grant mcgregor
technology · people

GENERAL TERMS AND CONDITIONS

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General Terms & Conditions

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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 Grant McGregor’s suppliers operate and any re-enactments thereof, that apply to the provision and receipt of the Goods and / or Services.

1.4 ‘Applicable Service’ means a Service or part thereof for which Grant McGregor makes an express commitment in relation to performance and sets out remedies in the event of failure to meet such commitment.

1.5 ‘Client’ means the person, firm or company as set out on the Order that purchases Goods or Services from Grant McGregor under the terms of this Agreement.

1.6 ‘Client Ticket’ means the report, by the Client of an Issue.

1.7 'Commencement Date' means the date of commencement of this Agreement, as set out on the Order, which is the date of Grant McGregor's acceptance of the Order.

1.8 'Confidential Information' means information, documentation, know-how, data, diagrams, specifications or other materials (digital, written or oral), belonging to the other and concerning the business and affairs of the other, including Customer Data and Customer Information.

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 Grant McGregor’s Infrastructure; and / or

1.9.2 Remotely stored within Grant McGregor’s Infrastructure or otherwise stored on Grant McGregor’s premises; and / or

1.9.3 Data (for example names, usernames and email addresses), used by Grant McGregor 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) which is required by Grant McGregor to enable it to deliver the Services under the terms of this Agreement.

1.11 ‘Equipment’ means telephony and IT hardware, including telephone handsets, workstations, servers, routers and switches.

1.12 ‘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, industrial action (except any industrial action relating to Grant McGregor, its subcontractors or suppliers or any other failure in Grant McGregor's supply chain), government restrictions, legislation, act of God or any other occurrence of a like nature.

1.13 ‘General Terms and Conditions’ means these General Terms and Conditions

1.14 'Goods' means any goods that are supplied to the Client by Grant McGregor, including Equipment and Software.

1.15 '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.

1.16 'Group' means in relation to either party, itself and each of its holding companies or subsidiaries for the time being and any subsidiary of any such holding company and the terms 'holding', 'company' and 'subsidiary' shall have the meanings given to them in the Companies Act 2006.

1.17 'Hour' means clock hour, which may fall outside of the Working Day.

1.18 'Infrastructure' means Grant McGregor's network infrastructure, servers and storage.

1.19 '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.

1.20 'Intellectual Property Rights' ('IPR') means the right to title to Intellectual Property.

1.21 'Issue' means any defect or failure in the Services or defect or failure in Equipment or Software that is maintained under the terms of this Agreement.

1.22 'Loaned Equipment' means Equipment that is loaned, at no charge, to the Client by Grant McGregor under the terms of this Agreement, to which Grant McGregor shall retain title.

1.23 'Minimum Term' means the initial term of this Agreement, set out in the Order.

1.24 'Order' means the hard copy or online order form (which may be attached to these terms, completed online by the Client or supplied by Grant McGregor to the Client) or written otherwise instruction which sets out the Goods to be supplied and summary of Services to be delivered.

1.25 'Public Internet' means the world-wide collection of private and public router-based networks that are interconnected via gateways and exchange points.

1.26 'Rented Equipment' means Goods that shall be rented to the Client and to which Grant McGregor shall retain title.

1.27 'Reseller' means an organisation which is authorised by Grant McGregor to either re-sell Grant McGregor's Services or sell such Services on Grant McGregor's behalf.

1.28 'RFS Date' (Ready For Service Date) means the date from which the Services are available for use (at all sites) by the Client, as notified by Grant McGregor.

1.29 'Services' means services provided to the Client by Grant McGregor under the terms of this Agreement.

1.30 'Service Component' means an individual component of the Services which is separately itemised on the Order and described in the Service Schedule.

1.31 'Service Credit' means credit applied to the Client's account to be used as credit against future invoices.

1.32 'Service Desk Operational Hours' means 8am to 6pm Monday to Friday, excluding Scottish Christmas and New Year bank holidays.

1.33 '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.

1.34 'Software' means any software and associated documentation provided by Grant McGregor to the Client or its end users pursuant to this Agreement or used by Grant McGregor to provide the Services, including any software which is embedded in the Equipment.

1.35 'Supplementary Terms' means the service-specific supplementary terms and conditions and its associated Service Schedule, which form part of this Agreement.

1.36 'Tariff' means the document that lists prices and charges, as amended from time to time and made available by Grant McGregor on request.

1.37 'Working Day' means 8.30am to 5pm Monday to Friday, excluding Scottish Christmas and New Year bank holidays.

1.38 'Working Hour' means any hour within the Working Day.

2 THE PARTIES

The parties to this Agreement are (I) Grant McGregor Limited ('Grant McGregor'), company number SC214097, whose registered office is at The Merchants' Hall, 22 Hanover Street, Edinburgh, EH2 2EP and (II) the Client, whose name and place of business are set out on the Order.

3 GENERAL

3.1 These General Terms govern the overall relationship of the parties to this Agreement in relation to the Services provided by Grant McGregor to the Client.

3.2 Grant McGregor 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 Grant McGregor 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 Grant McGregor 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 Grant McGregor 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 Grant McGregor'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 be deemed to come into effect on the Commencement Date and shall run until the termination of the Services in accordance with the terms of the Supplementary Terms or the terms hereof.

4.2 From time to time, the Client may engage Grant McGregor 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 GRANT MCGREGOR'S OBLIGATIONS

During the term of this Agreement, and subject to the performance by the Client of its obligations hereunder, Grant McGregor 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 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 the terms of this Agreement.

5.3 Warrant that it and its suppliers hold and shall continue to maintain all licences, authorisations, approvals and consents necessary to allow Grant McGregor, 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, Grant McGregor shall indemnify the Client against any third-party claims arising from Grant McGregor'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 Grant McGregor, its employees, subcontractors or suppliers at no charge to the Client. 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 Grant McGregor's obligations are performed on the Client's premises it shall:

5.6.1 Ensure that whenever reasonably possible it will not hinder the Client's employees from performing their duties and;

5.6.2 Ensure that all rules and instructions in force and published thereat are complied with, provided always that Grant McGregor 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 Grant McGregor 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 Grant McGregor may place on the Services.

5.10 Take full ownership of any Issues as properly reported to Grant McGregor or of which it ought to be aware and maintain ownership until such Issue is resolved; however Grant McGregor does no guarantee that it will fix all Issues.

5.11 Work directly with its suppliers if such suppliers are involved in the resolution of particular Issues.

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 Grant McGregor and its suppliers):

5.12.1 Whilst Grant McGregor cannot assume responsibility for the repair of any third party-faults, it will however 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, Grant McGregor 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, Grant McGregor shall be entitled to charge the Client for work carried out, at its prevailing rate.

6 THE CUSTOMER'S OBLIGATIONS

During the term of this Agreement and subject to the performance by Grant McGregor 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 Issues by submitting Client Tickets 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 Grant McGregor:

6.3.1 To promptly provide any information within the Client's possession or control which Grant McGregor may reasonably require in order to perform its obligations;

6.3.2 To give Grant McGregor 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 Grant McGregor; and / or

6.3.4 To carry out diagnostic tests on the Equipment as requested by Grant McGregor.

6.4 Allow Grant McGregor, 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 Grant McGregor's reasonable instructions.

6.6 If Grant McGregor has to install Equipment at a third party's site, seek all necessary permissions prior to Grant McGregor gaining access to the site.

6.7 Following Grant McGregor'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 Grant McGregor becomes aware that damage will occur or re-decoration will be required, Grant McGregor 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 Grant McGregor or its suppliers to contravene any legislation, regulation 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 Grant McGregor following a breach or suspected breach of Personal Data by the Client; prior to requesting Grant McGregor'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 Grant McGregor 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 Grant McGregor and found to be caused by the Client or a third party (not connected with or under the control of Grant McGregor), pay any reasonable charges levied by Grant McGregor in respect of the work carried out.

6.12 Warrant that it holds and shall continue to maintain all licences, authorisations, approvals and consents:

6.12.1 Necessary to allow it to use the Services;

6.12.2 Necessary for any data, including documentation, software or data which may be supplied to Grant McGregor for the purpose of assisting with the provision of the Services; and

6.12.3 Subject to the provisions of sub-clause 10.13, the Client shall indemnify Grant McGregor against any third party-claims arising from the Client's breach of the warranty given in this sub-clause 6.12.

6.13 Not, unless deemed by Grant McGregor to be a Reseller, supply, sell, sub-license, transfer or otherwise make available the Services to any third party.

6.14 Save as provided by Grant McGregor under the terms of this or another Agreement, provide all equipment necessary to enable access to the Services; and

6.14.1 Make all reasonable measures to ensure that such equipment used in conjunction with the Services is free from viruses, worms, Trojan horses or any other malware.

6.15 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.

6.16 Be solely responsible for the use of the Services under its control, including that by third parties whether fraudulent or invited by the Client.

7 CONFIDENTIALITY

7.1 Each of the parties to this Agreement agrees to use Confidential Information solely for the purposes of executing this Agreement and for the evaluation of future products and services. 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.

7.2 Each of the parties to this Agreement shall, and procure that its staff, agents, regulators and subcontractors shall, keep confidential all Confidential Information that it shall have obtained as a result of the discussions leading up to or entering into or performance of this Agreement except:

7.2.1 To the extent that it can be shown that the information is publicly available other than through a breach of this Agreement;

7.2.2 To the extent that it can be shown that the information was lawfully in its possession prior to the date of its disclosure by any other party;

7.2.3 To the extent that the receiving party may have received the information from a third party without (bona fide) restriction as to disclosure;

7.2.4 Where the receiving party receives or has received written consent to such disclosure from the party entitled to such information;

7.2.5 To the extent that the receiving party may be required by law to make such disclosure, whereupon the receiving party shall forthwith notify the disclosing party of such requirement and shall limit disclosure to the portion of the Confidential Information which is legally required;

7.2.6 To the extent that it can be shown that such has been independently developed by the receiving party;

7.2.7 The parties agree in writing that such need not be kept confidential.

7.3 Upon written request from the other party, either party will return to the other all copies of the Confidential Information obtained during the performance of the Agreement within thirty days of such request.

7.4 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.

7.5 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.

7.6 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.

7.7 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 General Data Protection Regulation (GDPR) EU2016/679, 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 Grant McGregor who Processes Customer Data on Grant McGregor's behalf.

8.2 Grant McGregor and the Client each agree to comply with their respective obligations under the Data Protection Legislation and to maintain all necessary consents, registrations and notifications.

8.3 The parties to this Agreement agree that in relation to Customer Information that Grant McGregor Processes on its own behalf in order to provide the Services, Grant McGregor 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 that Grant McGregor 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 Client Tickets;

c) Administration of access to Grant McGregor'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, Grant McGregor'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 Grant McGregor;

8.3.4 Grant McGregor 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 Grant McGregor and forthwith upon receipt of such notice Grant McGregor 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 Grant McGregor Processes on behalf of the Client, the Client shall be the Data Controller and Grant McGregor 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 Grant McGregor shall not be privy to such information;

8.4.4 To the extent necessary to enable it to provide the Services, Grant McGregor 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 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 Grant McGregor'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 environment;

8.5.2 Created and / or stored within Grant McGregor'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 websites and web-services;

8.5.3 Created and / or stored within Grant McGregor's Infrastructure by any other means, including telephone voice recording.

8.6 The Client hereby agrees that certain Services Grant McGregor provides under the terms of this Agreement will be provided to Grant McGregor by one or more suppliers or subcontractors; and

8.6.1 In respect of Personal Data, Grant McGregor's suppliers or subcontractors may act in the capacity of Sub-Processor; and

8.6.2 For the avoidance of doubt, if Grant McGregor appoints a Sub-Processor to Process Customer Data on its behalf, Grant McGregor shall remain fully liable to the Client for the performance of that Sub-Processor's data protection obligations; and

8.6.3 Grant McGregor shall be entitled to change its suppliers or subcontractors at its sole discretion; and

8.6.4 If Grant McGregor 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 Grant McGregor within thirty days of the change and Grant McGregor will address the objection in accordance with the process set out in clause 18 hereof; and

b) Grant McGregor 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 of Data Controller hereby authorises Grant McGregor, in its capacity of Data Processor to Process Customer Data and to permit its suppliers and subcontractors, whether direct or indirect, who may be acting in the capacity of Sub-Processor to Process Customer Data for the purposes of performing its obligations under this agreement, subject to Grant McGregor'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, Grant McGregor and / or its supplier(s) 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 Grant McGregor 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 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) Grant McGregor's employees as fully as it is reasonable to expect, understand their obligations under the Data Protection Legislation.

8.7.8 To undertake 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 Grant McGregor 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 in providing responses to 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 Grant McGregor'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 Grant McGregor'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 Grant McGregor 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 Grant McGregor's (or its supplier's) Infrastructure (unless such is prohibited by Applicable Law).

8.8 Grant McGregor undertakes that it shall:

8.8.1 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 Grant McGregor;

8.8.2 If required to disclose Customer Data, including communications content, to an appropriate judicial, law enforcement or government agency under Applicable

Law, Grant McGregor 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 Grant McGregor's ceasing to trade and any subsequent novation of this Agreement or part thereof by Grant McGregor's supplier, Customer Data and Customer Information, will be transferred to the supplier or its assignee.

8.10 Grant McGregor 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 Grant McGregor 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 this clause 9 (the 'Charges').

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

9.3 For monthly and annual recurring invoices (People Centric, Enhanced Security Service, licenses and subscriptions), invoices are produced at the end of the month and will be collected via direct debit within ten days. The Client agrees to pay the whole amount of the Charges (without any withholding, deduction, set off or counter-claim).

9.4 For sale of goods and professional services, the Client agrees to pay the whole amount of the Charges (without any withholding, deduction, set off or counter-claim), within thirty days of the date of Grant McGregor's invoice unless otherwise agreed in writing.

9.5 Grant McGregor shall be entitled to offset any monies owed to the Client against any monies owed to Grant McGregor.

9.6 Invoices shall be deemed accepted by the Client unless a written objection, which clearly identifies the reason for the dispute is received by Grant McGregor 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 Grant McGregor of the Client's letter, the dispute shall be escalated in accordance with the provisions of clause 18 of this Agreement.

9.7 If the Client fails to make any payment in respect of undisputed invoices for Goods or Services within ten days of Grant McGregor's written request to do so, Grant McGregor shall be entitled to take one or more actions:

9.7.1 Suspend the provision of Services to the Client until such time as the outstanding invoice(s) is/are paid;

9.7.2 Charge the Client interest at the rate of 6% 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;

9.7.3 Terminate this Agreement;

9.7.4 Recover from the Client damages for any costs or losses suffered by Grant McGregor as a result of the Client's failure to make payment.

9.8 If during the term of this Agreement Grant McGregor incurs reasonable expenses, Grant McGregor shall be entitled to charge the Client at cost for such expenses.

9.9 If Grant McGregor is requested to provide Goods or Services in addition to those set out in the Order, Grant McGregor shall charge the Client for the provision of such Goods or Services at its prevailing rates.

9.10 All prices or Charges stated or referred to in this Agreement are exclusive of packing, packaging, shipping, carriage and insurance charge, if applicable.

9.11 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.

9.12 All elements of the Charges for Services shall be reviewed by Grant McGregor to be effective at the end of the Minimum Term and each subsequent anniversary thereof; and:

9.12.1 Provided that no material changes occur in suppliers' charges to Grant McGregor, the maximum annual increase in the annual charge will not exceed the prevailing retail price index;

9.12.2 If there is material change to the charges made by Grant McGregor's supplier, Grant McGregor shall be entitled to pass such costs on to the Client;

9.12.3 Any proposed changes in charges will be notified to the Client in writing not less than ninety days prior to any anniversary.

9.13 Notwithstanding the provisions of clause 9.11, Grant McGregor shall be entitled to increase its charges for any part of the Services if its suppliers increase their charges:

9.13.1 At any time by providing the Client not less than twenty eight days' notice.

9.14 The Client hereby consents to Grant McGregor carrying out credit reference checks as reasonably required in respect of the Client from time to time. The Client also agrees to provide all information requested by Grant McGregor that is necessary to carry out such credit reference checks.

9.15 Grant McGregor shall be entitled to require that the Client pays a deposit before the commencement of Services or during the term of this Agreement if Grant McGregor becomes aware of an adverse change to the Client's financial standing:

9.15.1 Grant McGregor shall be entitled to apply all or any of the deposit against any unpaid charges at its sole discretion;

9.15.2 Deposits shall not attract interest.

9.16 If a Client's direct debit fails to clear, Grant McGregor shall be entitled to levy a handling charge, which shall be charged at Grant McGregor's prevailing rate, as set out in the Tariff.

9.17 Grant McGregor 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 Grant McGregor, Grant McGregor shall be entitled to charge the Client for all reasonable expenses incurred up to the date of the modification.

9.19 Time is of the essence with regard to payments due under the terms of this Agreement.

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 in respect of:

10.1.1 Any breach of the express or implied terms of this Agreement by either party, its employees, subcontractors agents and suppliers;

10.1.2 Any use made by the Client of the Services;

10.1.3 Any of the Services, their supply or failure or delay in the supply thereof by Grant McGregor;

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 other liability that cannot be excluded or limited by law.

10.2.2 Grant McGregor's liability for any breach by Grant McGregor, 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;

10.3 In the event of damage to or loss, illegal Processing or disclosure of Personal Data:

10.3.1 Grant McGregor shall accept liability for 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;

To the extent that such losses, costs or damages arise from Grant McGregor's negligence or breach of its obligations under clause 8 hereof, up to a maximum liability of one hundred thousand pounds per event or series of connected events.

10.3.2 Grant McGregor 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 Grant McGregor's negligence.

10.4 Notwithstanding any other provision of this Agreement either party's maximum aggregate liability in one calendar 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, 10.7 and 10.13 hereof shall be limited to one hundred thousand pounds, 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.

10.5 In relation to direct loss of or physical damage to the Client's tangible property, Grant McGregor's maximum liability is two million pounds, and excludes defence and criminal proceedings costs or losses.

10.6 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.

10.7 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:

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

10.7.2 Any loss or corruption of data or information;

10.7.3 Losses incurred by third parties;

10.7.4 Any indirect, special loss or damage;

10.7.5 Any purely economic losses or punitive damages;

10.7.6 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.

10.8 If any exclusion in sub-clause 10.7 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 10.4.

10.9 Grant McGregor 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 of the Client (including fraud), its employees, agents or subcontractors including provision of complete, accurate information in a timely fashion to Grant McGregor;

10.9.2 Can be reasonably attributed to the un-serviceability, un-suitability, misconfiguration or misuse of the Client's equipment which is attached to the Services and is under the control of the Client;

10.9.3 Arises from or is a consequence of use of Grant McGregor's Services other than in accordance with the express terms of this Agreement;

10.9.4 Occurs during any period during which the Services have been suspended by Grant McGregor in accordance with clause 12.

10.10 Grant McGregor shall not in any event have any liability for non-provision of services arising from a delay to the RFS Date, howsoever caused.

10.11 The Client acknowledges and agrees that data transmitted over 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 Grant McGregor 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 via 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 losses incurred by Grant McGregor arising directly from the Client's breach of clause 8 of this Agreement;

10.12.3 Grant McGregor 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 Nothing in this clause 10 excludes or limits the Client's liability to pay the charges due under the terms of this Agreement;

10.12.5 Grant McGregor shall not be liable for any damages, costs, fines or other claims that arise from errors or omissions in information provided to Grant McGregor by the Client;

10.12.6 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 'Claim');

10.13.2 If either party becomes aware of any claim contemplated by any indemnity given in this Agreement it shall as soon as reasonably practical, notify the other party of such 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 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 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 claim;

e) Promptly provide the indemnifying party and its advisers with all information and assistance that they may reasonably require;

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 a Claim results directly or indirectly from the negligence of or wilful misconduct by the party, its employees, subcontractors or agents, against whom the Claim has been made.

10.14 The Client agrees and accepts that the express obligations and warranties made by Grant McGregor 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 Grant McGregor'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 This Agreement may be terminated (without prejudice to the terminating party's other rights and remedies) by written notice to the other party:

11.1.1 Forthwith by Grant McGregor if Grant McGregor's invoice remains unpaid ten Working Days after receipt of written notice from Grant McGregor to do so;

11.1.2 Forthwith by Grant McGregor if that two consecutive direct debit requests are rejected;

11.1.3 Forthwith by either party if the other commits any material breach of any terms of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty days of a written request to remedy the same; or

11.1.4 Forthwith by either party if 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 the other 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); or

11.1.5 Forthwith by Grant McGregor in advance of the supply of Services under the terms of this Agreement if Grant McGregor's supplier declines to accept Grant McGregor's order for the supply of Services, without any liability on the Client;

11.1.6 Forthwith by either party if Grant McGregor ceases to be authorised by a competent authority to provide the Services;

11.1.7 Forthwith by either party if the other party ceases to trade;

11.1.8 Forthwith by either party if the other party commits a breach which cannot be remedied;

11.1.9 Forthwith by either party if the other party is repeatedly in material breach of this Agreement;

11.1.10 Forthwith if a right of termination arises in the event of Force Majeure;

11.1.11 In accordance with any additional terms of the Supplementary Terms.

11.2 On termination of this Agreement, the Client shall forthwith return all Rented Equipment and Loaned Equipment to Grant McGregor and shall pay all Charges and any applicable cancellation Charges to Grant McGregor.

11.3 If any Equipment that is Grant McGregor's property is not returned to Grant McGregor within fourteen days of the date of termination, Grant McGregor shall be entitled to:

11.3.1 Enter into the Client's premises to recover the property and charge the Client any costs reasonably incurred; or

11.3.2 Charge the Client for the full retail price of the property as at the Commencement Date.

11.4 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 Grant McGregor 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 Grant McGregor's reasonable opinion, the Services are being used for activities that are in breach of any acceptable use clause contained in the Supplementary Terms or any other fraudulent, illegal or wrongful activity, knowingly or otherwise, by the Client;

12.1.2 In Grant McGregor's reasonable opinion, the Client is in material breach of any other provision of this Agreement;

12.1.3 Payments are unpaid within ten days of Grant McGregor's written request to do so;

12.1.4 Grant McGregor is instructed to do so by governmental or any other competent authority;

12.1.5 There are critical operational reasons or emergency;

12.1.6 Planned or emergency work is required to systems that underpin the delivery of the Services;

12.1.7 Any consent, wayleave or authority required by Grant McGregor or its supplier is withdrawn, revoked or otherwise ceases to have effect.

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 Grant McGregor during Working Hours when the situation which has given cause to the suspension is resolved by the Client and Grant McGregor 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 Grant McGregor's charges in relation to this Agreement during the period of suspension of Services;

12.2.3 If the Client fails to rectify the situation which has given cause to the suspension within thirty days of the commencement of the suspension, Grant McGregor shall be entitled to terminate the Agreement under the terms of clause 11;

12.2.4 Grant McGregor 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 Grant McGregor is not obliged to suspend services or give notice of suspension prior to exercising its right to terminate this Agreement.

13 PERFORMANCE AND SERVICE CREDITS

13.1 Service performance targets that are deemed to be Applicable Services are clearly indicated as such in the service level agreement set out in the Supplementary Terms ('Service Level Agreement').

13.2 Grant McGregor commits to ensure that the Applicable Services meet the performance targets set out in the Service Level Agreement.

13.3 If Grant McGregor does not meet the performance criteria set out in the Service Level Agreement, the Client shall be entitled to claim a Service Credit as set out in the Supplementary Terms.

13.4 To make a claim for Service Credit, the Client must notify Grant McGregor within three days of the beginning of the incident that gives rise to the claim.

13.5 The notification of the claim must include:

13.5.1 Client name and contact;

13.5.2 The start and end time for each incident for which a claim is being made;

13.5.3 Clear and accurate evidence to enable Grant McGregor to confirm the claim for Service Credit.

13.6 Failure to provide the required information as set out in this clause shall invalidate the claim for Service Credit.

13.7 In the event of a claim for a Service Credit, Grant McGregor shall review such claim and determine at its sole discretion whether or not a Service Credit is due.

13.8 The Client acknowledges and accepts that:

13.8.1 The Service Level Agreement is conditional upon the Client allowing Grant McGregor unrestricted access to its site during Working Hours and any extended cover period set out in the Service Schedule without prior notice in the event of a malfunction or other failure of the Services;

13.8.2 For certain performance measures, Service Credit eligibility will be based solely on Grant McGregor's own measures of core performance of the Services (acting reasonably and in good faith);

13.8.3 It is technically impractical to provide the Services free from Issues or interruption and Grant McGregor does not give any undertaking to do so. The Client therefore agrees that Service Credits set out for any Applicable Service shall constitute the Client's sole financial remedy for Grant McGregor's failure to meet any service level targets set out in the Service Schedule, and that such financial remedy is full and final satisfaction of Grant McGregor's liability for such failure;

13.8.4 Eligibility for payment of Service Credits shall be restricted to the Service Component whose performance fails to meet its target. For the avoidance of doubt, Service Credits shall not be payable for the consequential lack of availability or otherwise of Service Components that are reliant upon the serviceability of the Service Component that has failed to meet its performance target.

13.9 If a Service Credit is deemed due, such shall be applied to the Client's account within thirty days of the date of Grant McGregor's determination.

13.10 The payment of Service Credits is subject to the following limitations:

13.10.1 The Client's entitlement to claim Service Credits as provided in this Agreement shall be the Client's sole and exclusive remedy for any failure by Grant McGregor to provide the Applicable Services according to the Service Schedule;

13.10.2 Service Credits are non-refundable and non-transferrable and may only be used as credit against future invoices due in respect of the Client's usage of the Services under the terms of this Agreement;

13.10.3 The aggregate monetary amount of credits payable by Grant McGregor in any month shall not exceed 20% of the recurring monthly charge (excluding VAT and usage-based charges) for the relevant Service.

13.11 Service Credits shall not apply following any failure of Grant McGregor to provide the Applicable Services due to:

13.11.1 Incidents outside of Grant McGregor's reasonable control including force majeure events; or

13.11.2 Law enforcement activity; or

13.11.3 Actions of a third-party including denial of service attacks; or

13.11.4 Suspension or termination of Services by Grant McGregor under the terms of this Agreement; or

13.11.5 Any action or inaction whatsoever by the Client, its employees, agents or subcontractors in connection with the Applicable Services.

13.11.6 Any incident, action or event that occurs before the RFS Date.

13.12 The Client shall be ineligible to claim for Service Credits under the terms of this Agreement if:

13.12.1 The Client is in breach of any part of the Agreement; or

13.12.2 The Services have been suspended or terminated by Grant McGregor under the terms of this Agreement; or

13.12.3 Invoices issued by Grant McGregor are due to be paid but remain outstanding.

13.12.4 Notice to terminate this Agreement has been served by either party and acknowledged by the other; or

13.12.5 The Client has been served notice to remedy a breach of these terms and conditions and such remedy remains un-discharged.

14 INTELLECTUAL PROPERTY RIGHTS

14.1 All Intellectual Property in the Equipment and associated documentation owned or used by Grant McGregor, 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, Grant McGregor 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 Grant McGregor shall if applicable acquire for the Client (a) non-exclusive, non-transferable, royalty-free licence(s) 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 Grant McGregor 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, dissemble 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 Grant McGregor 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 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, Grant McGregor 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 Grant McGregor 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, Grant McGregor shall indemnify the Client against any third-party claims arising from an Intellectual Property rights claim ('IPR Claim') by the Owner of Equipment or Software supplied by Grant McGregor under the terms of this Agreement.

14.8 In the event of an IPR Claim arising from Equipment or Software provided by Grant McGregor to facilitate the use of the Services, the Client acknowledges that Grant McGregor 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 Grant McGregor 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 Grant McGregor by operation of law, such IPRs shall be assigned by Grant McGregor to the Client immediately on the creation of such Customer Data.

14.10 Grant McGregor 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 Grant McGregor 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, Grant McGregor does not guarantee the work, goods, software or services unless it has been negligent in making the recommendation.

15.2 In the case where Grant McGregor 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 Grant McGregor 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, Grant McGregor 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 Grant McGregor 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 Grant McGregor 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 Grant McGregor shall be entitled to correct any clerical or typographical error made by its employees at any time.

15.8 If Grant McGregor sells Goods or loans or rents Equipment to the Client to enable the delivery of the Services, the Equipment will be provided under the terms of Grant McGregor's Supplementary Terms for the Sale of Goods and Rental or Loan of Equipment.

15.9 The parties agree to comply with the provisions of the Bribery Act 2010; and

15.9.1 Maintain such processes and procedures to ensure compliance therewith; and

15.9.2 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.

15.10 Nothing in this Agreement shall prohibit Grant McGregor from supplying the same or similar Goods or Services to other persons.

15.11 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 Grant McGregor, in writing; and

15.11.1 Grant McGregor 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.

15.11.2 Grant McGregor will not be obliged to implement the changes until the Client has agreed in writing to the necessary variations.

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) (Scotland) Act 2017 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 Scotland and both parties hereby agree to submit to the exclusive jurisdiction of the Scottish 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 Grant McGregor 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 by a mutually agreed mediator;

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, 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, including making payment for 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 notice in writing, in which case neither party shall have any liability to the other

except rights and liabilities which accrued prior to such termination shall continue to subsist.

19.5 For the avoidance of doubt:

19.5.1 Grant McGregor acknowledges and agrees that any default of any of its subcontractors, suppliers or agents shall not constitute a Force Majeure event and such default shall not excuse Grant McGregor from the performance of its obligations under this Agreement; and

19.5.2 During the period of any Force Majeure event, the Client shall be entitled to engage an alternative supplier to provide a replacement to the Services.

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 ASSIGNATION

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

21.2 Grant McGregor shall be entitled to:

21.2.1 Assign the benefit of this Agreement. For the avoidance of doubt, such assignment shall not relieve Grant McGregor of any of its obligations under this Agreement; or

21.2.2 Assign the benefit and burden of this Agreement to a third party in the event of a sale of its order book or all or substantially all of its assets on written notice to, but not requiring the consent of, the Client.

21.2.3 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 be entitled to assign the benefit or burden of this Agreement without the prior written consent of Grant McGregor (such consent not to be unreasonably withheld or delayed).

21.4 Either party shall be entitled to assign its rights and obligations under the terms of this Agreement to members of its Group on written notice to the other.

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 Grant McGregor; and

22.1.1 If Grant McGregor 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, Grant McGregor shall be entitled to change the terms of this Agreement by giving the Client not less than one month's notice, in order to:

22.2.1 Comply with legal or regulatory obligations;

22.2.2 Maintain the security and integrity of the Services;

22.2.3 Improve or clarify the Agreement;

22.2.4 Reflect contractual changes imposed by its suppliers;

22.2.5 Protect the use of Intellectual Property;

22.2.6 Add, change or withdraw Services or service levels;

22.2.7 Change the Charges under the provisions of sub-clause 9.12.

22.3 If Grant McGregor makes any change to the terms of this Agreement other than those listed in clause 22.2 and such change results in material adverse effect, the Client shall be entitled to terminate this Agreement by giving one month's notice without incurring cancellation Charges, PROVIDED THAT such notice is given within fourteen days of the variation being made; and

22.3.1 If notice is not given by the Client within fourteen days of the notification of the variation, the variation shall be deemed agreed by both parties.

22.4 No modification, amendment or other variation to this Agreement shall affect the rights of either party accrued prior to the date of the variation.

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 Grant McGregor'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 Grant McGregor 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 Grant McGregor; 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 forbearance, delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them.

24.2 Any single or any partial exercise of any such powers or rights or remedies shall not preclude any other or further exercise of them.

24.3 Any waiver to be effected must be agreed in writing and shall:

24.3.1 Be confined to the specific circumstances in which it is given;

24.3.2 Not affect any other enforcement of the same or any other right;

24.3.3 Unless expressly stated, be revocable at any time (in writing).

25 SEVERABILITY

If any part of this Agreement is found by any competent jurisdiction to be invalid, unlawful or unenforceable then such part will be severed from this Agreement. The remainder of this Agreement will continue to be valid and enforceable to the full extent permitted by law.

26 NOTICES

26.1 Any notice given under this Agreement, including any notice relating to termination, renewal, variation, breach or other formal contractual matter, must be in writing and sent by email to the designated notice email address notified by the receiving party from time to time. In the absence of any such notification, notices to Grant McGregor shall be sent to legal@grantmcgregor.co.uk and notices to the Client shall be sent to the email address stated in the Order or subsequently notified for that purpose.

26.2 A notice shall be deemed received at the time it is transmitted, provided that:

26.2.1 the sender does not receive an automated failure, bounce-back or delivery rejection message; and the email is sent before 5:00pm on a Working Day.

26.2.2 Any email sent after 5:00pm or on a day that is not a Working Day shall be deemed received at 9:00am on the next Working Day.

26.3 For the purposes of calculating any contractual notice period, including any notice period relating to termination, renewal or non-renewal of this Agreement, the effective date of notice shall be the date and time on which the notice is deemed received under clause 26.2.

26.4 A notice intended to terminate or prevent the automatic renewal of this Agreement shall only be valid if it is deemed received before expiry of the applicable contractual notice period. For example, where ninety days' notice is required, the notice must be deemed received no later than the final day of that ninety-day notice period.

26.5 Day-to-day operational matters, support requests, service issues and other routine communications may be sent to any usual business email address and shall not constitute formal notice under this Agreement unless expressly identified as a contractual notice and sent in accordance with this clause.

26.6 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.

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 The parties acknowledge and agree that:

27.2.1 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;

27.2.2 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;

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

27.2.4 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.

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

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

End of Document