

1. These terms and conditions which consist of the Sections listed below (these "**Conditions**") apply to all contracts that we enter into with our customers for the provision of "**IT Services**" to them:

SECTION A – DEFINITIONS AND INTERPRETATION

SECTION B – STATEMENT OF WORKS/SUBSIDIARY AGREEMENT GENERAL TERMS

SECTION C – SOFTWARE SUPPLY TERMS

2. Section A contains the definition and interpretation provisions that apply to these Conditions generally.
3. Section B contains the general terms which apply to orders for all IT Services.
4. Section C only applies where they are applicable to the IT Services being ordered.
5. Unless and until superseded by any new Conditions that we may post on this Website, these Conditions apply to all Statements of Work.
6. Unless otherwise stated in a quotation or a price guide, a price is valid until the end of the month in which it is quoted only, and unless otherwise agreed in writing, we may withdraw it at any time by notice to You.
7. Each order or acceptance of a quotation for IT Services by You shall be deemed to be an offer by You subject to these Conditions. You shall ensure that Your order is complete and accurate.
8. A binding contract shall not come into existence between Us and You unless and a Statement of Works is signed by both parties, until We issue a written order acknowledgement to You or We commence delivery of the IT Services to You (whichever occurs earlier).
9. No order which has been acknowledged by Us may be cancelled by You, except as provided in these Conditions and/or a Statement of Works and provided that You indemnify Us in full against all loss (including without limitation loss of profit), costs (including without limitation the cost of all labour and materials used), damages, charges and expenses incurred by Us as a result of cancellation.
10. It is suggested that you download and retain a copy of these Conditions if you have or will be placing an order.



Appetite for Business Terms  
& Conditions of Trade for IT Services

## SECTION A – DEFINITIONS AND INTERPRETATION

### 1. Definitions and interpretation

1.1 In these Conditions the expressions which follow are given these meanings unless the context in which they are used requires a different meaning:

1.1.1 **"Applicable Laws"** means any legislation in force from time to time that We can be reasonably expected to be aware of in relation to the IT Services

1.1.2 **"Business Day"** means any day which is not a Saturday, a Sunday or a bank or public holiday throughout Scotland, England and Wales

1.1.3 **"Commencement Date"** means the earlier of the date specified as such in the Statement of Works or the commencement of delivery of the IT Services;

1.1.4 **"Confidential Information"** means (i) Your Input Data; (ii) the Deliverables; (iii) the terms of any Statement of Works; and (iv) any and all other confidential information in any form or format disclosed by or on behalf of one Party to the other Party under or in connection with any Statement of Works at any time (whether before, upon or following the entry into force of these Conditions), which information is marked as confidential or otherwise designated (whether orally or in writing, including in the latter case in terms of the following provisions of this definition) by the person supplying it as 'confidential', or which by its nature is clearly confidential. Confidential Information includes any information in relation to the past, present and potential future finances, policies, procedures, plans, products, services, contractual arrangements, staff, customers or other of Our contractors and our company

1.1.5 **"Contract Governance Arrangements"** means the contract governance arrangements set out in any Statement of Works;

1.1.6 **"Data Protection Legislation"** means the Data Protection Act 1998, from the 25th of May 2018, the General Data Protection Regulation ((EU 2016/679) or any replacement legislation applicable in Scotland from time to time and any other applicable laws relating to the processing of personal data;

1.1.7 **"Deliverables"** means any works, materials or other output in any form or format whatsoever (including drafts) produced or supplied by or on Our behalf for or to You, as part of the IT Services, including any such works, materials or other output specified in any Statement of Works;

1.1.8 **"Discloser"** means, in respect of any Confidential Information, the Party by or on behalf of which that Confidential Information is disclosed, except that both Parties will be treated as the "Discloser" of the terms of these Conditions;

1.1.9 **"Fees"** means the fees specified in, or calculated in accordance with, any Statement of Works;

1.1.10 "**Force Majeure Event**" means any cause affecting the performance by a Party of its obligations under any Statement of Works arising from acts, events or omissions beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving Our workforce or the workforce of any other party), failure of a utility service or transport network, default of suppliers or sub-contractors, act of God, war, riot, civil commotion, act or threats of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of IT equipment, fire, flood or storm;

1.1.11 "**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including without limitation all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;

1.1.12 "**IT Services**" means any services, Software, and/or other information technology product which We have agreed to supply to You under, and is described in, a Statement of Works;

1.1.13 "**Parties**" means Us and You as parties to the relevant Statement of Works;

1.1.14 "**Project Milestones**" means the dates (if any) identified as such in the Project Timetable;

1.1.15 "**Project Timetable**" means the timetable (if any) for the provision of the IT Services which appears in the Statement of Works;

1.1.16 "**Recipient**" means, in respect of any Confidential Information, the Party to which that Confidential Information is disclosed under any Statement of Works, except that both Parties will be treated as the "Recipient" of the terms of any Statement of Works;

1.1.17 "**Statement of Works**" means any contract (and any subsequent document(s)) that the Parties enter for the provision of IT Services and/or Deliverables to be provided by Us to You, which is subject to these Conditions. Where the IT Services is Software the Statement of Works refers to the order confirmation in relation to that Software and where no further agreement is signed by both parties;

1.1.18 "**Term**" means the term of the Statement of Works;

1.1.21 "**Us**" means Appetite for Business Limited, a company incorporated in Scotland (registered number **SC530648**), whose registered office is at Davidson House, Innovation Park, Campus 1, Aberdeen, AB22 8GT and similar expressions such as "We", "Our" and "Ours" shall be construed accordingly;

1.1.22 "**VAT**" means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or additional tax;

1.1.23 "**Website**" means the website url [www.appetiteforbusiness.com](http://www.appetiteforbusiness.com) (or any website that We may operate in replacement therefor from time to time);

1.1.24 "**You**" means the person, firm or company who purchases the IT Services from Us and similar expressions such as "Your" and "Yours" shall be construed accordingly;

1.1.25 "**Your Data**" means any personal data which is transmitted by or on behalf of You, or is otherwise processed by Us under this agreement or which is generated under this agreement

1.1.26 "**Your Input Data**" means any information and works in any form or format whatsoever disclosed to Us by You or on Your behalf for use by Us in supplying the IT Services and includes the physical embodiment of any such information and works (if any) listed in the Statement of Works as part of Your Property; and

1.1.27 "**Your Property**" means the equipment, materials and other items listed in the Statement of Works as resource requirements that You will provide.

1.2 Unless the context requires a different interpretation, or these Conditions expressly provides otherwise, the following rules will be used to interpret these Conditions:

1.2.1 Any reference to a statute, a statutory instrument or a provision of either includes references to that statute, statutory instrument or provision as amended, extended, applied, consolidated or re-enacted from time to time, whether before, on or after the Commencement Date and, in the case of a statute or a provision of that statute, will be interpreted as including any subordinate legislation made under that statute or that provision from time to time.

1.2.2 Words used in the singular will be interpreted to include the plural and vice versa.

1.2.3 A reference to a Party to these Conditions includes that Party's permitted successors, transferees and assignees.

1.2.4 A reference to a "person" is to any legal person, including any individual, partnership, company or other body corporate.

1.2.5 The word "including" means "including but not limited to" and "include" and "includes" will be interpreted accordingly.

1.2.6 Except if and to the extent that these Conditions expressly provide otherwise, any reference to recording or communicating any matter in "writing" will be interpreted as excluding email, and "written" will be interpreted accordingly.

1.2.7 The word "disclose" includes permitting a person to access information in any manner or imparting that information orally or by demonstration and any other tense or part of that verb will be interpreted accordingly.

1.3 Where a word or phrase is defined anywhere in these Conditions, whether in this Clause 1 or elsewhere, that word or phrase will have the meaning given to it in that definition wherever it is used throughout these Conditions.

1.4 The clause headings in these Conditions and any Statement of Works do not create legal rights or obligations, nor affect the meaning of these Conditions.

1.5 In the event of any conflict or inconsistency between them, the terms of the Statement of Works will prevail over these Conditions.

1.6 Where these Conditions use an Scottish legal term and the relevant provision of these Conditions is being considered in the context of a jurisdiction other than Scotland, the term will be interpreted as referring to that which most nearly approximates to the Scottish legal term in such other jurisdiction.

## **SECTION B - STATEMENT OF WORKS GENERAL TERMS**

### **2. Application of the general terms to all Statements of Works**

The general terms of this Section B of these Conditions apply to and are deemed incorporated within all Statements of Works to the exclusion of any terms and conditions or other contractual terms or arrangements proposed by You except to the extent expressly agreed by Us in the Statement of Works.

### **3. IT Services**

3.1 We will use reasonable endeavours to provide the IT Services and/or Deliverables to You in accordance with:

- 3.1.1 the Statement of Works in all material respects;
- 3.1.2 all Applicable Laws; and
- 3.1.3 the Project Timetable, recognising however that the dates set out in the Project Timetable shall be estimates only and time shall not be of the essence of these Conditions.

### **4. Deliverables**

4.1 Risk of loss of, any Deliverable which is a good, or any physical medium on which a Deliverable is stored, will pass to You on delivery to You.

4.2 Property in any Deliverable which is a good, or any physical medium on which a Deliverable is stored, will pass to You on payment by You of the Fees in respect of that Deliverable.

### 5. Your obligations

5.1 co-operate with Us in all matters relating to the IT Services;

5.1.2 provide in a timely manner such access to Your premises, Your Property and data (including Your Input Data), and such office accommodation, computer and other facilities, as is requested by Us and/or as indicated as being required from You in the Statement of Works;

5.1.3 provide in a timely manner such information as We may request, and ensure that such information is accurate in all material respects; and

5.1.4 be responsible (at Your own cost) for preparing the relevant premises for the supply of the IT Services.

5.2 the provision of the IT Services requires Us to ensure that certain resources are made available at a time and location agreed by both Parties and/or as set out in the Project Timetable, if You are unable to fulfil Your obligations in relation to such activities at such time and location or wish to cancel or postpone the activity so that the resources are not required at the agreed time and/or location then You must give Us notice in accordance with Clause 18 (Notices) not less than 5 Business Days prior to the date of such activity.

5.3 We shall not be liable to You if Our performance of Our obligations under any Statement of Work is prevented or delayed by any act or omission of You or Your agents, sub-contractors or employees. Subject to Clause 5.2, if Our performance of Our obligations under any Statement of Work is prevented or delayed by any act or omission of You or Your agents, sub-contractors or employees, You shall be liable to pay to Us on demand all reasonable costs, charges or losses sustained or incurred by Us (including, without limitation, any loss of opportunity to deploy resources elsewhere), subject to Our confirmation and evidence of such costs, charges and losses to You in writing, and provided We have taken all reasonable steps to mitigate such costs, charges and/or loss. To be clear, such costs, charges and losses may include any such costs, charges or expenses that We incur to Our sub-contractors.

5.4 You shall not, without Our prior written consent, at any time from the Commencement Date to the expiry of twelve months after the completion of the IT Services, solicit or entice away from Us or employ or attempt to employ any person who is, or has been, engaged by Us as an employee or sub-contractor in relation to the relevant IT Services. If you want one of our team to work directly for you, we would consider releasing them from their contractual obligations for our fee which represents the all-in cost of locating, recruiting and training a substitute and our loss of profit.

### 6. Fees, invoicing and payment

6.1 The Fees, invoicing and payment information shall be confirmed in writing by Us in the Statement of Works.

6.2 Clause 6.3 shall apply if any part of the IT Services that are to be provided on a time-and-materials basis. Clause 6.4 and Clause 6.6 shall apply if any part of the IT Services are to be provided for a fixed price. The remainder of this Clause shall apply in either case. The provisions in this Clause are without prejudice to the provisions of Clause 32 where they apply.

6.3 Unless otherwise stated in the Statement of Works, where the Statement of Works provides that any part of the IT Services are to be provided on a time-and-materials basis:

6.3.1 The Fees payable for the IT Services shall be calculated in accordance with Our standard daily Fee rates as amended from time to time;

6.3.2 Our standard daily Fee rates are calculated on the basis of an seven and half hour day worked between 8.30 and 16.30 pm on Business Days;

6.3.3 We shall be entitled to charge at an overtime rate of 150% of the normal rate for time worked by members of Our team outside the hours referred to in Clause 6.3.2 on a pro-rata basis;

6.3.4 We shall ensure that all members of the team complete time sheets recording time spent in providing the IT Services, and We shall use such time sheets to calculate the charges covered by each monthly invoice referred to in Clause 6.3.5; and

6.3.5 We shall invoice You monthly in arrears for Our Fees for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this Clause 6. Each invoice shall set out the time spent by each member of Our team.

6.4 Where the Statement of Works provides that any of the IT Services are provided for a fixed price the Fees for the IT Services shall be the amount set out in the Statement of Works. The total price shall be paid to Us (without deduction or set-off) in instalments as set out in the Project Timetable on its achieving the corresponding Project Milestone. On achieving a Project Milestone, We shall invoice You for the Fees that are then payable, together with expenses and the costs of materials (and VAT, where appropriate), calculated as provided in Clause 6.

## **7. Change control**

7.1 If either Party wishes to change the scope of the IT Services, it shall submit details of the requested change to the other in writing.

7.2 If either Party requests a change to the scope or execution of the IT Services, We shall, within a reasonable time, provide a written estimate to You of:

7.2.1 the likely time required to implement the change;

7.2.2 any variations to Our Fees arising from the change;

7.2.3 the likely effect of the change on the Project Timetable; and



7.2.4 any other impact of the change on the terms of these Conditions and/or the Statement of Works. 7.3 If We request a change to the scope of the IT Services, You shall not unreasonably withhold or delay consent to it.

7.4 If You wish Us to proceed with the change, We have no obligation to do so unless and until the Parties have agreed in writing on the necessary variations to Our Fees, the Project Timetable and any other relevant terms of these Conditions and/or the Statement of Works to take account of the change.

7.5 You shall be responsible for paying additional fees for providing You with an estimate in accordance with Clause 7.2 unless the change in question has been requested by Us.

## **8. Contract governance**

8.1 Where applicable, the Parties will implement and follow the Contract Governance Arrangements.

8.2 Without affecting the generality of Clause 8.1, each Party will ensure that the individuals identified in the Contract Governance Arrangements attend the meetings and otherwise perform the functions set out there. We may also require You to ensure that one or more of Your senior representative(s) attends any of those meetings, in any case where We consider that the issues to be discussed at that meeting justify that.

## **9. Intellectual Property Rights**

9.1 All Intellectual Property Rights existing prior to the Commencement Date shall vest in their originator absolutely.

9.2 You grant Us for the Term a non-exclusive, worldwide, royalty free licence to use Your Intellectual Property Rights in any pre-existing material that vests in You pursuant to Clause 9.1 (including without limitation Your Input Data) to the extent required by Us to provide the IT Services and to fulfil Our other obligations under these Conditions or the Statement of Works.

9.3 Subject to Clauses 9.1 and 9.2 above and 9.4 below, all Intellectual Property Rights and all other rights in the Deliverables shall be owned by Us. We hereby licence all such rights to You free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable You to make reasonable use of the Deliverables and the IT Services as is envisaged by the Parties. If We lawfully terminate a Statement of Works under Clauses 14.1, 14.2, 14.5, 14.6 and 14.7, this licence will automatically terminate.

9.4 Where We have agreed to provide You with third party software as part of the IT Services, the terms upon which such software is provided are set out in Section C of these Conditions.

## **10. Limitation of liability**

10.1 The following provisions set out Our entire financial liability (including any liability for the acts or omissions of Our employees, agents and sub-contractors) to You in respect of:

10.1.1 any breach of these Conditions or the Statement of Works;

10.1.2 any use made by You of the IT Services, the Deliverables or any part of them; and Version 3

10.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with these Conditions or the Statement of Works.

10.2 We will provide the IT Services to You using reasonable care and skill and any Deliverables will conform substantially to the requirements of the Statement of Works. Without prejudice to Clause 35 if it should be applicable, all other warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded by these Conditions.

10.3 Nothing in Clause 10 excludes Our liability:

10.3.1 for death or personal injury caused by Our negligence; or

10.3.2 for fraud or fraudulent misrepresentation.

10.4 Subject to Clause 10.3:

10.4.1 We shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty), contract, misrepresentation (whether innocent or negligent) or otherwise for:

10.4.1.1 loss of profits; or

10.4.1.2 loss of business; or

10.4.1.3 depletion of goodwill or similar losses; or

10.4.1.4 loss of anticipated savings; or

10.4.1.5 loss of goods; or

10.4.1.6 loss of contract; or

10.4.1.7 loss of use; or

10.4.1.8 loss or corruption of data or information; or

10.4.1.8 any loss arising as a result of any defect in Software or

10.4.1.9 any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and

10.4.2 subject to Clause 10.4.1, Our total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of Our obligations under these Conditions or the Statement of Works (including any applicable conditions) shall be limited to the value of the Fees (unless any other amounts are agreed in writing in the Statement of Works).

## 11. Insurance

We will take out and maintain with a reputable insurer the insurance policies detailed in the Statement of Works

in respect of Our potential liabilities under or in relation to the Statement of Works.

## 12. Confidentiality

12.1 Each Party will in respect of any Confidential Information of which it is the Recipient:

12.1.1 use that Confidential Information only if and to the extent necessary for the purposes of performing its obligations and/or exercising its rights under these Conditions and the Statement of Works;

12.1.2 not disclose that Confidential Information to any person other than:

12.1.2.1 any person employed or engaged by it (including, in Our case, any of Our subcontractors);  
(ii) its auditors and other professional advisers, in each case if and to the extent that such disclosure is necessary for the purposes in Clause 12.1.1 ("**Permitted Disclosees**"); or

12.1.2.2 any other person having a statutory or other legal right (other than a contractual right) to request and receive that information, including any court of competent jurisdiction, provided that the Recipient informs the Discloser prior to such disclosure that it has been required to make it (if and to the extent that the Recipient is legally permitted to so inform the Discloser); and

12.1.3 otherwise use its best endeavours to protect and maintain the confidentiality of that Confidential Information.

12.2 Clause 12.1 will not apply to any information which:

12.2.1 is or becomes public knowledge other than as a result of a breach of this Clause 12;

12.2.2 was lawfully in the Recipient's possession before its disclosure to the Recipient under or in connection with these Conditions; or

12.2.3 following its disclosure to the Recipient under or in connection with these Conditions, is received by the Recipient from a third party who is not under an obligation of confidentiality in relation to that information.

12.3 Each Party will ensure compliance by its Permitted Disclosees with the confidentiality obligations imposed on it by this Clause. 12.4 A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure as possible. 12.5 Each Party agrees that damages may not be an adequate remedy for any breach of this Clause and that the other Party will be entitled to a court order to enforce compliance with this Clause or to stop any breach of it, actual or threatened.

12.6 The provisions of this Clause 12 are subject to the provisions of Clause 13 in so far as they apply to any Confidential Information which is personal data.

### 13. Data protection

Within these Conditions the terms “controller”, “data subject”, “personal data”, “personal data breach”, “process (“processed” to be construed accordingly) and “processor” shall have the same meanings as in the Data Protection Legislation.

13.1 With respect to the either Parties' rights and obligations under these Conditions, the Parties acknowledge that in relation to Your Data, You are a controller and We are a processor.

13.2 The Parties acknowledge their respective obligations under the Data Protection Legislation and shall give each other such assistance as is reasonable to enable each other to comply with such obligations. However, for the avoidance of doubt, You agree that where We have satisfied a contractual obligation under these Conditions or Statement of Works, then such satisfaction of the contractual obligation is deemed to satisfy the same or similar requirement under the Data Protection Legislation.

13.2.2 You warrant, represent and undertake to Us that You have lawful grounds for the processing of Your Data.

13.2.1 The Parties confirm that where applicable the following information has been provided in the relevant Statement of Works: subject matter and duration of the processing; the nature and purpose of the processing; the type of personal data; the categories of data subjects; Your obligations and rights.

13.3 Where We processes Your Data under or in connection with these Conditions, We shall:

13.3.1 save as required otherwise by law, only process Your Data as is necessary to perform our obligations under any Statement of Works, and only in accordance with Your documented instructions.

13.3.2 put in place appropriate technical and organisational measures to meet Our obligations under the Data Protection Legislation;

13.3.3 ensure Our staff who will have access to Your Data are subject to appropriate confidentiality obligations;

13.3.4 be entitled to engage sub-processors to process Your Data subject to Us ensuring that equivalent requirements to those set out in this Conditions are imposed on any sub-processor(s), Us remaining fully liable to You for the performance of the sub-processor's obligations and where applicable, providing You reasonable prior notice of any addition, removal or replacement of any such sub-processors;

13.3.5 not process or transfer Your Data outside the European Economic Area without Your prior documented consent (which consent is hereby given in respect of the processing of data by those third parties described where applicable in the relevant Statement of Works). For the avoidance of doubt, any consent given under this clause includes the consent to transfer Your Data to the United Kingdom;

13.3.6 have in place the appropriate technical and organisational security measures to protect Your Data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure or access; 13.3.7 notify You without undue delay after becoming aware of any personal data breach involving Your Data, taking into account the nature of processing and the information available to Us. You confirm that you have had opportunity to review our breach notification policy, systems and guidance and concluded that they are suitable and adequate for the nature of the processing under any Statement of Works or other agreement;

13.3.8 where applicable take appropriate technical and organisational measures, insofar as is possible, to assist You in responding to requests for data subjects for access to or rectification, erasure or portability of Your Data or for restriction of processing or objections to processing of Your Data (but We will not respond to any such data subject request except on written instructions from You). Furthermore, We will, upon Your request, provide assistance relating to Your security; impact assessment; data breach reporting requirements; and data protection or data privacy authority consultation obligations under the Data Protection Legislation taking into account the information available to Us. We may charge You reasonable costs (or the rates otherwise agreed between the parties) for its time spent and expenses incurred in providing co-operation and assistance as required by this clause;

13.3.9 make available to You such information reasonably requested and which We are reasonably able to provide, and, permit and contribute to such audits, including inspections, conducted by You (or Your appointed auditors), as is necessary to demonstrate compliance with the Data Protection Legislation. You will give reasonable notice of any audit and will be fully liable for any associated costs;

13.3.10 (save as may be required by law) may need to retain Your Data for an agreed period upon expiry or termination of any Statement of Works or other agreement under these Conditions, and at Your cost and option either delete or return Your Data on expiry or termination of any Statement of Works or other agreement under these Conditions, provided always that nothing in this clause shall oblige Us to provide assistance which does not relate directly to any IT Services performed pursuant to any agreed Statement of Works or agreement under these Conditions.

13.4 We shall inform You in writing if, in Our opinion, an instruction from the You infringes the Data Protection Legislation but only in relation to a breach of General Data Protection Regulation ((EU 2016/679)) and/or other Union or Member State data protection provisions and not jurisdictions outside of these areas. However, You acknowledge that:

(a) any information We provide is not legal advice or guidance in anyway whatsoever, and that We make no warranty or representation regarding the information (express or implied); and  
(b) this clause shall not relieve You of Your obligation to ensure that all instructions to Us comply with all applicable legislation, including all Data Protection Legislation; and  
(c) We may charge reasonable costs (or the rates otherwise agreed between the parties) for Our time spent and expenses incurred in providing the You with co-operation and assistance as required by this clause.

13.5 Notwithstanding anything to the contrary, if any of the following occur:

(a) any changes/modifications to the Data Protection Legislation (including in connection with the withdrawal of the United Kingdom from the European Union and/or the EEA) including the requirement to amend, update, modify or replace any systems used to process the Your Data;

(b) any new, clarified or amended guidance or policies issued by a supervisory authority;

(c) any direction or instruction issued by a supervisory authority (whether relating to Your or Us in respect of the IT Services (including any processing of the Your Data));

then any increased effort or costs incurred by Us in association with the aforementioned shall be additionally chargeable to You.

13.6 You shall indemnify and keep indemnified Us against any liability, fines, claims, demands, expenses and costs (including legal fees) arising as a result of: any breach of Data Protection Legislation by You, or Us acting in accordance with any instruction, policy or procedure on Your behalf AND/OR

13.7 You warrant and represent that any instruction, policy or procedure shall be lawful.

#### 14. Termination

14.1 The Statement of Works may be terminated by Us at any time by giving at least thirty days' written notice to You.

14.2 The Statement of Works may be terminated by Us immediately by giving written notice to You, if You commit a material breach of the Statement of Works.

14.3 You may terminate the Statement of Works by giving written notice to Us, if We commit a material breach of the Statement of Works. However, where a breach is capable of being remedied, such Statement of Works may only be terminated where We have failed, within 14 days of receipt of a notice from You (unless an alternative timescale is agreed), describing that breach and requesting that it be remedied, to remedy that breach or to provide You with a plan for remedying that breach.

14.4 The Statement of Works may be terminated immediately by You by giving written notice to Us, if We are in persistent breach of the Statement of Works. We will be in persistent breach of the Statement of Works if We have committed a material breach of such Statement of Works on at least the number of occasions in the period prescribed in the Statement of Works.

14.5 Where any of the IT Services is subject to a User License, We shall be entitled to suspend or terminate the relevant IT Services immediately effective upon notice, for a violation of the User License by You, and You agree to defend, indemnify and hold Us harmless from any losses, damages, costs, liabilities or expenses resulting from any third party claim or allegation arising out of, or relating to, use of the relevant IT Services, which is as a result of Your violation of the User Licence.

14.6 Either Party may, by written notice to the other, terminate the Statement of Works if a Force Majeure Event occurs which prevents Us from performing Our obligations in respect of all or a substantial part of the IT Services for a continuous period of more than 15 days.

14.7 The Statement of Works may be terminated by either Party (the **"Terminating Party"**) immediately by giving written notice to the other Party if:

14.7.1 the other Party suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or, being a company or a limited liability partnership, is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or, being a natural person, is deemed either to be unable to pay its debts or to have no reasonable prospect of so doing, in either case within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing applies;

14.7.2 the other Party commences negotiations with all, or any class of, its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors (other than for the sole purpose of a scheme for a solvent amalgamation of the other Party with one or more other companies or the solvent reconstruction of the other Party);

14.7.3 a moratorium is declared in respect of any indebtedness of the other Party;

14.7.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other Party (other than for the sole purpose of a scheme for a solvent amalgamation of the other Party with one or more other companies or the solvent reconstruction of the other Party);

14.7.5 an application is made to court, or an order is made, for the appointment of an administrator, a notice of intention to appoint an administrator is given, or an administrator is appointed over the other Party;

14.7.6 an administrative receiver, a receiver or a compulsory manager is appointed over the assets of the other Party or a person becomes entitled to make any such appointment;

14.7.7 a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen days;

14.7.8 any event occurs or step is taken in respect of the other Party in any jurisdiction to which it is subject which event or step is equivalent or similar to those set out in this Clause 14.7;

14.7.9 the other Party ceases (or threatens to cease) for any reason to carry on all or a substantial part of its business or takes or suffers any similar action which in the opinion of the Terminating Party means that the other Party may be unable to pay its debts.

## **15. Consequences of expiry or termination**

15.1 The expiry or termination of the Statement of Works (for any reason) will not affect:

15.1.1 any rights or obligations of either Party that have accrued prior to such expiry or termination; or

15.1.2 any provision of the Statement of Works which is expressly or by implication intended to come into or to continue in force on or after such expiry or termination.

15.2 Subject to Clause 15.3, upon the expiry or termination of the Statement of Works, each Party will promptly, and in event within ten Business Days of such expiry or termination, deliver up to the other Party or destroy (at the absolute discretion of the other Party) any and all copies of Confidential Information.

Conditions or any of its terms) of which it is the Recipient then in its (or any of its Permitted Disclosees') possession or control and provide the other Party with written confirmation, signed by a duly authorised officer, certifying that it has complied with its obligations under this Clause 15.2. The obligation to destroy any Confidential Information pursuant to this Clause 15.2 includes an obligation to permanently delete from any information technology system any copies of that Confidential Information held there in electronic form.

15.3 Clause 15.2 does not prohibit a Party (or its Permitted Disclosee) from retaining a copy of any Confidential Information if and to the extent that and for so long as that Party (or its Permitted Disclosee) is legally obliged to do so (other than in terms of any contractual obligation on its part) or that Party (or its Permitted Disclosee) reasonably requires to do so for internal audit and legal risk management purposes.

#### **16. Assignment and sub-contracting**

16.1 You may not assign, novate or otherwise transfer or sub-contract or otherwise deal in any of Your rights and/or obligations under the Statement of Works, whether in whole or in part, without Our prior written consent, such consent not to be unreasonably withheld or delayed.

16.2 We may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under these Conditions and/or the Statement of Works.

#### **17. Force majeure**

A Party that is subject to a Force Majeure Event will not be in breach of these Conditions and/or the Statement of Works or liable for any failure or delay in the performance of any obligations under these Conditions and/or the Statement of Works to the extent that such failure or delay is attributable to the Force Majeure Event.

#### **18. Notices**

18.1 Where any notice is to be given under the Statement of Works, it must be in English and in writing, signed by a duly authorised signatory of the Party giving it. Notices must be:

18.1.1 delivered personally or by commercial courier or sent by first class post or recorded delivery, to the address and marked for the attention of the individual specified in the notices provisions of the Statement of Works, or to any other address and marked for the attention of any other individual that either Party may nominate in writing for these purposes from time to time; or

18.1.2 sent by fax to the fax number specified in the notices provisions of the Statement of Works, or such other fax number as either Party may nominate in writing for these purposes from time to time, and provided that within twenty four hours of sending it by fax, the notice is also delivered or posted to the Party concerned in accordance with Clause 18.1.1.

18.2 Any notice given in accordance with Clause 18.1 will be treated as having been received:

18.2.1 at the time of delivery, if delivered personally;

18.2.2 at the time of signature by the recipient of the courier's receipt, if delivered by commercial courier;

18.2.3 at 0900 hours on the second Working Day following the date of posting the notice, if sent by post;

18.2.4 immediately on completion of successful transmission, if sent by fax.

However, where in any case, these rules would result in a notice being treated as having been received on a day which is not a Business Day, or after 1700 hours on a day which is a Business Day, it will be treated as having been received at 0900 hours on the next Business Day afterwards.



18.3 To prove the giving of a notice it will be sufficient to show it was sent in accordance with Clause 18.1.

18.4 The provisions of this Clause do not apply to the service of any process in any legal action or proceedings which may be served in any manner competent under applicable law.

**19. Severability**

19.1 If any provision of these Conditions and/or the Statement of Works is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

19.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

**20. Waiver**

20.1 No failure to exercise or delay in exercising a right or remedy under a Statement of Works or otherwise in law will constitute grounds from which to infer that the Party so delaying or failing has waived or elected to abandon that right or remedy in respect of any circumstances or events, past, present and/or future.

20.2 No single or partial exercise of any right or remedy under a Statement of Works or in law will preclude or restrict the further exercise of that right or remedy.

**21. Variations**

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

**22. Exclusive Remedies**

The remedies set out in these Conditions and the relevant Statement of Works are Your sole and exclusive remedies.

**23. Disputes**

23.1 If a dispute arises out of or in connection with these Conditions and/or a Statement of Works, or the performance, validity or enforceability of either of them (**Dispute**) then the Parties shall follow the procedure set out in this clause:

23.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, our Sales Director and the person identified in the Statement of Works for First Stage Dispute shall attempt in good faith to resolve the Dispute;

23.1.2 if the above are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to our Sales & Marketing Director and the person identified in the Statement of Works for Second Stage Dispute who shall attempt in good faith to resolve it; and

23.1.3 if the above are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the Dispute shall be referred for determination as follows: 23.1.3.1 if the dispute is of a technical nature which is related to the provision of the IT Services and/or the Project, to an expert (an "**Expert**"), who will act as expert and not as arbitrator, in accordance with Clause 23.2 to Clause 26.5; or

23.1.3.2 in all other cases, mediation and/or arbitration in accordance with Clause 23.6 and Clause

23.2 The Expert will be selected and appointed by agreement of the Parties. If the Parties fail to appoint the Expert within 10 Business Days, the Expert will be chosen and appointed on the instructions of either Party using CEDR Solve who shall appoint an Expert who is suitably qualified and experienced to determine the issue in dispute.

23.3 The Expert will be instructed to deliver his or her decision to the Parties in writing within 30 days or such other period as may be agreed in writing of the date on which his or her appointment takes effect.

23.4 Each Party will fully comply with any instructions issued by the Expert in accordance with the terms of his or her appointment and otherwise co-operate with the Expert, including by providing him or her with any information in its possession which he or she requests for the purposes of considering the issue in dispute and reaching his or her decision.

23.5 Each Party will bear its own costs in relation to the reference to the Expert. The fees and costs of the Expert will be borne by the Parties in whatever proportion he or she decides having regard (amongst other things) to the conduct of the Parties.

23.6 If Clause 23.1.3.2 applies and/or the Parties cannot agree that the Dispute is of a technical nature, the Parties shall first seek settlement of the Dispute by mediation in accordance with the LCIA Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.

23.7 The provisions of this Clause 23 do not prevent either Party from applying for an interim court order whilst the Parties attempt to resolve a dispute in accordance with this clause.

23.8 If the Dispute is not settled by mediation within 30 days of the commencement of the mediation, or such further period as the parties shall agree in writing, the Dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause there shall be one arbitrator and the seat, or legal place, of arbitration shall be Scotland.

#### **24. No joint venture, partnership or agency**

A Statement of Works does not and is not intended to create a partnership or joint venture between the Parties to it, nor authorise either Party to act as agent for the other. Except to the extent otherwise agreed expressly in a Statement of Works or otherwise in Writing, neither Party will have authority to act in the name of or on behalf of or otherwise to bind the other Party in any way (including without limitation the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power), nor will they purport to so act or to so bind the other Party.

#### **25. Counterparts**

A Statement of Works may be entered into in any number of counterparts and by the Parties on separate counterparts, each of which, when executed and delivered, shall constitute a duplicate original, but all the counterparts together shall together constitute the one agreement.

#### **26. Entire agreement**

26.1 The Statement of Works and any other documents that may be referred to in it or annexed to it, constitutes the entire agreement between the Parties in relation to its subject matter and supersedes any prior arrangement, understanding or agreement between them in relation thereto.

26.2 Each of the Parties acknowledges and agrees that in entering into the Statement of Works and the documents referred to in it or annexed to it, it does not rely on the statement, representation (whether innocent or negligent), assurance or warranty (whether in writing or not) of any person (whether party to this agreement or not) other than as expressly set out in the Statement of Works or those documents.

26.2 These Conditions and the Statement of Works are made for the benefit of the Parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by anyone else.

#### **27. Law**

27.1 These Conditions, the Statement of Works and any dispute or claim arising out of or in connection with them or their subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with Scottish law.

27.2 Subject to Clause 23, the Parties irrevocably agree that the court of Scotland will have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with these Conditions, the Statement of Works or its or their subject matter or formation (including without limitation non-contractual disputes or claims).

### **SECTION C – SOFTWARE SUPPLY TERMS**

#### **28. Application of Section C**

28.1 The terms of this Section C of these Conditions apply to and are deemed incorporated within all Statement of Works where within the IT Services there is a reference to Software to the exclusion of any terms and conditions or other contractual terms or arrangements proposed by You.

28.2 Unless any provision in this Section provides otherwise, the terms of this Section apply subject to the other terms of these Conditions which shall take precedence in the event of conflict or inconsistency.

## 29. Definitions

In addition to the defined terms contained within Section A Clause 1, the expressions which follow are given these meanings unless the context in which they are used requires another meaning.

**"Software"** means any third party software products to be provided by Us to You under the Statement of Works;

**"User Licence"** means the end user licence agreement applying to the Software provided to You by the licensor of the Software.

## 30. Software User Licences, Intellectual Property and Representations

30.1 Subject to the payment of the Fees by You and acceptance by You of the terms of the relevant User Licences, We shall procure the delivery of the Software for, and provide the Media to, You.

30.2 We do not own any Intellectual Property Rights in the Software and We do not grant You any rights to use the Software. You acknowledge that User Licences are granted by the licensors of the Software direct to You and confirm that You will use Software on and subject to their terms.

30.3 You acknowledge that We are not authorised to make and have not made any representations regarding the Software to You, and You have not entered into the Statement of Works in reliance of any representations regarding the Software.

30.4 The Statement of Works covers the supply of the Software by Us to You. Unless the description of the IT Services expressly provides otherwise, We do not advise or recommend the purchase of any software by You and assume no duties under contract or otherwise in relation to Your choice of Software.

## 31. Use of Software

31.1 You undertake:

31.1.1 not to use the Software until You have accepted the terms of the relevant User Licence:

## 32. Payment

32.1 Unless otherwise stated in the Statement of Works, You shall pay the Fees which relate to the Software in full to Us within 7 days of the date of Our invoice without any withholding, deduction, set-off, counterclaim or cross demand. We reserve the right to have User Licences revoked and withdraw IT Services if payment is not received for the Software and/or Hardware within 30 days of Our Invoice date (or in accordance with any other payment terms which are agreed between the Parties).

32.2 Time shall be of the essence in respect of Your obligations under this Clause 32.

## 33. Returns/Cancellation

As a reseller of Third-Party Software we are subject to the return and cancellation policies of the relevant supplier of the Software. We shall provide reasonable efforts to assist You in cancelling and/or returning the Software in accordance with the relevant return and/or cancellation policies of the supplier applicable to the Software.

## 34. Export Control

Without prejudice to the generality of Clause 30.2, You acknowledge and undertake that the Software may be the subject of governmental controls on its use or resale and that You will observe the provisions of applicable law and User Licences relating to such controls.



## Appetite for Business Terms & Conditions of Trade for IT Services

### **35. Indemnity**

You will indemnify Us against all losses, claims, demands, expenses and liabilities of any nature which we may sustain or suffer arising from a breach by You of your undertakings to Us under clauses 31.