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Terms and Conditions

1. Interpretation

1.1. Definitions:

Charges: the charges payable by the Customer for the supply of the Services as set out in the Project Specification or, if no charges are set out in the Project Specification, as calculated on a time-and-materials basis in accordance with the Supplier's hourly fee rates as amended from time to time.

Conditions: these terms and conditions set out in Clause 1 (Interpretation) to Clause 27 (Governing law and jurisdiction) (inclusive).

Contract: the Contract between the Customer and the Supplier for the supply of the Services in accordance with these Conditions and the Project Specification.

Control: has the meaning given to it in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Commencement Date: has the meaning given to it in Clause 2.2.

Completion Date: the estimated date specified in the Project Specification (which may be varied in accordance with Clause 7) by which the Supplier is to provide the Supplier Software.

Customer: the person, firm or company which purchases Services from the Supplier.

Customer Materials: all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier.

Data Protection Legislation: the Data Protection Act 1998, or, from the date it comes into force in the UK, the General Data Protection Regulation (EU) 2016/679 (as applicable) and the Data Protection Act 2018 (subject to Royal Assent) and any other applicable laws relating to the protection of personal data and the privacy of individuals (all as amended, updated or re-enacted from time to time).

Data Subject, Controller, International Organisation, Processor and Processing: have the same meaning as in the Data Protection Legislation.

Deposit: the deposit payable by the Customer as the first instalment of the Charges, as set out in the Project Specification.

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Force Majeure Event: any circumstances beyond a party's reasonable control which prevent that party from performing its obligations under the Contract, including: a) fire, flood, earthquake, elements of nature or act of God; or b) governmental act, war, riot, civil disorder, terrorism, rebellion or revolution; or c) strikes, lock-outs or labour disputes (but in each case excluding those of the non-performing party's employees or employees of that party's subcontractors); d) other causes similar to the above; e) in the case of the Supplier, employee illness which prevents the Supplier from carrying out the Services; or f) the discontinuance, withdrawal or other unavailability of Third-Party Software which is necessary for the operation of the Supplier Software or other Services where such discontinuance, withdrawal or unavailability results from circumstances beyond the Supplier's control.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world, including the right to sue for and recover damages for past infringements.

Insolvency Event: one or more of the following events: (i) an administrator, administrative receiver, receiver or manager, liquidator or similar officer is appointed in respect of the whole or any part of the Customer's assets and/or a winding up petition is issued against the Customer; or (ii) the Customer proposes to enter or enters into any composition or arrangement with its creditors generally or any class of creditors; or (iii) any event or proceeding with respect to the Customer that has an effect equivalent or similar to any of the foregoing.

Key Personnel: the employees or agents of the Customer specified in the Project Specification who are responsible for overseeing and / or managing the Customer's obligations under the Contract.

Licensed Users: the employees and agents of the Customer who use the Supplier Software, up to, if applicable, the maximum number specified in the Project Specification.

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Milestone Dates: the estimated dates specified in the Project Specification (which may be varied in accordance with Clause 7) by which the Supplier is to provide the relevant Software Modules.

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

Order: the Customer's written acceptance of an estimate by the Supplier for the Services.

Personal Data: has the meaning set out in the Data Protection Legislation in relation to data Processed under the Contract.

Project Specification: the specification of the Supplier Software and the time schedule and sequence of events for performance of the Services as issued by the Supplier following receipt of the Order and as may be amended from time to time in accordance with these Conditions.

Services: the services to be performed by the Supplier under the Contract, including the services set out in Clause 3.

Software Modules: any one of the individual software programs and /or descriptions of program functionality set out in the Project Specification which form part of the Supplier Software.

Supplier: It Becomes Fluid Ltd, a company incorporated in England and Wales under company registration number 05774231 and whose registered office is situated at 1 Inman Road, Sprowston, Norwich, NR7 8JT.

Supplier Software: the software program(s) developed by the Supplier specifically for the Customer as set out in the Project Specification.

Test Data: the test data to be supplied by the Customer to the Supplier for the purposes of testing whether the Software Modules comply with the relevant parts of the Project Specification.

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Third Country: any country other than the UK, a European Union Member State or a member of the European Economic Area at the time of transfer of Personal Data.

Third-Party Software: the software programs proprietary to third parties which may be provided to the Customer as part of the Services or which the Customer may be required to procure for the purposes of operating the Supplier Software or other Services, including application programming interface and third party server services.

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

1.2. Interpretation:

1.2.1. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision includes any subordinate legislation made from time to time under that statute or statutory provision.

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

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

1.2.4. Except where a contrary intention appears, a reference to a Clause is a reference to a clause of these Conditions.

1.2.5. A reference to writing or written includes email.

2. **Basis of Contract**

2.1. The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions.

2.2. The Order shall only be deemed to be accepted when the Supplier issues either the Project Specification or written acceptance of the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**").

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- 2.3. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4. Any estimate given by the Supplier shall not constitute an offer, and is only valid for a period of 14 days from its date of issue.
- 2.5. For the avoidance of doubt nothing in these Conditions shall oblige the Supplier to accept an Order, and the Supplier reserves the right to refuse or reject any Order.

3. Supply of Services

- 3.1. The Supplier shall develop the Supplier Software in accordance with the requirements of the Project Specification.
- 3.2. Subject to Clause 4.1.4, the Supplier shall provide the Third-Party Software to the Customer under the standard licence terms provided by the relevant third parties.
- 3.3. In supplying the Services, the Supplier shall:
 - 3.3.1. perform the Services with reasonable skill and care;
 - 3.3.2. use reasonable endeavours to perform the Services in accordance with the requirements of the Project Specification; and
 - 3.3.3. take reasonable care of all Customer Materials in its possession and make them available for collection by the Customer on reasonable notice and request, provided that the Supplier may destroy the Customer Materials if the Customer fails to collect the Customer Materials within a reasonable period after expiry or termination of the Contract.

4. Customer's obligations

- 4.1. The Customer shall:
 - 4.1.1. co-operate with the Supplier in all matters relating to the Services;
 - 4.1.2. provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as required by the Supplier for the purposes of the Services;

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- 4.1.3. provide, in a timely manner, such information as the Supplier may require, and ensure that it is accurate and complete;
 - 4.1.4. promptly procure any Third-Party Software which is necessary, or recommended by the Supplier, for the purposes of operating the Supplier Software or other Services;
 - 4.1.5. no later than the dates set out in the Project Specification or, if no such dates are set out, on the Commencement Date, deliver to the Supplier the Test Data for each Software Module and the Supplier Software; and
 - 4.1.6. obtain all licences and consents, including licences and consents to any Intellectual Property Rights which might subsist in the Customer Materials, to provide the Customer Materials to the Supplier for the purposes of incorporating any such material into the Supplier Software.
- 4.2. If the Supplier's performance of the Services or any of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, including any failure to provide Test Data or other information requested by the Supplier, the Supplier shall:
- 4.2.1. not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly from such prevention or delay;
 - 4.2.2. be entitled to payment of the Charges despite any such prevention or delay;
 - 4.2.3. be entitled to extend the Milestone Dates and / or the Completion Date in accordance with Clause 7; and
 - 4.2.4. be entitled to recover any additional costs, charges or losses the Supplier sustains or incurs that arise directly or indirectly from such prevention or delay.

5. Software Delivery

- 5.1. Subject to Clause 7, the Supplier shall use reasonable endeavours to deliver to the Customer:
 - 5.1.1. each Software Module by the applicable Milestone Date; and
 - 5.1.2. the Supplier Software ready for use by the Completion Date.

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5.2. Before delivering any Software Module or the Supplier Software to the Customer, and provided the Customer has provided Test Data to the Supplier, the Supplier shall carry out reasonable tests to ensure that such item is in operable condition and is capable of meeting the requirements of the Project Specification.

6. Acceptance

6.1. For the purposes of this Clause 6, "Software Module" shall be construed to include the "Supplier Software" if the software to be developed under the Contract does not comprise modules or will not be delivered to the Customer in modules.

6.2. The Customer shall carry out all necessary tests for each Software Module within 30 days from the delivery of that module to verify whether such module complies with the Project Specification, and shall provide to the Supplier at least seven days' prior notice of the date set for such testing and permit the Supplier to observe all or any part of the testing.

6.3. If any Software Module fails to pass the Customer's tests within 30 days following the delivery of that module, the Customer shall notify the Supplier by no later than the expiry of that 30 day period together with all details of the test results and an explanation of why the Software Module does not comply with the Project Specification, and may, by written notice to the Supplier, either:

6.3.1. fix a new date for carrying out further tests of the Software Module to allow time for the Supplier to rectify any faults;

6.3.2. accept the Software Module subject to amendment of the Project Specification and / or reduction in the Charges as, after taking into account all the relevant circumstances, is reasonable; or

6.3.3. if the Supplier is unable to correct material defects within a period of two months from the original delivery date of the Software Module, reject the Software Module as not being in conformity with the Project Specification, in which event the Customer may terminate the Contract.

6.4. The Customer shall be deemed to accept a Software Module on whichever is the earlier of:

6.4.1. the expiry of 30 days from delivery of the Software Module, unless the Customer has given written notice under Clause 6.3; or

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- 6.4.2. the use of the Supplier Software by the Customer in the normal course of its business.
- 6.5. The Supplier does not warrant or guarantee that it will be able to rectify all defects in a Software Module, nor that any defect which does not materially affect the Customer's operations using the Supplier Software will be corrected.

7. Extension of time

- 7.1. The Supplier may extend any one or more of the Milestone Dates and / or Completion Date if one or more of the following events occur:
 - 7.1.1. a variation to the Supplier Software is made at the Customer's request under Clause 8;
 - 7.1.2. a Force Majeure Event; or
 - 7.1.3. a delay is caused in whole or in part by an action or omission of the Customer or its agents, subcontractors, consultants or employees.
- 7.2. If the Supplier is entitled to extend any one or more of the Milestone Dates and / or Completion Date under Clause 7.1.1 or Clause 7.1.3, it shall give written notice to the Customer not later than 14 days after the beginning of the event.
- 7.3. If the Supplier is entitled to extend any one or more of the Milestone Dates and / or Completion Date under Clause 7.1.2, it shall use reasonable endeavours to give to the Customer, within 14 days after the beginning of the Force Majeure Event, written notice of the Force Majeure Event and the probable extent of the delay.
- 7.4. The Supplier and the Customer shall use best endeavours to agree in writing what extension to the Milestone Dates and /or Completion Date is reasonable in the circumstances and, upon such agreement, the Project Specification shall be deemed amended accordingly.
- 7.5. Nothing in this Clause 7 shall require the Supplier to serve notice of a Force Majeure Event, and the operation of Clause 20 shall not be conditional upon service of any such notice.

8. Variation to Supplier Software

- 8.1. The Customer may, by giving written notice to the Supplier at any time during the term of the Contract, request a variation to the Supplier Software.

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- 8.2. Within 30 days following receipt of such notice, the Supplier shall prepare for the Customer a written estimate of any increase or decrease in the Charges, and of any effect that the requested variation would have on the Project Specification, including the Milestone Dates and / or the Completion Date.
- 8.3. Within 14 days following receipt of the written estimate referred to in Clause 8.2, the Customer shall inform the Supplier in writing of whether or not the Customer wishes the requested variation to be made. If the variation is required, the Supplier shall not make the requested variation until the parties have agreed a variation to the Contract in writing specifying any changes to the Charges, the Project Specification, including any one or more of the Milestone Dates and / or Completion Date, which, upon agreement, shall be deemed amended accordingly.
- 8.4. The Supplier reserves the right to amend the Supplier Software and the Project Specification if necessary to:
 - 8.4.1. ensure the Supplier Software or other Services function with any Third-Party Software which is necessary for the operation of the Supplier Software or other Services;
 - 8.4.2. comply with any applicable law or regulatory requirement; or
 - 8.4.3. if the amendment will not materially affect the nature or quality of the Services and / or Supplier Software

and the Supplier shall notify the Customer in any such event.

9. Charges and payment

- 9.1. In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this Clause 9.
- 9.2. Any fixed Charges set out in the Project Specification exclude:
 - 9.2.1. the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the Supplier in connection with the Services, and the cost of any materials or services reasonably and properly provided by third parties required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier at cost; and

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- 9.2.2. value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable).
- 9.3. The Supplier shall submit invoices for the Charges plus VAT if applicable to the Customer on the Milestone Dates or at any other intervals specified in the Project Specification.
- 9.4. With the exception of the Deposit, the Customer shall pay to the Supplier each invoice due and submitted to it by the Supplier, within 14 days from receipt, by BACS or such other electronic payment method as nominated in writing by the Supplier.
- 9.5. The Customer shall pay to the Supplier the Deposit on the Commencement Date by BACS or such other electronic payment method as nominated in writing by the Supplier.
- 9.6. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under Clause 18 (Termination):
- 9.6.1. the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 8% a year above the Bank of England's base rate from time to time, but at 8% a year for any period when that base rate is below 0%; and
- 9.6.2. the Supplier may suspend all Services until payment has been made in full.
- 9.7. All amounts due under the Contract from the Customer to the Supplier shall be paid by the Customer in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

10. Ownership of Intellectual Property Rights

- 10.1. The Intellectual Property Rights in the Supplier Software (other than any Open-Source Software and / or the Third-Party Software) and Tools are, and shall remain, the property of the Supplier.
- 10.2. The Customer shall not acquire any rights in or to the Supplier Software and / or Tools other than those expressly granted by the Contract.

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- 10.3. 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 Supplier Software and / or the Tools.
- 10.4. The Customer shall use reasonable endeavours to prevent any infringement of the Supplier's Intellectual Property Rights in the Supplier Software and / or Tools and shall promptly report to the Supplier any such infringement that comes to its attention. In particular, the Customer shall not permit third parties to have access to the Supplier Software and / or Tools without the prior written consent of the Supplier, who may require that such third party executes a written confidentiality agreement before being given access to the Supplier Software and / or Tools.

11. Software licence

- 11.1. The Supplier grants, subject to the terms of the Contract, the Customer the non-exclusive, non-transferable right to use the source code in the Supplier Software (excluding any Third-Party Software) for the purpose set out in the Project Specification or, if no such purpose is stated, any purpose related to the business carried out by the Customer at the time of the Contract.
- 11.2. Subject to Clause 11.6, the Supplier Software may be used only by Licensed Users, except as follows:
- 11.2.1. the Supplier has given prior consent; and / or
 - 11.2.2. any appropriate additional fee is paid to the Supplier before such use.
- 11.3. The Customer shall comply with any licences of Third-Party Software and shall indemnify and hold the Supplier harmless against any loss or damage which it may suffer or incur as a result of the Customer's breach of such terms howsoever arising.
- 11.4. Subject to Clause 11.5, the licence granted under this Clause 11 shall survive expiry of the term of the Contract.
- 11.5. The licence granted under this Clause 11 will automatically terminate in the event:
- 11.5.1. the Supplier terminates the Contract in accordance with Clause 18;
 - 11.5.2. use of the Supplier Software is determined in a court of law to infringe any third party Intellectual Property Rights; or

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- 11.5.3. an injunction or similar order is granted in connection with a claim for infringement of any third party Intellectual Property Rights which prevents or restricts the use or possession by the Customer of the Supplier Software.
- 11.6. Nothing in this Clause 11 shall be construed as preventing the Customer's clients or members of the public from interacting with the Supplier Software or using any interface of the Supplier Software in the manner intended by the parties and / or for the purposes set out in the Project Specification.

12. Reproduction adaptation and transfer of Supplier Software

- 12.1. The Customer may make such copies of the Supplier Software as are reasonably necessary for use in accordance with the Contract and for the purposes of backup and security. The Customer has no right to make, or authorise the making of, any other copies of the Supplier Software.
- 12.2. The Supplier shall at all times own all copies of all or any part of the Supplier Software. For copies recorded on a tangible medium, the Customer shall place on each copy of all or any part of the Supplier Software a clearly visible label indicating that the copy is the property of the Supplier. For electronic copies, the Customer shall ensure that all proprietary notices contained in the Supplier Software shall be maintained in such copies and shall display when the software is run, in the same way as in the case of the Supplier Software as supplied by the Supplier. The Customer shall keep all copies of the Supplier Software in a secure place when not in use and shall, at all times, keep all such copies in its possession or control.
- 12.3. The Customer may not make adaptations or variations of the Supplier Software without the prior consent of the Supplier.
- 12.4. The Customer may not disassemble, decompile, reverse translate or in any other manner decode the Supplier Software, except as permitted by law.
- 12.5. Subject to Clause 12.6, the Customer shall not:
 - 12.5.1. sub-license, rent, lend, assign or transfer in any other way the Contract or the Supplier Software to any person without the prior written consent of the Supplier; or
 - 12.5.2. give access to the Supplier Software through any network of computers to users who are not employees or agents of the Customer

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12.6. Nothing in this Clause 12 shall be construed as preventing the Customer's clients or members of the public from interacting with the Supplier Software or using any interface of the Supplier Software in the manner intended by the parties and / or for the purposes set out in the Project Specification.

13. Confidentiality

13.1. Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 13.2.

13.2. Each party may disclose the other party's confidential information:

13.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 13; and

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

13.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

14. Data protection

14.1. Both parties will comply with all applicable requirements of the Data Protection Legislation.

14.2. To the extent that the Customer's Materials include any Personal Data, the parties acknowledge that the Supplier is a Processor acting on behalf of the Customer for the purposes of the Data Protection Legislation and, for the purposes of the Contract:

14.2.1. the types of Personal Data are: names, contact details, financial details and similar of the Customer's agents, subcontractors, consultants, employees and customers, and the categories of Data Subjects are: the Customer's agents, subcontractors, consultants, employees and customers; and

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- 14.2.2. the nature and purpose of the Processing is to enable the Supplier to carry out the Services(which form the subject matter of the Processing) and the duration of the Processing shall be the term of the Contract.
- 14.3. The Customer will ensure that it has all necessary and appropriate consents and notices in place to enable the lawful transfer of the Personal Data to the Supplier for the duration and purposes of the Contract.
- 14.4. The Supplier shall comply with its obligations under the Data Protection Legislation and shall, in particular:
- 14.4.1. process the Personal Data only to the extent necessary for the purpose of providing the Services and in accordance with the Customer's written instructions;
 - 14.4.2. implement appropriate technical and organisational measures in accordance with the Data Protection Legislation to ensure a level of security appropriate to the risks that are presented by such Processing, in particular, from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of Processing and the likelihood and severity of risk in relation to the rights and freedoms of the Data Subjects;
 - 14.4.3. ensure that any employees or other persons authorised to Process the Personal Data are subject to appropriate obligations of confidentiality;
 - 14.4.4. not transfer the Personal Data to a Third Country or to an International Organisation without the prior written consent of the Customer;
 - 14.4.5. not engage any third party to carry out its Processing obligations under this Agreement without procuring by way of a written contract that such third party will, at all times during the engagement, be subject to data processing obligations equivalent to those set out in this Clause 14;
 - 14.4.6. notify the Customer, as soon as reasonably practicable, about any request or complaint received from a Data Subject (without responding to that request, unless authorised to do so by the Customer) and assist the Customer by technical and organisational measures, insofar as possible, for the fulfilment of the Customer's obligations in respect of such requests and complaints;

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- 14.4.7. notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - 14.4.8. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 14.4.9. on request by the Customer, make available all information necessary to demonstrate compliance with this Clause 14; and
 - 14.4.10. on termination or expiry of the Contract, destroy, delete or return (as the Customer directs) all Personal Data and delete all existing copies of such data unless required by law to keep or store such Personal Data.
- 14.5. The Customer acknowledges that Clause 14.4 shall not apply to the extent that the Supplier is required by law to Process the Personal Data other than in accordance with the Customer's instructions and the Contract and acknowledges that, in such a case, it must promptly inform the Customer of the relevant legal requirement prior to Processing (unless the law prohibits the provision of such information on important grounds of public interest).
- 14.6. The Customer shall indemnify and keep the Supplier indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Customer's unlawful Processing, transfer, destruction and/or damage to Personal Data in connection with the Contract.
- 14.7. The Supplier may, at any time on not less than 30 days' notice, revise this Clause 14 by replacing it with any applicable "controller to processor" standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

15. Indemnity

- 15.1. The Customer shall indemnify the Supplier in full against all liabilities, costs, expenses, damages and losses suffered or incurred by the Supplier arising out of or in connection with any claim brought against the Supplier for infringement of a third party's rights (including any Intellectual Property Rights) arising out of, or in connection with, the receipt or use of the Customer Materials by the Supplier.

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16. Limitation of liability

16.1. Nothing in the Contract shall limit or exclude liability for:

16.1.1. death or personal injury caused by negligence;

16.1.2. fraud or fraudulent misrepresentation; or

16.1.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

16.2. Subject to Clause 16.1:

16.2.1. the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract shall be limited to the total Charges paid by the Customer to the Supplier under the Contract;

16.2.2. the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with the Contract;

16.2.3. the Supplier shall not be liable to the Customer for failures or inherent defects in Third-Party Software or Open-Source Software; and

16.2.4. the Supplier shall not in any circumstances have any liability for any claim of infringement of Intellectual Property Rights:

(i) caused or contributed to by the Customer's use of the Supplier Software in combination with software not supplied or approved in writing by the Supplier; or

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

16.3. The Supplier has given commitments as to compliance of the Services with the Project Specification in Clause 3. In view of these commitments, the terms implied by sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

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16.4. This Clause 16 shall survive termination of the Contract.

17. Duration

17.1. Subject to Clause 18, the Contract shall commence on the Commencement Date and shall continue until the Supplier Software has been delivered and / or Services have been completed.

17.2. Subject to Clause 18.1, the Supplier's obligations to the Customer under the Contract shall end on expiry or termination of the Contract. Without prejudice to the generality of the foregoing, the Supplier shall not be responsible for monitoring or reviewing the Supplier Software and / or Third-Party Software following either expiry or termination of the Contract.

18. Termination

18.1. Termination or expiry of the Contract shall be without prejudice to any rights or remedies which may have accrued up to the date of termination.

18.2. Either party may terminate the Contract by giving the other party 30 days' written notice.

18.3. Either party may terminate the Contract with immediate effect by giving written notice to the other party if:

18.3.1. the other party commits a material breach of any term of the Contract (other than failure to pay any amounts due under the Contract) and, if such a breach is remediable, fails to remedy that breach within 14 days following the other party being notified in writing to do so;

18.3.2. the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or

18.3.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

18.4. The Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:

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- 18.4.1. the Customer fails to pay the Charges or any amount due under the Contract on the due date for payment;
- 18.4.2. the Customer is affected by an Insolvency Event;
- 18.4.3. the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
- 18.4.4. there is a change of control of the Customer; or
- 18.4.5. the Key Personnel cease to be responsible for the performance of the Customer's obligations under the Contract or the Customer changes or seeks to change the Key Personnel without the Supplier's prior written consent.

19. Consequences of termination

- 19.1. On termination of the Contract for whatever reason (but not expiry under Clause 17.1):
 - 19.1.1. subject to Clause 19.2, the Customer shall pay immediately to the Supplier:
 - (i) all of the Supplier's outstanding unpaid invoices and interest;
 - (ii) in respect of Software Modules supplied or Charges incurred but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; and
 - (iii) if the Supplier Software to be developed under the Contract does not comprise Software Modules, or the Contract has been terminated before a Software Module has been built or supplied, and the Charges are fixed in the Project Specification, the Customer shall pay the Supplier for all work done before termination on a time-and-materials basis in accordance with the Supplier's hourly fee rates (excluding any work which the Customer has already paid the Supplier for under a previous invoice);

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- 19.1.2. the Customer shall permanently delete any proprietary software belonging to the Supplier which is not the subject of a current licence granted by the Supplier;
 - 19.1.3. the Customer shall either collect any Customer Materials in the Supplier's possession within a reasonable period after termination or notify the Supplier in writing that any Customer Materials in the Supplier's possession may be destroyed; and
 - 19.1.4. any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 19.2. On termination of the Contract by the Customer under Clause 18.2, the Customer shall pay immediately to the Supplier:
- 19.2.1. any outstanding unpaid invoices and interest thereon;
 - 19.2.2. in respect of Software Modules supplied or Charges incurred but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt; and
 - 19.2.3. 50% of the remainder of the Charges payable under the Contract for the whole of the Services.

20. Force Majeure

- 20.1. The Supplier shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event.
- 20.2. If a Force Majeure Event occurs, the Supplier shall be entitled to a reasonable extension of time for performing its obligations under the Contract. If the period of delay or non-performance continues for two months, the Customer may terminate the Contract by giving 14 days' written notice to the Supplier.

21. Assignment and other dealings

- 21.1. The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the Supplier's prior written consent.

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21.2. The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under the Contract.

22. Entire agreement

22.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

22.2. Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

23. Variation

23.1. Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

24. Waiver

24.1. A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

24.2. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

25. Severance

25.1. If any provision or part-provision of the Contract 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 25.1 shall not affect the validity and enforceability of the rest of the Contract.

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26. Third party rights

26.1. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

27. Governing law and jurisdiction

27.1. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by, and construed in accordance with the law of England and Wales.

27.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.