



## General Terms and Conditions

### 1. DEFINITIONS

- 1.1 'Additional Term' means any term of this Agreement which is subsequent to the expiry of the Minimum Term.
- 1.2 'Agreement' means these General Terms and Conditions, the Order and a single instance of Supplementary Terms with its attached Service Schedule, all of which together constitute the agreement between the parties for the supply of Goods and / or Services.
- 1.3 'Applicable Law' means:
  - 1.3.1 The laws of the jurisdiction set out in clause 17 hereof, any re-enactments thereof and regulations imposed by regulatory bodies that apply to the provision and receipt of the Goods and / or Services; and
  - 1.3.2 The laws of the jurisdictions under which Ingenious's suppliers and subcontractors operate and any re-enactments thereof, that apply to the provision and receipt of the Goods and / or Services.
- 1.4 'Charges' means the charges as set out in the Order to be paid by the Client to Ingenious for the Goods and / or Services in accordance with clause 9.
- 1.5 'Commencement Date' means the date of commencement of this Agreement, as set out on the Order, which is the date of Ingenious's acceptance of the Order.
- 1.6 'Contract Year' means a period of twelve months beginning on the Commencement Date and each subsequent anniversary thereof.
- 1.7 'Confidential Information' means information of a confidential nature, including documentation, know-how, data, diagrams, specifications or other materials (digital, written or oral) relating to the business of the parties, including without limitation Customer Data and Customer Information.
- 1.8 'Client' means the person, firm or company as set out on the Order that purchases Goods or Services from Ingenious under the terms of this Agreement.
- 1.9 'Customer Data' means data that is the property of the Client (including any information or data derived there from), which may contain Personal Data and which is:
  - 1.9.1 Transmitted via Ingenious's Infrastructure; and / or
  - 1.9.2 Remotely stored within Ingenious's Infrastructure or otherwise stored on Ingenious's premises; and / or
  - 1.9.3 Used by Ingenious for the purposes of configuration of the Services or the configuration of the Client's Equipment or Software.
- 1.10 'Customer Information' means information supplied by the Client which includes Personal Data (including names, email addresses, company address, telephone numbers, usernames and passwords) that is required by Ingenious to enable it to deliver the Services under the terms of this Agreement.
- 1.11 'Defective' means in relation to Goods, Goods that are faulty or otherwise do not conform substantially to their specification.
- 1.12 'Early Termination Charges' means the Charges which shall be paid by the Client by way of liquidated damages in the event of termination of this Agreement for cause by Ingenious or for convenience by the Client prior to the end of any extant term of this Agreement, as contemplated in clause 10 of the Supplementary Terms.
- 1.13 'Equipment' means telephony and IT hardware, including telephone handsets, workstations, servers, routers and switches.
- 1.14 'Fair Use' means use of the Services in line with the combination of the price paid, Ingenious's experience of providing such Services and any expectations set out in this Agreement.
- 1.15 'Force Majeure' means an event affecting the performance by a party of its obligations under this Agreement, arising from circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, pandemic, accident, malicious damage, terrorism, riot, civil commotion, compliance with any law or

governmental order, rule, regulation or direction, industrial action (except any industrial action relating to Ingenious) act of God or any other occurrence of a like nature.

- 1.16 'General Terms and Conditions' means these General Terms and Conditions.
- 1.17 'Goods' means any goods that are supplied to the Client by Ingenious under the terms of this Agreement, including Equipment and Software.
- 1.18 'Good Industry Practice' means in relation to any undertaking and any circumstances, the exercise of the degree of skill, care, prudence and foresight which would be expected from a provider of business-critical services having regard to factors such as the nature and size of the parties, the term of the Agreement, the pricing structure and any other relevant factors.
- 1.19 'Hour' means clock hour, which may fall outside of the Working Day.
- 1.20 'Incident' means any defect or failure in the Services provided or defect or failure in Equipment or Software that is supported under the terms of this Agreement.
- 1.21 'Infrastructure' means Ingenious's network infrastructure, servers and storage.
- 1.22 'Intellectual Property' means all intellectual property, including patents, utility models, trade and service marks, trade names, domain names, rights in designs, copyrights, moral rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or able to be registered and including registrations and applications for registration of any of these and rights to apply for the same, rights to receive equitable remuneration in respect of any of these and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world.
- 1.23 'Intellectual Property Rights' ('IPR') means the right to title to Intellectual Property.
- 1.24 'Loan Equipment' means Equipment that is loaned, at no charge, to the Client by Ingenious under the terms of this Agreement, to which Ingenious shall retain title.
- 1.25 'Malware' means software that is specifically designed to disrupt, damage, or gain unauthorized access to a computer system, including Trojan horses, viruses and ransomware.
- 1.26 'Minimum Term' means the initial term of this Agreement, set out in the Order.
- 1.27 'Order' means the hard copy or online order form (which may be attached to these terms, completed online by the Client or supplied by Ingenious to the Client) or written otherwise instruction which sets out the Goods to be supplied and summary of Services to be delivered.
- 1.28 'Public Internet' means the world-wide collection of private and public router-based networks that are interconnected via gateways and exchange points.
- 1.29 'Recurring Charges' means the Charges due to be paid to by the Client on a regular basis, as set out on the Order.
- 1.30 'Rental Equipment' means Goods that shall be rented to the Client and to which Ingenious shall retain title.
- 1.31 'Reseller' means an organisation which is authorised by Ingenious to either re-sell Ingenious's Services or sell such Services on Ingenious's behalf.
- 1.32 'Ready For Service Date' ('RFS Date') means the date from which the Services are available for use (at all sites) by the Client, as notified by Ingenious.
- 1.33 'Services' means services provided to the Client by Ingenious under the terms of this Agreement as described in the Service Schedule.
- 1.34 'Service Component' means an individual component of the Services which is separately itemised on the Order and described in the Service Schedule.
- 1.35 'Service Schedule' means the schedule which forms part of the service-specific Supplementary Terms which sets out the detailed services to be provided and any applicable service levels.
- 1.36 'Software' means any software and associated documentation provided by Ingenious to the Client or its end users pursuant to this Agreement or used by Ingenious to provide the Services, including any software which is embedded in the Equipment.
- 1.37 'Supplementary Terms' means the service-specific supplementary terms and conditions and its associated Service Schedule, which form part of this Agreement.
- 1.38 'Working Day' means 9am to 5.30pm Monday to Friday, excluding bank and public holidays.
- 1.39 'Working Hour' means any hour within the Working Day.

## **2. THE PARTIES**

The parties to this Agreement are (I) Ingenious Ltd ('Ingenious's), whose place of business is at Woolwich House, 43 George Street, Croydon CR0 1LB and (II) the Client, whose name and place of business are set out on the Order.

## **3. GENERAL**

- 3.1 These General Terms and Conditions govern the overall relationship of the parties to this Agreement in relation to the Services provided by Ingenious to the Client.
- 3.2 Ingenious shall provide the Services to the Client in the manner and on the terms of these General Terms and Conditions, the Order and the Supplementary Terms.
- 3.3 From time to time, the Client may engage Ingenious to provide additional Services under the terms of an additional Order and the terms of this Agreement, which at its Commencement Date shall be incorporated into this Agreement; and
  - 3.3.1 In the event that any Services or Goods are supplied by Ingenious which are not subject to an Order, these terms and conditions and any applicable Supplementary Terms shall apply to the provision of such Goods and Services;
  - 3.3.2 For the avoidance of doubt, Orders for services that are not described in the Supplementary Terms to this Agreement shall be subject to the terms of a separate agreement.
- 3.4 In the event of a conflict between the terms set out in an Order, these General Terms and Conditions and the Supplementary Terms, the following order of precedence shall apply:
  - 3.4.1 The terms of the Order;
  - 3.4.2 The terms of the Supplementary Terms and its attached Service Schedule;
  - 3.4.3 The terms of these General Terms and Conditions.
- 3.5 In this Agreement:
  - 3.5.1 The words 'including' and 'includes' when followed by particular examples shall be construed as illustrative and not exhaustive;
  - 3.5.2 Words of a technical nature shall be construed in accordance with the relevant common usage in the information technology industry in the United Kingdom;
  - 3.5.3 References to a 'person' include a natural person, body corporate, unincorporated body of persons, individual, company, firm, government, state or agency of the state;
  - 3.5.4 References to the singular includes the plural and vice versa;
  - 3.5.5 Headings to clauses have been inserted for convenience of reference only and should not be construed as forming part of this Agreement;
  - 3.5.6 References to clauses and sub-clauses are references to clauses and sub-clauses in these General Terms and Conditions and the Supplementary Terms; and references to paragraphs are references to paragraphs within the Service Schedules attached to the Supplementary Terms;
  - 3.5.7 A reference to a statute, statutory provision, order, regulation, instrument or other subordinate legislation is a reference to that statute, statutory provision, order, regulation, instrument or other subordinate legislation and amendments and re-enactments made to such from time to time;
  - 3.5.8 A reference to a regulatory authority or other competent body shall be deemed to include any successor authority or body;
  - 3.5.9 A reference to the parties is a reference to Ingenious and the Client and a reference to a party is a reference to one of them;
  - 3.5.10 All periods expressed in days shall mean calendar days unless expressly stated otherwise;
  - 3.5.11 Copyright in supplier and other third-party product and service names is hereby acknowledged.
- 3.6 Payment of Ingenious's invoice for the Services or the use of the Services and associated Equipment by the Client constitutes acceptance of the terms and conditions of this Agreement.

## **4. COMMENCEMENT AND TERM**

- 4.1 This Agreement shall commence and terminate in accordance with the provisions of the Supplementary Terms.

- 4.2 From time to time, the Client may engage Ingenious to provide other services. Each engagement will operate under a separate agreement which will be subject to its own order, appropriate supplementary terms and these General Terms and Conditions.
- 4.3 The termination of this Agreement to provide the Services will not affect any other agreement between the parties that may be in place for the supply of other services.

## **5. INGENIOUS'S OBLIGATIONS**

During the term of this Agreement, and subject to the performance by the Client of its obligations hereunder, Ingenious shall:

- 5.1 As soon as reasonably possible following the Commencement Date of this Agreement, provide a target for the RFS Date and make reasonable endeavours to provide the Services by such date; and
  - 5.1.1 As soon as reasonably possible, notify the Client if it becomes aware of any subsequent change thereto;
  - 5.1.2 On the RFS Date, notify the Client that the Services are available for use;
  - 5.1.3 Promptly respond to any and rectify any non-conformances in the Services that are raised by the Client.
- 5.2 Provide the Services in accordance with terms of this Agreement.
- 5.3 Warrant that it and its suppliers and subcontractors hold and shall continue to maintain all licences, authorisations, approvals and consents necessary to allow Ingenious, its suppliers and subcontractors to provide the Services in accordance with all Applicable Laws; and
  - 5.3.1 Subject to the provisions of sub-clause 10.13, Ingenious shall indemnify the Client against any third-party claim arising from Ingenious's breach of the warranty given in this sub-clause 5.3.
- 5.4 Being engaged by the Client for its professional expertise, warrant that the Services shall be performed by sufficient competent staff, with reasonable skill and care and in accordance with Good Industry Practice.
- 5.5 Undertake to promptly correct any failure to perform the Services arising from a failure of Ingenious, its employees, subcontractors or suppliers at no charge to the Client. Subject to any remedies that may be available under the terms of this Agreement and in law, such correction shall be the Client's sole and exclusive remedy for any breach of the warranty in sub-clause 5.4.
- 5.6 Without prejudice to its other obligations or responsibilities, when any of Ingenious's obligations are performed on the Client's premises it shall:
  - 5.6.1 Endeavour that whenever reasonably possible it will not hinder the Client's employees from performing their duties and;
  - 5.6.2 Endeavour that all rules and instructions in force and published thereat are complied with, provided always that Ingenious has been made aware of such rules and instructions.
- 5.7 Ensure that it and if appropriate, use reasonable endeavours to ensure that its suppliers provide sufficient resources to perform its obligations under the terms of this Agreement.
- 5.8 Ingenious shall ensure that appropriate safety, backup and security systems and procedures are in place and maintained to maintain continuity of and prevent unauthorised access or damage to the Services, its own systems and Customer Data, in accordance with Good Industry Practice.
- 5.9 Make reasonable endeavours to provide reasonable notice of any bona fide restriction which, for operational reasons Ingenious may place on the Services.
- 5.10 Take full ownership of any Incidents in the Services as properly reported to Ingenious or of which it ought to be aware and maintain ownership until such Incident is resolved; however Ingenious does not guarantee that it will resolve all Incidents.
- 5.11 Work directly with its suppliers if such suppliers are involved in the resolution of particular Incidents.
- 5.12 Recognising that the Services may be used in conjunction with services, software and equipment that may be provided and maintained by third parties (that is, suppliers other than Ingenious and its suppliers):
  - 5.12.1 Whilst Ingenious cannot assume responsibility for the repair of any third-party faults, it will however use its reasonable endeavours to assist the Client in the tracing and identification of problems incurred by the Client which prove not directly attributable to the Services;
  - 5.12.2 Where it is appropriate, Ingenious will also take reasonable steps to demonstrate to a third-party supplier where the fault lies; and

- 5.12.3 If such fault is shown not to result from the Services, Ingenious shall be entitled to charge the Client for work carried out in accordance with this sub-clause 5.12, at its prevailing rate.

## 6. THE CLIENT'S OBLIGATIONS

During the term of this Agreement and subject to the performance by Ingenious of its obligations hereunder, the Client shall:

- 6.1 If installation or implementation Charges are indicated on the Order to be estimates, undertake to pay the actual Charge incurred for the installation / implementation of the Equipment or Services.
- 6.2 Promptly report Incidents and / or place calls for support services using the designated telephone number, email-address or web portal as set out in the Supplementary Terms or as notified to the Client from time to time.
- 6.3 Provide suitably qualified personnel for such times as may be reasonably required by Ingenious:
- 6.3.1 To promptly provide any information within the Client's possession or control which Ingenious may reasonably require in order to perform its obligations;
- 6.3.2 To give Ingenious information and assistance in identifying and correcting any malfunctions;
- 6.3.3 To receive and execute the appropriate corrective measures (or other instructions in relation to this Agreement) given by Ingenious; and / or
- 6.3.4 To carry out diagnostic tests on the Equipment as requested by Ingenious.
- 6.4 Allow Ingenious, its subcontractors or agents proper access to the Client's premises on reasonable notice and a suitable, safe working environment during the Working Day and at other times as may be reasonably requested.
- 6.5 Provide and prepare a suitable place for the installation of Equipment necessary for the delivery of the Services (including availability of electrical supply and connection points) in accordance with Ingenious's reasonable instructions.
- 6.6 If Ingenious has to install Equipment at a third party's site, seek all necessary permissions prior to Ingenious gaining access to the site. In such instances, all provisions relating to the Equipment as installed at a third party's site, shall apply mutatis mutandis as if it were installed at the Client's premises.
- 6.7 Following Ingenious's installation of Equipment at the Client's site be responsible for replacing items of furniture and any necessary redecoration, provided that any such damage is minor, cosmetic and reasonably incurred and;
- 6.7.1 If, prior to such installation Ingenious becomes aware that damage will occur or re-decoration will be required, Ingenious shall notify the Client prior to carrying out the installation work.
- 6.8 Ensure that the use of the Services complies with the acceptable use clauses set out in this Agreement and not cause Ingenious or its suppliers to contravene any Applicable Law or authorisation.
- 6.9 Ensure that the existence of this Agreement does not breach the terms of any agreement made between the Client and any other party for the supply of similar services; and
- 6.9.1 If the Client requests assistance from Ingenious following a breach or suspected breach of Personal Data by the Client; prior to requesting Ingenious's assistance, ensure that such request does not breach the terms of any insurance policy held by the Client in relation thereto.
- 6.10 Disclose to Ingenious any facts that are known or potential issues that are suspected which might have a material impact on the implementation of the Services, including breach or potential breach of this Agreement and breach or suspected breach of its security.
- 6.11 In the event of a failure or interruption to the Services which has been investigated and or repaired by Ingenious and found to be caused by the Client or a third party (not connected with or under the control of Ingenious), pay any reasonable Charges levied by Ingenious in respect of the work carried out.
- 6.12 Warrant that it holds and shall continue to maintain all licences, authorisations, approvals and consents necessary:
- 6.12.1 To enter into and be bound by this Agreement;
- 6.12.2 To allow it to use the Services;
- 6.12.3 For any data, including documentation, software or Customer Data which may be supplied to Ingenious for the purpose of assisting with the provision of the Services; and
- 6.13 Subject to the provisions of sub-clause 10.13, the Client shall indemnify Ingenious against any third-party claims arising from the Client's breach of the warranty given in sub-clause 6.12.

- 6.14 Not, unless deemed by Ingenious to be a Reseller, supply, sell, sub-license, transfer or otherwise make available the Services to any third party.
- 6.15 Save as provided by Ingenious under the terms of this Agreement or any other agreement, provide all equipment necessary to enable access to the Services; and
  - 6.15.1 Make all reasonable measures to ensure that such equipment used in conjunction with the Services is free from Malware.
- 6.16 Ensure that its use of the Goods or Services supplied under the terms of this Agreement is in compliance with Applicable Law and undertakes not to cause, approve or otherwise facilitate third parties to breach such compliance.
- 6.17 Be solely responsible for the use of the Services under its control, including that by third parties whether fraudulent or invited by the Client.
- 6.18 If and to the extent that Ingenious shall be delayed in the execution of this Agreement by the failure of the Client to perform any of its obligations under this clause 6, then Ingenious shall be entitled to recover from the Client any additional costs that Ingenious may incur by reason of such delay.
- 6.19 It is the responsibility of the Client to ensure that all of its files are adequately duplicated and documented. Ingenious will not be responsible for the Client's failure to do so, nor for the cost of reconstructing data stored and subsequently lost, including during the performance of maintenance.

## **7. CONFIDENTIALITY**

- 7.1 Each of the parties to this Agreement agrees to use Confidential Information solely for the purposes of executing this Agreement, performing its obligations under this Agreement and for the evaluation of future products and services and that it will be treated as secret and confidential.
- 7.2 Neither party shall disclose Confidential Information to any other person without the owner's written consent except when it is deemed that such disclosure is required to execute this Agreement, in which case the disclosing party will obtain binding commitment from the receiving party to keep such information confidential.
- 7.3 Each of the parties to this Agreement shall, and shall procure that its staff, agents and subcontractors shall, (and in the event of mandatory disclosure to a regulator shall obtain assurances from the regulator that it shall) keep confidential all Confidential Information that it shall have obtained pursuant to sub-clause 7.1 and not disclose it to third parties, except:
  - 7.3.1 To the extent that it can be shown that the information is publicly available other than as a result of a breach of this Agreement by the disclosing party;
  - 7.3.2 To the extent that the disclosing party can demonstrate that the information was already known to it at the time it was received;
  - 7.3.3 To the extent that the receiving party may have received the information from a third party independently entitled to disclose it;
  - 7.3.4 Where the receiving party receives or has received written consent to such disclosure from the party entitled to such information;
  - 7.3.5 To the extent as may be required by law or by a competent regulatory or government authority provided that the party required to make such disclosure shall immediately being required to do so advise the other party of such obligation;
  - 7.3.6 To the extent that it can be shown that such has been independently developed by the receiving party;
  - 7.3.7 The parties agree in writing that such need not be kept confidential;
  - 7.3.8 If non-disclosure would render the relevant party liable to legal, administrative or regulatory sanction, PROVIDED THAT in each such case:
    - a) The disclosure made is only to the extent required to render the relevant party not liable to the legal, administrative or regulatory sanction in point; and
    - b) Wherever it is reasonably practical to do so, and subject to any applicable law, prior to making any disclosure the relevant party will give to the other party reasonable prior written notice of its intention to make such disclosure and the reasons therefore.

- 7.4 Upon written request from the other party, either party will return to the other all originals and / or copies of the Confidential Information obtained during the performance of the Agreement within thirty days of such request, provided that such Confidential Information is not required for the performance of this Agreement.
- 7.5 Within thirty days of the date of termination of this Agreement, all Confidential Information and copies thereof shall be returned to the disclosing party, or at the disclosing party's request, destroyed by the receiving party. Notwithstanding the foregoing, obligations to destroy Confidential Information shall not apply to any electronic copies stored for back-up or archiving purposes that are not readily accessible to the receiving party, provided that the receiving party does not restore any such back-up or archived copies for the purposes of accessing the disclosing party's Confidential Information.
- 7.6 Neither party shall provide Confidential Information which has been received from the other in response to a request made under the Freedom of Information Act 2000 prior to giving the other party no less than ten Working Days to make its representations.
- 7.7 Without prejudice to any other rights or remedies that the disclosing party may have, the receiving party agrees that if Confidential Information is used, disclosed or threatened to be used or disclosed in breach of this clause 7, the disclosing party shall be entitled, without proof of special damage, seek injunctive relief or other equitable relief for any actual or threatened breach of this clause 7.
- 7.8 The provisions of this clause 7 shall survive in perpetuity the termination of this Agreement, howsoever occasioned.

## **8. DATA PROTECTION**

8.1 In this Agreement the terms:

8.1.1 'Data Protection Legislation' means the Data Protection Act 2018, the UK General Data Protection Regulation ('GDPR'), any amendments and re-enactments made thereto from time to time and any other data protection regulations currently in force;

8.1.2 'Personal Data', 'Data Subject', 'Data Controller', 'Data Processor', 'Subject Access Request', 'Supervisory Authority', 'Process' and 'Processing' shall have the meanings defined in the Data Protection Legislation;

8.1.3 'Sub-Processor' means a subcontractor or supplier to Ingenious who Processes Customer Data on Ingenious's behalf.

8.2 Each party shall comply with their respective obligations under the Data Protection Legislation as it applies to Personal Data processed under this Agreement and shall maintain all necessary consents, registrations and notifications. This clause is in addition to, and does not relieve, remove, or replace a party's obligations under the Data Protection Legislation.

8.3 The parties to this Agreement agree that in relation to Customer Information that Ingenious Processes on its own behalf in order to provide the Services, Ingenious shall be a Data Controller and, acting in the capacity of Data Controller shall:

8.3.1 Collect from the Client, Process, use or share with its suppliers or subcontractors Customer Information in relation to which Ingenious shall determine the purpose of Processing to enable it to provide the Services, including:

- a) Administration, tracking and fulfilment of Client orders;
- b) Management of Incident reports;
- c) Administration of access to Ingenious's support portal;
- d) Administration of access to the Services;
- e) Raising and issuing invoices;
- f) Management of this Agreement, including issuing notices and providing management reporting.

8.3.2 Process the Customer Information in accordance with the applicable Data Protection Legislation and where applicable, Ingenious's privacy policy;

8.3.3 Not disclose to any person Customer Information other than to its suppliers, subcontractors or employees who shall be placed under the same binding obligation of confidence and who need access to such Customer Information to facilitate proper performance of their contractual obligations (in relation to this Agreement), to Ingenious;

- 8.3.4 Ingenious shall be entitled to use selected Customer Information and data pertaining to the Client's use of the Services to advise appropriate members of the Client's staff about additional products, services and offers;
- 8.3.5 If the Client does not consent to the provisions of sub-clause 8.3.4, it shall be entitled to notify Ingenious and forthwith upon receipt of such notice Ingenious shall cease to advise the Client about additional products, services and offers.
- 8.4 The parties agree that in relation to Personal Data contained within Customer Data that Ingenious Processes on behalf of the Client, the Client shall be the Data Controller and Ingenious shall be the Data Processor and that under the terms of this Agreement:
- 8.4.1 The duration of Processing shall be limited to the duration of this Agreement and thereafter for as long as is required by Applicable Law following the termination thereof;
- 8.4.2 The nature of Processing is (a) the transmission; (b) the storage; and (c) the use for the purpose of configuration of the Client's Equipment and Software, (collectively, the 'Permitted Uses') of Customer Data as required to deliver the Services and the purpose of the Processing is the delivery of the Services ordered by the Client under the terms of this Agreement;
- 8.4.3 The parties acknowledge that save email and internet protocol addresses, which may be transmitted via the Services, types of Personal Data and categories of Data Subjects that may be included within the Customer Data shall be determined exclusively by the Client and Ingenious shall not be privy to such information;
- 8.4.4 To the extent necessary to enable it to provide the Services, Ingenious shall be entitled to and may transfer Customer Data outside of the European Economic Area or to an international organisation, subject to its compliance with the terms of sub-clause 8.7.5;
- 8.4.5 This Agreement forms inter alia the Client's complete written instruction to Process Customer Data.
- 8.5 Without prejudice to Ingenious's obligations in relation to the processing of Customer Data on behalf of the Client, the Client agrees that it shall be solely responsible for its compliance with its obligation under the Data Protection Legislation to take the necessary technical and organisational measures to ensure that Customer Data is protected (to a level that is appropriate to the risks associated with Processing) against accidental destruction, damage, loss or disclosure where such Customer Data is:
- 8.5.1 Created and / or stored within Ingenious's Infrastructure by the Client using applications including email, desk-top applications, third-party software and software developed by or for the Client, including such being executed in managed desktop and infrastructure as a service environments;
- 8.5.2 Created and / or stored within Ingenious's Infrastructure either automatically or in response to third-party user input using third-party software or software developed by or for the Client, including web-sites and web-services;
- 8.5.3 Created and / or stored within Ingenious's Infrastructure by any other means, including telephone voice recording;
- 8.5.4 Created and / or stored in the Client's Infrastructure but may be accessible to Ingenious, its employees or subcontractors in the course of delivery of the Services.
- 8.6 The Client hereby agrees that certain Services Ingenious provides under the terms of this Agreement will be provided to Ingenious by one or more suppliers or subcontractors; and
- 8.6.1 In respect of Personal Data, Ingenious's suppliers or subcontractors may act in the capacity as Sub-Processor; and
- 8.6.2 For the avoidance of doubt, if Ingenious appoints a Sub-Processor to Process Customer Data on its behalf, Ingenious shall remain fully liable to the Client for the performance of that Sub-Processor's data protection obligations; and
- 8.6.3 Ingenious shall be entitled to change its suppliers or subcontractors at its sole discretion; and
- 8.6.4 If Ingenious elects to change a supplier or subcontractor who is acting in the capacity of Sub-Processor, it shall notify the Client without undue delay and:
- a) If the Client objects to the appointment of a Sub-Processor, the Client shall notify Ingenious within thirty days of the change and Ingenious will address the objection in accordance with the process set out in clause 18 hereof; and
- b) Ingenious shall be entitled to use the Sub-Processor until the objection is resolved; and



- c) If the Client does not object within thirty days of notification of the changed Sub-Processor, such change will be deemed acceptable to the Client.

8.7 The Client, in its capacity as Data Controller hereby authorises Ingenious, in its capacity as Data Processor to Process Customer Data and to permit its suppliers and subcontractors, whether direct or indirect, who may be acting in the capacity as Sub-Processor to Process Customer Data for the purposes of performing Ingenious's obligations under this Agreement, subject to Ingenious's, its suppliers' and subcontractor's compliance with the following conditions:

- 8.7.1 To restrict Processing of Customer Data to the Permitted Uses thereof;
- 8.7.2 Notwithstanding the provisions of sub-clause 8.7.1, Ingenious and / or its suppliers shall be entitled use and store information including origin, destination, duration, route and time of data transmitted over its network services, exclusively for the purposes of:
  - a) Collating statistics for network planning purposes; and
  - b) Providing such information to government security agencies in response to specific requests.
- 8.7.3 Not to retain any copy (save as required for the provision of specific services under the terms of this Agreement, including backup and disaster recovery services), abstract, summary or précis of the whole or any part of the Customer Data (save as set out in sub-clause 8.7.2); permit its employees to do the same and shall procure similar written, binding undertakings from its subcontractors and suppliers, who may be acting in the capacity of Sub-Processor;
- 8.7.4 Not to modify any part of Customer Data or permit its employees to do the same and shall procure similar written, binding undertakings from its subcontractors and suppliers, who may be acting in the capacity of Sub-Processor;
- 8.7.5 Not to transfer Customer Data outside of United Kingdom or the European Economic Area or to an international organisation without complying with the provisions of the Data Protection Legislation regarding inter alia the adequate level of protection of any Personal Data that may be contained therein, unless such transfer is required under Applicable Law in which case Ingenious shall, provided that it is not prevented from so doing under the Applicable Law, promptly notify the Client of such transfer.
- 8.7.6 To promptly and in any case within twenty four hours notify the Client if it becomes aware of any accidental destruction, disclosure or illegal Processing of Customer Data;
- 8.7.7 To undertake to implement appropriate processes and technology to ensure that:
  - a) The Processing of Customer Data meets the requirements of the Data Protection Legislation;
  - b) Customer Data is protected (to a level that is appropriate to the risks associated with Processing) against accidental destruction, damage, loss or disclosure;
  - c) Ingenious's employees as fully as it is reasonable to expect, understand their obligations under the Data Protection Legislation.
- 8.7.8 To assist the Client with the Client's own obligations under the Data Protection Legislation, taking into account the nature of the Processing and the information available to Ingenious by:
  - a) Communicating to the Client within five Working Days of receipt, any Subject Access Requests that relate to the Customer Data;
  - b) In response to written instructions, assisting the Client with Subject Access Requests to the extent practicable;
  - c) In the event of a security breach which involves Customer Data, providing to the Client details of the Customer Data that is involved in the breach;
  - d) Providing responses to reasonable requests for technical and organisational information in relation to the Processing of Customer Data;
  - e) On request making available to the Client any of Ingenious's relevant documentation that demonstrates its compliance with its obligations under the Data Protection Legislation;
  - f) Allow the Client or an authorised representative of the Client to audit Ingenious's compliance with the Data Protection Legislation, the frequency of such audits to be not greater than once every twelve months;

And the Client agrees to reimburse Ingenious for its reasonable expenses incurred for any assistance provided under this sub-clause 8.7.8, save sub-clause 8.7.8(c).

8.7.9 To undertake to on termination of this Agreement:

- a) On request, return to the Client copies of all Customer Data;
- b) Delete all Customer Data that is held within Ingenious's (or its supplier's) Infrastructure (unless such is prohibited by Applicable Law).

8.8 Ingenious shall:

8.8.1 Ensure that access to Customer Data is limited to those employees, subcontractors or suppliers who need access to such to meet Ingenious's obligations under this Agreement and that all employees, subcontractors and suppliers shall be placed under the same written, binding obligation of confidence;

8.8.2 Not disclose to any person Customer Data other than to its suppliers, subcontractors or employees who shall be placed under the same written, binding obligation of confidence and who need access to such Customer Data to facilitate proper performance of their contractual obligations (in relation to this Agreement), to Ingenious;

8.8.3 If required to disclose Customer Data or Customer Information, including communications content, to an appropriate judicial, law enforcement or government agency under Applicable Law, Ingenious shall prior to disclosure use reasonable endeavours to promptly notify the Client of the disclosure, PROVIDED THAT it is not prohibited from doing so by the requesting agency.

8.9 The Client agrees that in the event of novation of the terms of this Agreement, or part thereof, by Ingenious to another supplier, Customer Data and Customer Information will be transferred to the supplier or its assignee in compliance with Applicable Law.

8.10 Ingenious will on demand, deliver to the Client all documents that may be in its possession or in the possession of its agents, subcontractors, suppliers or employees (including documents prepared by the Client) which may include Personal Data.

8.11 The provisions of this clause 8 shall survive in the termination of this Agreement, howsoever occasioned, until such time as Ingenious no longer retains any Customer Data or Customer Information.

## **9. CHARGES AND PAYMENT**

9.1 In consideration of the provision of the Services, the Client shall pay the Charges in accordance with the provisions of this clause 9 and the Supplementary Terms.

9.2 Ingenious shall invoice the Client according to the Charges and billing period set out in the Order and the Charges will be calculated using the details recorded by Ingenious.

9.3 The Client agrees to pay the whole amount of the Charges (without any withholding, deduction, set off or counter-claim, save any disputed amount), within thirty days of the date of Ingenious's invoice unless stated otherwise on the invoice.

9.4 Ingenious shall be entitled to offset any monies owed to the Client against any monies owed to Ingenious.

9.5 Invoices shall be deemed accepted by the Client unless a written objection, which clearly identifies the reason for the dispute is received by Ingenious within ten Working Days of the date of the invoice. If the Client disputes the invoice, the parties shall make all reasonable endeavours to resolve the dispute promptly. In the event that the dispute has not been resolved within fifteen Working Days of the receipt by Ingenious of the Client's written objection, the dispute shall be escalated in accordance with the provisions of clause 18 of this Agreement.

9.6 If the Client fails to make any payment in respect of undisputed invoices for Goods or Services after payment has fallen due and within ten Working Days of Ingenious's written notice to do so, Ingenious shall be entitled to take one or more of the following actions:

9.6.1 Suspend the provision of Services to the Client until such time as the outstanding invoice is paid;

9.6.2 Charge the Client interest at the rate of 8% per annum above the prevailing Bank of England base rate, on any amount outstanding from the due date to the date of actual payment and such interest shall accrue on a daily basis;

9.6.3 Terminate this Agreement in accordance with sub-clause 11.1.1; and

9.6.4 Recover from the Client damages for any direct costs or losses suffered by Ingenious as a result of the Client's failure to make payment.

- 9.7 If during the term of this Agreement Ingenious incurs reasonable expenses, Ingenious shall be entitled to charge the Client at cost for such expenses.
- 9.8 If Ingenious is requested to provide Goods or Services in addition to those set out in the Order, Ingenious shall charge the Client for the provision of such Goods or Services at its prevailing rates.
- 9.9 All prices or Charges stated or referred to in this Agreement are exclusive of packing, packaging, shipping, carriage and insurance charge, if applicable.
- 9.10 All prices or Charges stated or referred to in this Agreement are exclusive of Value Added Tax which shall be charged in addition at the rate ruling at the tax point.
- 9.11 All elements of the Charges for Services shall be reviewed by Ingenious to be effective once per Contract Year; and:
- 9.11.1 Provided that no material changes occur in suppliers' charges to Ingenious, the maximum annual increase in the annual Charge will not exceed the prevailing Retail Prices Index plus 5% unless set out otherwise on the Order;
- 9.11.2 If there is material change to the charges made by Ingenious's supplier, Ingenious shall be entitled to pass such costs on to the Client;
- 9.11.3 Any proposed changes in Charges will be notified to the Client in writing not less than thirty days prior to the effective date of the change to the Charges.
- 9.12 Notwithstanding the provisions of clause 9.11, Ingenious shall be entitled to increase its Charges for any part of the Services at any time by providing the Client not less than thirty days' notice if its suppliers increase their charges.
- 9.13 The Client hereby consents to Ingenious carrying out such credit reference checks as reasonably required in respect of the Client from time to time and agrees to provide all information requested by Ingenious that is necessary to carry out such credit reference checks.
- 9.14 Ingenious shall be entitled to require that the Client pays a deposit before the supply of Goods or commencement of Services or during the term of this Agreement if Ingenious becomes aware of an adverse change to the Client's financial standing and:
- 9.14.1 Ingenious shall be entitled to apply all or any of the deposit against any unpaid Charges at its sole discretion;
- 9.14.2 Deposits shall not attract interest.
- 9.15 If the Client elects not to pay for Services by direct debit, Ingenious shall levy a monthly handling Charge which shall be charged at Ingenious's prevailing rate.
- 9.16 If a Client's direct debit fails to clear, Ingenious shall be entitled to levy a handling Charge, which shall be charged at Ingenious's prevailing rate.
- 9.17 Ingenious shall be entitled to:
- 9.17.1 Correct a previously raised invoice for a period of twelve months following the date of the invoice; and
- 9.17.2 Raise an invoice for supply of the Services for a period of twelve months following the Client's incurring the Charges; and
- 9.17.3 The provisions of this sub-clause 9.17 shall continue in force for a period of twelve months following termination of this Agreement, howsoever occasioned.
- 9.18 If the Client modifies the Order after the Order has been accepted by Ingenious, Ingenious shall be entitled to charge the Client for all reasonable expenses incurred up to the date of the modification.

## **10. LIMITATION OF LIABILITY**

- 10.1 This clause 10 sets out the parties' entire financial liability (including any liability for the acts or omissions of its employees, subcontractors, agents and suppliers) to the other or an third party in respect of:
- 10.1.1 Any breach of the express or implied terms of this Agreement by either party, their employees, subcontractors, agents and suppliers;
- 10.1.2 Any utilisation of the Services by the Client;
- 10.1.3 Any matter relating to the Services, their supply or failure or delay in the supply thereof by Ingenious;

10.1.4 Any fraudulent misrepresentation, tortious act or omission (including negligence) arising under or in connection with this Agreement;

Whether arising in contract (including under any indemnity), tort (including negligence), under common law or statutory duty.

10.2 Nothing in this Agreement shall limit:

10.2.1 Either party's liability to the other for:

- a) Death or personal injury caused by or arising from the negligence of the other, its employees, subcontractors, agents or suppliers;
- b) Any damage resulting from fraud or fraudulent misrepresentation by the other, its employees, subcontractors, agents or suppliers;
- c) Any damage resulting from breach of confidentiality by the other, its employees, subcontractors, agents or suppliers;
- d) Any damage resulting from breach of Intellectual Property Rights by the other, its employees, subcontractors, agents or suppliers;
- e) Any damage resulting from failure by the other to comply with Applicable Law;
- f) Any indemnity given under the terms of third Agreement;
- g) Any other liability that cannot be excluded or limited by law;

10.2.2 Ingenious's liability for any breach by Ingenious, its employees, subcontractors agents or suppliers of warranties as to title, quiet possession and freedom from encumbrance which may be implied by section 2 of the Supply of Goods and Services Act 1982 or section 12 of the Sale of Goods Act 1979;

10.2.3 The Client's liability to pay the Charges due under the terms of this Agreement.

10.3 In the event of damage to or loss incurred by the Client as a result of illegal Processing or disclosure by Ingenious of Personal Data:

10.3.1 Notwithstanding the generality of sub-clause 10.2.1(e), Ingenious's liability shall be limited to direct losses, costs and damages which arise in respect of:

- a) Regulatory inspection;
- b) Notification of Data Subjects;
- c) Remediation efforts with Data Subjects;
- d) Data Subject claims;
- e) Restoration of Personal Data;

Up to a maximum liability of fifty thousand Pounds per event or series of connected events;

10.3.2 Ingenious shall not accept liability for:

- a) Any indirect losses, costs or damages;
- b) Losses, costs or damages to the extent that such arise from the Client's breach of its obligations under clause 8 and / or the Data Protection Legislation;
- c) Losses, costs or damages that result directly from the interception by a third party of Personal Data whilst such Personal Data is being transmitted via the Public Internet or telephony network, unless the possibility of such interception arises directly from Ingenious's negligence.

10.4 Subject to any express terms and conditions of this Agreement to the contrary, neither party shall be liable in respect of any matter arising out of or in connection with this Agreement in contract, tort (including negligence and breach of a statutory duty), misrepresentation, restitution or otherwise for:

10.4.1 Any indirect loss of production, time, goodwill, reputation, use, opportunity, revenue, profit, contracts, business, expenditure or anticipated savings;

10.4.2 Any loss or corruption of data or information;

10.4.3 Losses incurred by third parties;

10.4.4 Any indirect, special loss or damage;

10.4.5 Any purely economic losses or punitive damages;

10.4.6 Any loss or damage that could not be reasonably foreseen;

And the parties hereby waive and release any claims they might otherwise have to be compensated in respect of such losses (without limitation), even if a party has been advised of the possibility of such loss or damages.

- 10.5 Except the Client's liability to pay the Charges and any incurred Early Termination Charges, either party's maximum liability for any and all claims in one Contract Year whether in contract, tort (including negligence and breach of statutory duty), misrepresentation, restitution or otherwise for any direct loss or damage howsoever caused and not falling under the provisions of sub-clauses 10.2, 10.3, 10.6 and 10.13 hereof shall be limited to the total amount of the Charges (including VAT) paid or payable under the terms of this Agreement in the Contract Year in which the event which gave cause to the claim occurred, in respect of any one event or series of connected events, PROVIDED THAT before any such claim is made the breaching party is given reasonable opportunity to make good the breach giving rise to such claim.
- 10.6 In relation to direct loss of or physical damage to the Client's tangible property, Ingenious's maximum liability is two million Pounds.
- 10.7 Except as expressly set out in this Agreement, all conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise are hereby wholly excluded to the maximum extent permitted by law.
- 10.8 If any exclusion of loss or damage in clause 10.4 is held to be invalid for any reason the liable party's liability for loss or damage that may be lawfully limited shall be limited to the aggregate liability set out in sub-clause 10.5.
- 10.9 Ingenious shall not in any event have any liability for non-provision in the provision of Services which:
  - 10.9.1 Can be reasonably attributed to the acts or omissions (including fraud and negligence) of the Client, its employees, agents or subcontractors including provision of complete, accurate information in a timely fashion to Ingenious;
  - 10.9.2 Can be reasonably attributed to the un-serviceability, un-suitability, mis-configuration or misuse of the Client's equipment which is required to perform the Services and is under the control of the Client;
  - 10.9.3 Arises from or is a consequence of use of Ingenious's Services in breach of the express terms of this Agreement;
  - 10.9.4 Occurs during any period during which the Services have been suspended by Ingenious in accordance with clause 12.
- 10.10 Ingenious shall not in any event have any liability for non-provision of the Services arising from a delay to the RFS Date, howsoever caused.
- 10.11 The Client acknowledges and agrees that data transmitted through the use of technology including the public internet, telephony network or any other electronic means cannot be guaranteed to be free from the risk of interception, corruption or loss even if transmitted in an encrypted form, and that Ingenious shall not be liable for any losses the Client may incur resulting from the interception, corruption or loss of such data; and:
  - 10.11.1 The Client shall be responsible for insuring against loss of or damage to data stored or transmitted a result of Ingenious performing the Services; and
  - 10.11.2 The Client shall be responsible for adopting such security measures as are appropriate to protect the Client's systems and data (including backups).
- 10.12 The parties acknowledge and agree that:
  - 10.12.1 The allocation of risk contained in this clause 10 is reflected in the price charged for the Goods and Services;
  - 10.12.2 The Client shall be liable for all direct losses incurred by Ingenious arising directly from the Client's breach of clause 8 of this Agreement;
  - 10.12.3 Ingenious shall not be liable for any losses, costs or damages incurred by third parties resulting from such third party's use of or reliance upon the Services, whether with or without the permission of the Client;
  - 10.12.4 Ingenious shall not be liable for any damages, costs, fines or other claims that arise from errors or omissions in information provided to Ingenious by the Client;
  - 10.12.5 Neither party shall be liable for any losses, costs or damages whatsoever under the terms of this Agreement, where proceedings for such losses, costs or damages are begun one year or more after the occurrence of the breach giving rise to the claim.
- 10.13 The parties acknowledge and agree that in respect of all indemnities given in this Agreement:

- 10.13.1 The indemnifying party agrees to indemnify the indemnified party from and against any liabilities, actions, losses damages, judgements, costs, fines, claims or expenses incurred by the indemnified party or legal proceedings which are brought or threatened against the indemnified party by a third party (the 'Indemnity Claim');
- 10.13.2 If either party becomes aware of any Indemnity Claim that party shall as soon as reasonably practical, notify the other party of such Indemnity Claim;
- 10.13.3 The indemnified party shall:
- a) Consult with the indemnifying party regarding the conduct of any action and have due regard for the indemnifying party's representations and not agree any settlement, legal proceedings or make any payment by way of liquidated damages without the prior written agreement of the indemnifying party, such agreement not to be unreasonably delayed or withheld;
  - b) Make no admission relating to such Indemnity Claim or legal proceedings without agreement of the indemnifying party, such agreement not to be unreasonably delayed or withheld;
  - c) Not agree any settlement of the Indemnity Claim or make any payment without the consent of the indemnifying party;
  - d) Allow the indemnifying party (at its request) to use its chosen advisers and to have the exclusive conduct of all negotiations and proceedings and provide the indemnifying party with such reasonable assistance required by the indemnifying party regarding the Indemnity Claim;
  - e) Promptly provide the indemnifying party and its advisers with all information and assistance that they may reasonably require in respect of the Indemnity Claim;
  - f) Promptly take any action and give any information and assistance as the indemnifying party may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party's rights in relation to the matter.
- 10.13.4 Both parties to this Agreement shall have a duty to mitigate any loss which it may incur as a result of a matter giving rise to a right of indemnification under this clause.
- 10.13.5 The indemnities given in this Agreement shall not apply to the extent that such an Indemnity Claim results directly or indirectly from the negligence of or wilful misconduct by the party, its employees, subcontractors or agents, against whom the Indemnity Claim has been made.
- 10.14 The Client agrees and accepts that the express obligations and warranties made by Ingenious in this Agreement are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, (excluding fraudulent misrepresentations) express or implied, statutory or otherwise relating to the Services provided under or in connection with this Agreement, including (though not limited to) those as to the quality, performance and care and skill used in its provision.
- 10.15 The Client acknowledges that Ingenious's obligations and liabilities are exhaustively defined in this Agreement.
- 10.16 The provisions of this clause 10 shall survive the termination of this Agreement, howsoever occasioned for a period of twelve months.

## **11. TERMINATION**

- 11.1 Notwithstanding clauses 4.1, 4.2 and 4.3 and in accordance with any additional provisions of the Supplementary Terms, this Agreement may be terminated immediately by written notice:
- 11.1.1 By Ingenious if:
- a) Ingenious's invoice remains unpaid after it has fallen due and ten Working Days after receipt of written notice from Ingenious to do so;
  - b) Two consecutive direct debit requests are rejected;
  - c) Ingenious's supplier declines to accept its order for the supply of Services.
- 11.1.2 By either party in accordance with the provisions of the Supplementary Terms; or if:
- a) The other convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within part 1 of the Insolvency Act 1986 or a proposal for any other composition, scheme of arrangement with (or assignment for the benefit of) its creditors or if is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if a trustee receiver, administrator or similar officer is appointed in respect of all or any part of the business or assets of

the other or if a petition is presented or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction);

- b) The other party ceases to hold the necessary licences or authorisations from any regulatory authority to carry out its business and perform its obligations under this Agreement;
- c) The other party ceases to trade;
- d) The other commits any material breach of any terms of this Agreement which is capable of being remedied but which the breaching party fails to remedy within thirty days of a written request to remedy the same;
- e) The other party commits a material breach which cannot be remedied;
- f) The other party is repeatedly in material breach of this Agreement, where "repeatedly" means twice or more in any one calendar year;
- g) A right of termination arises in the event of Force Majeure.

- 11.2 On termination of this Agreement, Ingenious shall be entitled to receive all Charges and expenses and other monies accrued and due to it up to the date of such termination, any Early Termination Charges and any other amounts due to it with respect to settlement of claims or concluding outstanding obligations as at the date of termination of this Agreement and shall be entitled to charge and be paid any additional expenses which are reasonably incurred as a consequence of termination of this Agreement.
- 11.3 On termination of this Agreement, the Client shall forthwith return all Rental Equipment and Loan Equipment to Ingenious.
- 11.4 If any Equipment that is Ingenious's property (including Goods on which payment is outstanding, Rental Equipment and Loan Equipment) is not returned to Ingenious within fourteen days of the date of termination, Ingenious shall be entitled to:
  - 11.4.1 Enter into the Client's premises to recover the property and charge the Client any costs reasonably incurred; or
  - 11.4.2 Charge the Client for the full retail price of the property as at the Commencement Date.
- 11.5 Any termination of the Agreement (however occasioned) shall not affect any accrued rights, remedies or liabilities of either party. Nor shall it affect the continuance in force of any provision of this Agreement that is expressly or by implication intended to continue in force after such termination.

## **12. SUSPENSION OF SERVICES**

- 12.1 Ingenious shall be entitled to suspend the provision of the Services in whole or part, without notice (save as where it is reasonably possible to provide prior written notice) or liability to the Client if:
  - 12.1.1 In Ingenious's reasonable opinion, the Services are being used to commit any fraudulent, illegal or wrongful activity or are in breach of any acceptable use clause contained in this Agreement, knowingly or otherwise, by the Client;
  - 12.1.2 In Ingenious's reasonable opinion, the Client is in material breach of any other provision of this Agreement;
  - 12.1.3 Payments are unpaid after they have fallen due and within ten days of Ingenious's written request to do so;
  - 12.1.4 Any consent, wayleave or authority required by Ingenious or its supplier is withdrawn, revoked or otherwise ceases to have effect;
  - 12.1.5 Ingenious is instructed to do so by any law enforcement, governmental or any other competent authority in any applicable jurisdiction;
  - 12.1.6 There are critical operational reasons or emergency which materially impact the provision of the Services;
  - 12.1.7 Planned or emergency work is required to systems that underpin the delivery of the Services.
- 12.2 In the event of suspension of Services under the terms of sub-clause 12.1:
  - 12.2.1 Services shall be restored by Ingenious during Working Hours when the situation which has given cause to the suspension is resolved by the Client or Ingenious (as applicable) and if the suspension had arisen

for any reason contemplated in sub-clauses 12.1.1 to 12.1.4 Ingenious shall be entitled to charge a reinstatement fee;

12.2.2 Suspension of any part of the Services under the terms of this Agreement shall not constitute a termination and the Client shall continue to pay all of Ingenious's Charges in relation to this Agreement during the period of suspension of Services;

12.2.3 If the suspension had arisen for any reason contemplated in sub-clauses 12.1.1 to 12.1.4 and the Client fails to rectify the situation which has given cause to the suspension within thirty days of the commencement of the suspension, Ingenious shall be entitled to terminate the Agreement under the terms of clause 11;

12.2.4 Ingenious shall not be liable for any costs, expenses or losses or other liabilities incurred by the Client as a result of suspension of the Services.

12.3 Ingenious is not obliged to suspend the Services or give notice of suspension prior to exercising its right to terminate this Agreement.

### **13. Clause Intentionally Unused**

### **14. INTELLECTUAL PROPERTY RIGHTS**

14.1 All Intellectual Property in the Goods or Equipment and associated documentation owned or used by Ingenious, its subcontractors, agents or suppliers ('Owners') in the performance of this Agreement shall be and will remain vested in the Owners. Except as expressly provided in this Agreement, the Client shall not acquire any rights, title or interest in or to any Intellectual Property owned by the Owners. To the extent to which it is entitled, Ingenious grants to the Client a royalty-free, non-exclusive, revocable, non-transferable licence to use all such Intellectual Property as is required to use the Services in accordance with the terms of this Agreement, until this Agreement is terminated or expires.

14.2 Ingenious shall if applicable acquire for the Client a non-exclusive, non-transferable, royalty-free licence to use the Software and associated documentation set out on the Order or Supplementary Terms for the purposes of using the Services.

14.3 The Client hereby undertakes to protect and keep confidential all Software and associated documentation and, except to the extent and in the circumstances expressly permitted by Ingenious in accordance with section 50B of the Copyright Designs and Patents Act 1988, the Client hereby undertakes that it shall make no attempt to examine, copy, alter, reverse engineer, disassemble or tamper with such Software.

14.4 In the event of the Client's breach of sub-clause 14.3, the Client undertakes to:

14.4.1 Immediately notify Ingenious of the breach;

14.4.2 Take reasonable steps to remedy the breach within forty eight hours of having become aware of the breach.

14.5 Save for the Intellectual Property belonging to the Owners, all Intellectual Property owned or used by the Client and / or its subcontractors, agents and suppliers ('Client Owners') pursuant to this Agreement shall be and will remain vested in Client Owners and except as expressly provided in this Agreement, Ingenious shall not acquire any rights, title or interest in or to any Intellectual Property owned by Client Owners.

14.6 Subject to the provisions of sub-clause 10.13, the Client shall indemnify Ingenious against all third-party claims arising from the Client's infringement of third-party Intellectual Property Rights in software, images or other data contained within Customer Data.

14.7 Subject to the provisions of sub-clause 10.13, Ingenious shall indemnify the Client against any third-party Intellectual Property rights claim ('IPR Claim') by the Owners of Equipment or Software supplied by Ingenious under the terms of this Agreement.

14.8 In the event of an IPR Claim arising from Equipment or Software provided by Ingenious to facilitate the use of the Services, the Client acknowledges that Ingenious may, at its discretion and cost, licence to the Client or procure a licence to the Client of an alternative item and / or modify or procure the modification of the infringing item in each case provided that (i) this resolves the original IPR Claim, (ii) it does not give rise to another IPR Claim; (iii) is of no extra cost to the Client and (iv) it does not materially affect the performance of the Services.



- 14.9 Ingenious acknowledges that Customer Data is and shall remain the property of the Client and the Client reserves all IPRs which may at any time subsist in the Customer Data. To the extent that any Customer Data vest in Ingenious by operation of law, such IPRs shall be assigned by Ingenious to the Client immediately on the creation of such Customer Data.
- 14.10 Ingenious shall:
- 14.10.1 Not alter, store, copy, disclose or use Customer Data other than in strict accordance with this Agreement;
  - 14.10.2 Preserve, so far as possible, the integrity of Customer Data and prevent any loss, disclosure, theft, manipulation or interception of Customer Data and shall advise the Client immediately in the event thereof;
  - 14.10.3 Return Customer Data to the Client when requested by the Client.

## **15. MISCELLANEOUS**

- 15.1 Ingenious may recommend that another party carries out work, supplies goods, software or services to the Client. The Client shall not be obliged to engage any such recommended party and shall not be prejudiced in any way should it choose not to do so. However, if it does engage any such recommended party, Ingenious does not guarantee the work, goods, software or services unless it has been negligent in making the recommendation.
- 15.2 In the case where Ingenious provides goods or software originally manufactured or developed by third parties it passes on statements, warranties and representations in good faith but doesn't verify them or guarantee their accuracy.
- 15.3 Ingenious cannot accept responsibility for any statements or representations unless such are made in writing.
- 15.4 If Goods or Services are provided to the Client at a reduced or no Charge for a trial period, Ingenious shall commence charging for the provision of the Goods and / or Services at the price agreed between the parties prior to the commencement of the trial period, from the end of the trial period unless the Client serves thirty days' notice to terminate this Agreement at the end of the trial period; and
- 15.4.1 The Minimum Term shall be deemed to commence at the end of the trial period.
- 15.5 The signing by Ingenious of any of the Client's documentation shall not imply any modification to this Agreement.
- 15.6 For the purpose of this Agreement, communications made between Ingenious and the Client by electronic mail shall be regarded as made in writing and signed by the party sending the electronic mail, save for the serving of notices under the terms of this Agreement, which is subject to the provisions of clause 26.
- 15.7 Ingenious shall be entitled to correct any clerical or typographical error made by its employees at any time.
- 15.8 The parties agree to comply with the provisions of the Bribery Act 2010; and
- 15.8.1 Maintain such processes and procedures to ensure compliance therewith; and
  - 15.8.2 Promptly report to the other party any request or demand for any undue financial or other advantage of any kind it receives in connection with the performance of this Agreement.
- 15.9 Nothing in this Agreement shall prohibit Ingenious from supplying the same or similar Goods or Services to other persons.
- 15.10 If the Client wishes to change the scope of the Services, including the addition of equipment or end users, it shall submit details of the requested change ('Change Request') to Ingenious, in writing; and
- 15.10.1 Ingenious shall within a reasonable time provide a written response which shall identify:
    - a) An estimate of the time required to make the change;
    - b) Any variations to the Charges;
    - c) Any impact of the change on this Agreement or the delivery of Services hereunder.
  - 15.10.2 Ingenious will not be obliged to implement the changes until the Client has agreed in writing to the necessary variations.
- 15.11 The Client acknowledges that if it decides not to take advice in given by Ingenious in relation to the security and performance the Services or supported Equipment:
- 15.11.1 There may be a resulting risk to the performance, integrity or security of the Services or supported Equipment;

- 15.11.2 Ingenious shall not be liable for any degradation in performance, integrity or security resulting from such decision and that any additional costs incurred by Ingenious arising there from will be charged to the Client;
- 15.11.3 Subject to the provisions of sub-clause 10.13, the Client shall indemnify Ingenious against all third-party claims, losses, charges or costs that arise directly or indirectly from any degradation in performance, integrity or security of the Services or supported Equipment;
- 15.11.4 Ingenious may if required under the terms of its insurance policy require that the Client signs a disclaimer which relates to the specific advice and the Client agrees that such disclaimer shall be signed and returned within five Working Days.
- 15.12 In the event that Ingenious rents or loans Equipment to the Client:
- 15.12.1 In this sub-clause 15.11, 'Entrusted Equipment' means Rental Equipment and / or Loan Equipment;
- 15.12.2 For the avoidance of doubt, Loan Equipment:
- a) May be loaned to the Client at Ingenious's sole discretion; and
  - b) Shall be loaned free of Charge; and
  - c) Shall not be subject to an Order.
- 15.12.3 The Charges for the Rental Equipment and billing period are as set out on the Order;
- 15.12.4 Entrusted Equipment shall at all times remain the property of Ingenious;
- 15.12.5 Without prejudice to any of its other rights, Ingenious may recover or resell the Entrusted Equipment supplied and its servants or agents may enter upon the Client's premises for that purpose should any events as contemplated in clause 11.1 occur or Ingenious has reasonable grounds to believe that its interest in the Entrusted Equipment is or is likely to be in jeopardy;
- 15.12.6 In the event that the Entrusted Equipment becomes Defective through no fault of the Client or any third party under the control of the Client, unless otherwise stated in the Service Schedule Ingenious shall at its sole discretion either repair or replace the Defective Loan Equipment or Rental Equipment with equipment of similar functional specification;
- 15.12.7 The Client undertakes to:
- a) Only use the Entrusted Equipment for the purposes for which it is intended and in conjunction with the Services for which it has been provided;
  - b) Store the Entrusted Equipment in a manner that makes it readily identifiable as Ingenious's property;
  - c) Keep the Entrusted Equipment properly insured;
  - d) Obtain and pay for all necessary licences, consents and approvals required for the installation and operation of the Entrusted Equipment;
  - e) Notify Ingenious promptly of any defects in, loss of or damage to the Entrusted Equipment;
  - f) At any time during or on termination of this Agreement, pay Ingenious the cost of replacement of the Rental Equipment, such cost to be based on the list price of the Rental Equipment at the Commencement Date, in the event of loss of or damage to the Rental Equipment caused by the act, omission or negligence of the Client or any third party for which it is responsible;
  - g) At any time during or on termination of this Agreement, pay Ingenious the cost of replacement of the Loan Equipment on a like for like basis, in the event of loss of or damage to the Loan Equipment caused by the act, omission or negligence of the Client or any third party for which it is responsible;
  - h) The Client shall return the Loan Equipment to Ingenious within 30 days of any request by Ingenious to return such.
- 15.12.8 The Client undertakes not to:
- a) Pledge the Entrusted Equipment or documents to title thereon, or allow any credit to arise thereon;
  - b) Dispose of the Entrusted Equipment or documents of title thereon or any interest therein; or
  - c) Hold itself out as Ingenious's agent in respect of the Entrusted Equipment; or

- d) Repair, modify or otherwise maintain, or allow any other party to do same to the Entrusted Equipment.

## **16. THIRD-PARTY RIGHTS**

Save as expressly stated, these terms and conditions do not confer any rights on third parties as provided for under the Contracts (Rights of Third Parties) Act 1999 and it is not the intention of the parties to this Agreement to confer such rights.

## **17. GOVERNING LAW**

This Agreement and the rights and obligations of the parties hereto shall be governed by the laws of England and Wales and both parties hereby agree to submit to the exclusive jurisdiction of the English courts and if this Agreement is translated into any other language, the English Language version shall prevail.

## **18. DISPUTE RESOLUTION**

- 18.1 If the Client is not satisfied with any aspect of the delivery of the Services, in the first instance the Client should make a complaint to Ingenious using the procedure set out in the Service Schedule.
- 18.2 The parties to this Agreement will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.
- 18.3 Except in the case of disputes arising from non-payment of invoices which are deemed accepted by the Client:
  - 18.3.1 If the dispute is not resolved through negotiation within ten Working Days, the parties will attempt in good faith to resolve the dispute through mediation in accordance with the Centre for Effective Dispute Resolution's Communication and Internet Service Adjudication Scheme (CISAS);
  - 18.3.2 Neither party may commence any court proceedings in relation to any dispute arising out of this Agreement except those excluded in clause 18.3 until they have attempted to settle said dispute by mediation and that mediation has terminated;
  - 18.3.3 The fees and the costs of such mediation or arbitration shall be borne equally by the parties.
- 18.4 Nothing in this clause 18 shall prevent either party from:
  - 18.4.1 Referring the dispute to the appropriate regulatory authority in accordance with any right either party may have to request a determination;
  - 18.4.2 Exercising any remedies or rights that may be available in respect of any breach of this Agreement.

## **19. FORCE MAJEURE**

- 19.1 Subject always to the provisions of this clause 19, neither party shall in any circumstance be liable to the other for any loss of any kind whatsoever including any damages whether directly or indirectly caused or incurred by reason of any delay or failure in the performance of its obligations hereunder which is due to Force Majeure.
- 19.2 If either party becomes aware of circumstances of Force Majeure which prevent or are likely to prevent its performance of any obligations under the terms of this Agreement, it shall:
  - 19.2.1 Notify the other in writing as soon as reasonably possible and in any case within five Working Days of the onset of such Force Majeure event, specifying its nature and extent of the circumstances;
  - 19.2.2 Use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Agreement; and
  - 19.2.3 Notify the other party as soon as the Force Majeure event has ceased to affect performance of the agreement and resume performance of its obligations as soon as reasonably possible.
- 19.3 If either party is unable to perform its obligations due to Force Majeure, the other party shall be released to an equivalent extent from its obligations relating thereto for so long as the Force Majeure continues and to the extent that the party is so prevented, hindered or delayed, including making payment for the affected Services.
- 19.4 If either party is unable to perform its obligations due to Force Majeure for a period exceeding two months, the other party shall be entitled to terminate this Agreement by giving 10 Working Days' notice in writing, in which case neither party shall have any liability to the other except in respect of those rights and liabilities which accrued prior to the Force Majeure event which shall continue to subsist.

## **20. ADVERTISING**

Neither party shall be entitled to use any trademark or trade name of the other, refer to the other, this Agreement or the Services to be rendered hereunder, either directly or indirectly, in connection with any promotion or publication without the prior, written consent of the other (such consent not to be unreasonably withheld or delayed).

## **21. ASSIGNMENT**

21.1 Ingenious shall be entitled to subcontract all or any part of the Services. For the avoidance of doubt, such subcontracting will not relieve Ingenious of any of its obligations under this Agreement.

21.2 Ingenious shall be entitled to:

21.2.1 Assign, transfer, novate or otherwise dispose of any of, or any interest in, its rights or obligations under this Agreement by giving written notice to the Client but without requiring its consent; and

21.2.2 Notwithstanding the provisions of clauses 7 and 8, disclose to a proposed assignee any information in its possession that relates to this Agreement solely for the purposes of the proposed assignment.

21.3 The Client shall not assign, transfer, novate or otherwise dispose of any of, or any interest in, its rights or obligations under this Agreement without the prior written consent of Ingenious (such consent not to be unreasonably withheld or delayed).

## **22. VARIATION**

22.1 If the Client requests a change to the Services or Goods provided under the terms of this Agreement, such request shall be made in writing and will not be deemed accepted until acknowledged and agreed in writing by Ingenious; and

22.1.1 If Ingenious fails to accept such change, such failure shall not affect the provision of any foregoing Services.

22.2 Subject to the provisions of sub-clause 22.3, Ingenious shall be entitled to change the terms of this Agreement ('Variation') by giving the Client not less than thirty days' prior notice of the effective date of the Variation ('Effective Variation Date').

22.3 If Ingenious makes a Variation other than:

22.3.1 Those contemplated in sub-clauses 9.11 and 9.12; or

22.3.2 To comply with legal or regulatory obligations; or

22.3.3 To maintain the security and integrity of the Services; or

22.3.4 To improve or clarify the Agreement; or

22.3.5 To reflect contractual changes imposed by its suppliers; or

22.3.6 To protect the use of Intellectual Property; or

22.3.7 To add or improve Services or service levels;

and such Variation is, in the reasonable opinion of the Client, disadvantageous to the Client, the Client shall be entitled to notify Ingenious of its objection, whereupon such shall be discussed by the parties in good faith, PROVIDED THAT such notice is delivered to Ingenious in writing prior to the Effective Variation Date; and

22.3.8 If notice of objection is not given by the Client prior to the Effective Variation Date, the Variation shall be regarded as being agreed by both parties and will become effective on the Effective Variation Date.

22.4 No Variation to this Agreement shall affect the rights of either party accrued prior to the Effective Variation Date.

22.5 No modification, amendment or other variation to this Agreement made by the Client shall be valid unless agreed in writing and signed by both parties.

## **23. STAFF**

23.1 Each party agrees not to approach employees or subcontractors of the other in order to entice them to join the other in a role that relates directly to the provision of the Services whether as an employee or in any other capacity, during the term of this Agreement or for a period of six months after its termination. If either party

breaches the terms of this clause 23.1 the party in breach agrees, by way of liquidated damages and not a penalty, to pay the other a sum equal to the annual salary or otherwise of the employee or subcontractor concerned except where that employee has responded to a bona fide advertisement or other offer published or made to the general public.

- 23.2 Nothing in this Agreement or Ingenious's performance thereof shall be construed as creating any relationship as between employer and employee, agent and principal, joint venture or any mutual obligation between the parties other than set out in this Agreement.
- 23.3 Ingenious shall, at its sole discretion determine the allocation of its personnel in furnishing the Services.
- 23.4 The parties consider that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE Regulations') will not apply on the commencement or cessation (in whole or in part) of the provision of Services by Ingenious; and
- 23.4.1 Subject to the provisions of sub-clause 10.13, each party agrees to indemnify the other in respect of any liabilities arising out of or in connection with any claim or decision by a court or tribunal that the contract of employment of any staff has transferred to the other under the TUPE Regulations or otherwise as a result of the parties entering into this Agreement, including (without limitation), any liability for failure to inform and consult under the TUPE Regulations;
- 23.4.2 If any contract of employment of any staff of either party has effect (or is argued to have effect) as if originally made between one party and staff of the other as a result of the TUPE Regulations or otherwise at any time, then the affected party shall be entitled, on becoming aware of that effect (or argued effect) to terminate the contract of employment of such staff and the other party agrees, subject to the provisions of sub-clause 10.13, to indemnify the affected party against any liabilities arising out of such termination and against any sum payable to or in respect of such staff prior to termination of employment.

## **24. WAIVER**

- 24.1 No failure to exercise or delay in exercising any right or remedy provided under this Agreement or by law constitutes a waiver of such right or remedy, nor shall it prevent any future exercise or enforcement thereof.
- 24.2 No amendment will affect any outstanding order or transaction or any legal rights or obligations which may already have arisen.
- 24.3 No single or partial exercise of any right or remedy under this Agreement shall preclude or restrict the further exercise of any such right or remedy or other rights or remedies.
- 24.4 Any waiver to be effected must be agreed in writing and shall:
- 24.4.1 Be confined to the specific circumstances in which it is given;
- 24.4.2 Not affect any other enforcement of the same or any other right;
- 24.4.3 Unless expressly stated, be revocable at any time (in writing).

## **25. SEVERABILITY**

If any provision of this Agreement is held to be illegal, void, invalid or unenforceable under the laws of any jurisdiction, such provision shall be deemed to be deleted from this Agreement as if it had not originally been contained in this Agreement and the legality, validity and enforceability of the remainder of this Agreement in that jurisdiction shall not be affected and the legality, validity and enforceability of the whole of this Agreement in any other jurisdiction shall not be affected.

## **26. NOTICES**

- 26.1 Any notice to be given hereunder shall be delivered or sent by recorded delivery first class post addressed to the company secretary at the address of the other party set out in this Agreement and shall be deemed to have been received by the addressee within two Working Days of sending.
- 26.2 Notices shall not be deemed validly served if sent only by email.
- 26.3 For the avoidance of doubt, day-to-day operational matters excluding formal notifications (for example notices to terminate) may be communicated by email.
- 26.4 Either party may at any time notify the other of a change of address or person for the purpose of the serving of notices under the terms of this Agreement, subject to the terms of this clause 26.

26.5 The provisions of this clause 26 do not apply to the service of any proceedings or other documents in any legal action or proceedings or, where applicable, any mediation or other method of dispute resolution.

**27. ENTIRE AGREEMENT**

27.1 This Agreement contains the entire agreement between the parties and supersedes any previous agreement between the parties, including understandings, commitments, agreements, draft agreements oral or written, and terms and conditions attached to the Client's purchase order.

27.2 This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute a single agreement.

27.3 The parties acknowledge and agree that:

27.3.1 The parties have not been induced to enter into this Agreement by, nor have relied on any statement, representation, promise, inducement or any other assurance not set forth herein;

27.3.2 Except for fraudulent misrepresentations, the parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein;

27.3.3 Each party confirms that it is acting on its own behalf and not for the benefit of any third party;

27.3.4 Each party has the power to enter into, exercise its rights under and perform and comply with its obligations under the terms of this Agreement.

27.4 Unless expressly stated to the contrary, general guidance documents including user manuals, handbooks or marketing collateral supplied by Ingenious shall not form part of this Agreement.

27.5 The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.