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to an Agreement or not) other than as expressly set out in an Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.

18. MISCELLANEOUS

18.1 If the Client or any of its Affiliates:

(a)   at any time during, or within six (6) months following the date of termination or expiry of, an Agreement;

(b)   at any time during, or within six (6) months following the date of termination or expiry of, the employment of any employee of the Company;

employs or enters into an agreement to receive consultancy services from any person who was formerly an employee of the Company that had been within the preceding 12 month period engaged in an Agreement, the Client shall pay to the Company such amount as is certified by the Company to equal 150% of the aggregate value of such person's current annual salary, potential annual bonus (if any), and benefits, assessed as at the date that he or she leaves the employment of the Company. The Client shall pay such amount to the Company within thirty (30) days of receipt of (i) an invoice for the same and (ii) the certificate referred to above.

18.2 All amounts to be paid or repaid by one party to the other under the terms of an Agreement shall be exclusive of Value Added Tax (unless otherwise stated), which shall be paid as necessary following receipt by such party of an invoice valid for Value Added Tax purposes.

18.3 The Client shall not novate, assign or otherwise transfer an Agreement except with the prior written consent of the Company.

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

18.5 Any failure by either party to enforce at any time and for any period any one or more of the terms of, or rights arising pursuant to, an Agreement shall not be a waiver of such terms or rights, or of the right at any time subsequently to enforce all the terms of, and rights arising under, an Agreement.

18.6 The invalidity or unenforceability of any term of, or any right arising pursuant to, an Agreement shall not in any way affect the remaining terms or rights.

18.7 Nothing in an Agreement (or any of the arrangements contemplated hereby) shall be deemed to create a partnership between the parties.

18.8 No variation or amendment to an Agreement, or any Order Acknowledgment or Service Level Document shall be effective unless made in writing and signed by both of the parties.

19. DEFINITIONS

19.1 In these terms and conditions, the following words and expressions shall have the following meanings unless the context otherwise requires:

"Act of Insolvency"	means in relation to either party: (a) the party passes a resolution for winding up (otherwise that for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; (b) becomes or declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; (c) the party passes a resolution for winding up (otherwise that for the purposes of a solvent amalgamation or reconstruction) or a court makes an order to that effect; (d) becomes or is declared insolvent or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; (e) (being a partnership or other unincorporated association) is dissolved or (being a natural person) dies; or (f) has a liquidator, receiver, administrator, administrative receiver, manager, trustee or similar officer appointed over any of its assets; (g) ceases or threatens to cease, to carry on business; (h) the appointment of a receiver, administrator, liquidator or trustee or analogous officer of such party over all or any material part of such party's property; (i) the convening of any meeting of its creditors for the purpose of considering a voluntary arrangement as referred to in Section 3 of the Insolvency Act 1986 (or any analogous proceeding); or (j) the levying of distress or execution upon its property;
"Adequacy Decision"	a finding under Article 25(2) of the Data Protection Directive that a country or territory ensures an adequate level of protection within the meaning of Article 25 of the Data Protection Directive or (as applicable) a finding under Article 45(1) of the General Data Protection Regulation that a country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection within the meaning of Article 45 of the General Data Protection Regulation or UK GDPR (as applicable);
"Affiliate"	means in relation to either party, any person or any entity at any time:
	(a) that exercises, or is able to exercise, or is entitled to acquire, direct or indirect control over the affairs of that party; or
	(b) whose affairs are or are capable of being controlled directly or indirectly by that party; or
	(c) whose affairs are or are capable of being controlled directly or indirectly by the same person who, or entity which, exercises, or is able to exercise, or is entitled to acquire, direct or indirect control over the affairs of that party;
"Applicable Law"	means any applicable law, enactment, order, regulation and mandatory or generally recognised industry code of conduct under any laws relating or applicable to the provision or receipt of the Services or the performance of the terms of an Agreement
"Business Day"	means Monday to Friday each week, excluding (i) designated bank holidays in the United Kingdom; and (ii) 27 December to 31 December (inclusive);
"Business Hours"	means a total of 7.5 hours per Business Day;
"Client Architecture"	means the information technology hardware, cabling, communication and software (including operating system) architecture of the Client
"Client Data"	means documents, information, items and materials (including without limitation Personal Data) provided by the Client to the Company including information regarding the Client's business, systems and process;
"Client Obligation"	means an activity or undertaking designated to the Client pursuant to an Agreement;
"Client Site"	means premises of the Client within the Territory specified in an Order Acknowledgment;
"Commencement Date"	means such date as is specified in an Order Acknowledgment;
"Confidential Information"	means any information disclosed by a party by any means (including orally, in writing or as code) that relates to its business, assets, affairs, customers, clients, suppliers, plans, intentions, market opportunities or the subject matter of an Agreement, including the existence and content of any such Agreement, (in respect of the Client only) the Client Data, or which is otherwise reasonably expected to be treated in a confidential manner given the circumstances of disclosure, whether or not the same is marked to indicate its confidential or proprietary nature;
"Contract Year"	means the period of 12 (twelve) calendar months from the commencement of an Order Acknowledgement and each subsequent 12 (twelve) month period thereafter;
"Controller"	has the meaning given in UK GDPR;
"Data Processing Services"	means the services set out at Schedule 1;
"Data Protection Directive"	means Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
"Data Protection Laws"	means the Data Protection Act 2018, UK GDPR, GDPR and any relevant law implemented as a result of GDPR;
"Data Subject"	has the meaning given in the UK GDPR;
"Deliverables"	means any documentation, software, know-how or other works created or supplied by the Company in the

	course of providing the Services, as set out in an Order Acknowledgment;
"End User Licence Agreement"	means in respect of an item of Software, the relevant end user software licence agreement for such software;
"Expenses"	means such reasonable expenses as are incurred by the Company in accordance with any expenses policy agreed with the Client from time to time;
"Fees"	means the fees set out in an Order Acknowledgment;
"**Force Majeure Event**"	means any event affecting the performance of any provision of an Agreement arising from or attributable to acts, events, omissions or accidents which are beyond the reasonable control of a party, including, without limitation, abnormally inclement weather, flood, lightning, storm, fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, failure or shortage of power supplies, failure or shortage of communication links, internet or web-server errors or unavailability, war, military operations, riot, crowd disorder, terrorist action, civil commotion and any legislation, regulation, ruling or omissions (including failure to grant any necessary permissions) of any relevant government, court or any competent national authority and similar events (but excluding strikes, lock-outs, and industrial action/disputes) suffered by a party;
"General Data Protection Regulation" or "GDPR"	means Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;
"Hardware"	means the information technology hardware and equipment specified in an Order Acknowledgment (if any) in respect of which Services are to be performed, and all supporting documents intended for supply to an end user as standard by the relevant manufacturer;
"Intellectual Property Rights"	means (including, without limitation), any patents, designs, trademarks, service marks, (whether registrable or otherwise), applications for any of the foregoing, trade or business names, copyright, database rights, domain names, moral rights, inventions whether or not capable of protection by patent or registration, rights in commercial information and technical information, including know-how, research and development data specifications and drawings and other intellectual property rights, whether registrable or not in any country and all rights or forms of protection having equivalent or similar effect anywhere in the world;
"Losses"	means all losses, liabilities, costs, expenses, damages and claims including fines levied by any relevant regulator whether arising in contract, tort (including negligence) or otherwise;
"Maintenance Services"	means any part of the Services involving the maintenance of Software and/or Hardware;
"Minimum Architecture Specification"	means in respect of an item of Software or Hardware, the standard minimum specification of information technology architecture necessary for the same to run and function effectively, as published by the relevant software publisher or manufacturer respectively;
"Moral Rights"	means all rights described in Part 1, Chapter IV of the Copyright Designs and Patents Act 1988 and any similar rights of authors anywhere in the world;
"Non-adequate Country"	means a country or territory which is outside the European Economic Area and in respect of which there has not been an Adequacy Decision. For the purposes of an Agreement, "Non-adequate Country" includes the United States of America;
"Order Acknowledgment"	means an order acknowledgment supplied by the Company to the Client setting out the Services to be supplied by the Company to the Client on these terms and conditions;
"Personal Data"	has the meaning given in the UK GDPR;
"Personal Data Breach"	has the meaning given in the UK GDPR;
"Portable Copy"	a copy of Personal Data in a structured, commonly used and machine-readable format;
"Privacy Notice"	the information notice required to be supplied to Data Subjects under Data Protection Laws detailing the relevant Processing and provided at a time, in a form and at all times containing content, which is compliant with the requirements of Data Protection Law and relevant guidance issued by the Article 29 Working Party/European Data Protection Board and/or the Information Commissioner's Office;
"Processing"	has the meaning given in the UK GDPR and "Process" and "Processed" have corresponding meanings;
"Processor"	has the meaning given in the UK GDPR;
"Related Agreement"	means any other agreement the Company has with the Client from time to time;
"**Services**"	means the services set out in an Order Acknowledgment;
"Service Level Document"	means in respect of any Service, any document setting out the Company's standard service levels (together with related terms) for that Service, as set out or referred to in an Order Acknowledgment;
"Service Level Start Date"	means the date specified as such in a Service Level Document;
"Software"	means the proprietary software of the Company and other third party software publishers specified in an Order Acknowledgement in respect of which the Company is to perform Services, and all supporting documents intended for supply to an end user as standard by the relevant software publisher;
"Software Media"	means the media on which Software is loaded;
"Supervisory Authority"	has the meaning given in the UK GDPR;
"Support Services"	means any part of the Services comprising the provision of support in respect of Software and/or Hardware in response to issues raised by the Client, including without limitation, by telephone;

"Term"	means such period of time as is specified in an Order Acknowledgment;
"Territory"	means the territory specified in an Order Acknowledgment;
"UK GDPR"	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
"Value Added Tax"	means the value added tax chargeable from time to time.

19.2 In these terms and conditions, save where the context requires otherwise:

(a) clause headings are inserted for ease of reference and shall not affect its interpretation;

(b) any reference to a clause or sub-clause shall mean a clause or sub-clause terms and conditions;

(c) words suggesting any gender include any other gender;

(d) words denoting a singular number only shall include the plural and vice versa; references to either party shall be deemed to include its employees, officers, authorised agents, duly appointed sub-contractors, and such successors and assignees as are permitted by the terms of these terms and conditions;

(e) any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, industrial and provident societies, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);

(f) references to any statue or statutory instrument or government regulation shall be deemed to include any modification, amendment, extension or re-enactment thereof from time to time; and

(g) all usage of "include" or "including" or derivations thereof shall not be construed as words of limitation;

(h) any reference to a party to these terms and conditions, shall include that party's permitted agents, sub-contractors, successors and assignees; and

(i) in the event of any conflict between (a) an Order Acknowledgment or Service Level Document and these terms and conditions, the Order Acknowledgment or Service Level Document shall prevail; (b) any applicable End User Licence Agreement and these terms and conditions, the relevant End User Licence Agreement shall prevail, (c) any Deliverable or other document forming part of an Agreement and these terms and conditions these terms and conditions shall prevail.

Schedule 1

The Data Processing Services

1.   The subject-matter and duration of the processing;

the Company provides the industrial IT solutions to the Client as set out in the Order Acknowledgement. Processing of Personal Data shall only be carried out to the extent necessary to fulfil the Order Acknowledgement.

Except as set out under clause 8.6 of an Agreement, the Company shall cease processing of the Personal Data on termination of the Agreement.

2.   The nature and purpose of the processing;

the Company shall only Process Personal Data to the extent necessary to provide its industrial IT solutions as more specifically set out in the Order Acknowledgement.

3.   The type of personal data; and

Machine operator ID, name, location of the machine.

4.   The categories of data subjects;

Employees, consultants, contractors of the Client who are involved in ordering and receiving delivery of the services.