

**STANDARD TERMS AND CONDITIONS  
FOR IT SERVICES****BACKGROUND:**

Dynamics Consultants Ltd (the “Provider”) provides Business Software Solutions and IT services to business Customers. The Provider has reasonable skill, knowledge and experience in that field. These Terms and Conditions shall apply to the provision of services by the Provider to its Customers.

**OVERVIEW:**

A summary of the pertinent points within our Terms and Conditions can be found in our [Key Facts document](#).

**1. Application**

- 1.1 These Terms and Conditions shall apply to the provision of IT Services by the Provider to the Customer.
- 1.2 In the event of conflict between these Terms and Conditions and any other terms and conditions (of the Customer or otherwise), the former shall prevail unless expressly otherwise agreed by the Provider in writing.
- 1.3 In no event will the Provider be liable by reason of any breach by it of any of these Terms and Conditions or breach by it of any implied warranty, condition or other term of the Agreement, or any negligent or innocent misrepresentation, or any negligence or other duty at common law as specified in Clause 10.9.

**2. Definitions and Interpretation**

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

<b>“Agreement”</b>	means the Contract, Agreement or Purchase Order entered into by the Customer and the Provider to which these Terms and Conditions apply;
<b>“Business Day”</b>	means, any day (other than Saturday and Sunday) on which ordinary banks are open for their full range of normal business in England;
<b>“Commencement Date”</b>	means the date on which provision of the Services will commence, as defined in the Agreement;
<b>“Confidential Information”</b>	means all business, technical, financial or other information of a Party to the Agreement;
<b>“Customer”</b>	means the party procuring the Services from the Provider who shall be identified in the Agreement;

- “Data Protection Legislation”** means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR (the retained EU law version of the General Data Protection Regulation ((EU) 2016/679), as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018); the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 as amended;
- “Equipment”** means the Equipment or Systems on which the Software is installed;
- “Fees”** means any and all sums payable by the Customer to the Provider arising out of the performance of the Provider’s obligations under these Terms and Conditions;
- “Project”** means the project in relation to which the Provider is to provide the Services, as fully described in the Agreement;
- “Programme”** means a schedule for the provision of the Services which shall set out relevant dates and times for the Services as set out in the Agreement;
- “Provider”** Dynamics Consultants Ltd a company registered in England under number 06357376 whose registered office is at 30-34 North Street, Hailsham, East Sussex, BN27 1DW;
- “Software”** means any and all programs, applications, instructions or similar that may from time to time be installed on the Customer’s computer systems; and
- “Working Hours”** means the normal working hours of the Provider which are 09:00 to 17:00, UK GMT.
- 2.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 2.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
- 2.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- 2.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions and each of the Schedules as amended or supplemented at the relevant time;

- 2.2.4 a Schedule is a schedule to these Terms and Conditions;
  - 2.2.5 a Clause or paragraph is a reference to a Clause of these Terms and Conditions (other than the Schedules) or a paragraph of the relevant Schedule; and
  - 2.2.6 a "Party" or the "Parties" refer to the parties to these Terms and Conditions.
- 2.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 2.4 Words imparting the singular number shall include the plural and vice versa.
- 2.5 References to any gender shall include any other gender.

### 3. **Provider's Obligations**

- 3.1 With effect from the Commencement Date until any termination under Clause 9 or Clause 6.3, the Provider shall, in consideration of the Fees being paid in accordance with the terms of payment, provide the Services to the Customer as identified in the Agreement, or otherwise agreed under these Terms and Conditions.
- 3.2 The Provider will use reasonable care and skill to perform the Services identified in the Agreement or otherwise agreed under these Terms and Conditions.
- 3.3 The Provider shall use reasonable commercial endeavours to act in accordance with all reasonable instructions given to it by the Customer provided such instructions are compatible with the specification of Services provided in the Agreement.
- 3.4 The Provider will, subject to Clause 4, use reasonable endeavours to maintain the functionality of any Software which may be installed or otherwise operative on the Customer's Equipment and warrants that it will re-install any Software which may have been corrupted or otherwise made unavailable due to hardware failure and to render such technical assistance as may be necessary to secure the satisfactory operation of the Equipment and Software.
- 3.5 Upon receipt of the Customer's request for support or rectification of a production environment defect, the Provider shall (subject to its then current commitments) normally begin work on such support or defect within the timescales specified in the related support agreement and shall carry out all Services as specified in the Specification of Services Schedule during Working Hours until all required work is completed to the reasonable satisfaction of the Customer.
- 3.6 The Provider will not guarantee the performance of any Software which the Provider has undertaken to re-install under sub-Clause 3.4.
- 3.7 The Provider shall use all reasonable endeavours to complete its obligations under the Specification of Services provided in the Agreement. The Parties agree that time will not be of the essence in the performance of these obligations.
- 3.8 The Provider will endeavour to keep the Customer informed of all activities related to the Project by means of regular reports limited to material developments or similar, supplied to the Customer at regular intervals to be defined in the Agreement.
- 3.9 The Provider shall, from time to time, prepare and submit to the Customer a Programme which shall set out relevant dates and times for the Services including, but not limited to:
  - 3.9.1 Start dates;

- 3.9.2 Access dates;
  - 3.9.3 Milestone dates on which the Provider is to complete certain parts of the Services in order to enable the Customer's other contractors to proceed with their agreed services (or the relevant parts thereof);
  - 3.9.4 Invoicing dates.
- 3.10 The Provider shall use all reasonable endeavours to accommodate any reasonable changes in the Programme that may be requested by the Customer, subject to the Customer's acceptance of any related reasonable changes to the Fees that may be due as a result of such changes.
- 3.11 The Provider may, in relation to certain specified matters related to the Services, act on the Customer's behalf. Such matters shall not be set out in the Agreement but shall be agreed between the Parties in writing, as they arise from time to time.

#### 4. Customer's Obligations

- 4.1 The Customer shall provide all pertinent information to the Provider that is necessary for the Provider's provision of the Services. Such information shall include, but not necessarily be limited to, that pertaining to the priorities of the Project and the Project timetable.
- 4.2 The Customer shall, within 21 days of receiving a Programme from the Provider, inform the Provider in writing either of the Customer's acceptance or shall submit, with detailed reasons, its reasons for non-acceptance including proposed changes.
- 4.3 The Customer may, from time to time, issue reasonable instructions to the Provider in relation to the Provider's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.
- 4.4 In the event that the Provider requires the decision, approval, consent or any other communication from the Customer in order to continue with the provision of the Services or any part thereof at any time, the Customer shall provide the same in a reasonable and timely manner.
- 4.5 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Customer's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 4.6 The Customer shall allow the Provider the use of any Equipment, computer systems, peripherals or other hardware necessary to enable it to provide the Services and shall be responsible for procuring, installing and maintaining all communications media not supplied by the Provider.
- 4.7 The Customer will not allow any changes or modifications to the Software to be made by any party other than those changes or modifications authorised by, and notified to, the Provider in writing. If such changes or modifications are carried out without such authorisation and appropriate notification, the Provider reserves the right to review these Terms and Conditions and make adjustments accordingly. In addition, any effort required to support / maintain such enhancements will be charged at the Provider's standard daily rate.
- 4.8 The Customer will make freely available to the Provider all documentation associated with the Equipment, working documents, original Software installation media, current data backups, Equipment and any other relevant hardware for the efficient maintenance of the Equipment and the Software.

- 4.9 The Customer shall create regular data backups in such a manner as to minimise any potential data loss and to ensure that these are made available to the Provider as required. The Customer shall use their own reasonable discretion in determining the frequency of the back-ups which remain entirely their responsibility.
- 4.10 Any delay in the provision of the Services resulting from the Customer's failure or delay in complying with any of the provisions of Clause 4 of the Agreement shall not be the responsibility or fault of the Provider.
- 4.11 The Customer shall take all reasonable precautions to ensure the safety and health of the Provider's personnel while such personnel are at the Customer's premises.

## 5. Price

- 5.1 The Customer agrees to pay the Fees in accordance with Clause 6 and the Specification of Services in the Agreement.
- 5.2 The Provider shall be entitled to recover from the Customer its reasonable incidental expenses, for materials used and for third party goods and services supplied in connection with the provision of the Services. Mileage will be charged at the Fixed Profit Car Scheme rate as defined by HM Revenue & Customs.
- 5.3 The Customer shall pay the Provider for any additional services provided by the Provider that are not specified in the Specification of Services in the Agreement in accordance with the Provider's daily rate in effect at the time of the performance or such other rate as may be agreed. Any such charge for additional services shall be invoiced separately from any Fees due under the Specification of Services in the Agreement.
- 5.4 All sums payable by either Party pursuant to these Terms and Conditions are exclusive of any value added or other tax or other taxes on profit, for which that Party shall be additionally liable.

## 6. Payment

- 6.1 All payments required to be made pursuant to these Terms and Conditions by either Party shall be made within 30 days of the date of the relevant invoice, without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct or withhold by law.
- 6.2 The time of payment shall be of the essence of these terms and conditions. If the Customer fails to make any payment on the due date in respect of any sum due under these Terms and Conditions then the Provider shall have the right to charge the Customer interest on any sum outstanding at the rate of 1% above the base rate of NatWest Bank PLC from the due date for payment until the date on which the payment is received.
- 6.3 The Provider has the right to suspend and/or terminate the Agreement, if payment is delayed by more than 15 days for license purchases and 60 days for services provided.

## 7. Variation and Amendments

- 7.1 If the Customer wishes to vary any details of the Specification of Services Schedule in the Agreement it must notify the Provider in writing as soon as is reasonably possible. The Provider shall use reasonable commercial endeavours

to make any required changes and any additional costs thereby incurred shall be separately invoiced to the Customer.

- 7.2 If, due to circumstances beyond the Provider's control, it has to make any change in the arrangements relating to the provision of the Services it shall notify the Customer forthwith. The Provider shall endeavour to keep such changes to a minimum and shall seek to offer the Customer arrangements as close to the original arrangements as is reasonably possible in the circumstances.

## 8. Warranty

- 8.1 The Provider warrants that the product of all Services provided shall be free from any and all defects for a period that shall be defined in the Agreement.
- 8.2 If any defects in the product of the Services appear during the warranty period set out in the Agreement (30 days unless otherwise stated) the Provider shall rectify any and all such defects at no cost to the Customer.
- 8.3 Software, by its nature, will contain defects, nothing in this agreement guarantees that a software solution is defect free. The Provider is not liable for any defects in the base solution, or for defects caused by third parties.

## 9. Termination

- 9.1 Either Party may terminate the Agreement forthwith if:
- 9.1.1 the other Party is in breach of any of its obligations hereunder;
  - 9.1.2 the other Party has entered into liquidation (other than for the purposes of a bona fide amalgamation or reconstruction) whether compulsory or voluntarily or compounds with its creditors generally or has an administrator, administrative receiver or receiver appointed over all or a substantial part of its undertaking or assets;
  - 9.1.3 the other Party has become bankrupt or shall be deemed unable to pay its debts by virtue of Section 123 of the Insolvency Act 1986;
  - 9.1.4 the other Party ceases or threatens to cease to carry on business; or
  - 9.1.5 the other Party is delayed in performing or fails to perform any of their obligations due to any cause beyond their reasonable control in circumstances where, having proper regard to the nature and extent of the actual or likely future disruption to the Services due to that cause.
- 9.2 In the event of termination under clause 9.1 the Provider shall retain any sums already paid to it by the Customer without prejudice to any other rights that either party may have whether at law or otherwise.

## 10. Liability

- 10.1 The Provider shall ensure that it has in place at all times suitable and valid insurance that shall include public liability insurance.
- 10.2 In the event that the Provider fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Customer, up to a maximum cost of £50,000 to the Provider
- 10.3 The Customer shall indemnify the Provider against all damages, costs, claims and expenses suffered by the Provider arising from loss or damage to any equipment (including that of third parties) caused by the Customer, or its agents

or employees.

- 10.4 The Provider will indemnify the Customer for personal injury or death caused by the Provider's negligence in connection with the performance by the Provider of the Services.
- 10.5 The Provider's total liability for any loss or damage in respect of any individual occurrence or a series thereof arising out of any one event shall be limited either to the sum received for the service (up to a maximum of £500,000) or to the net contribution calculated in accordance with sub-Clause 10.6 of the Agreement, whichever is the smaller sum. Clause 10.4 is excluded from this limitation.
- 10.6 The net contribution referred to in sub-Clause 10.5 shall be calculated on the basis of what is deemed just and equitable for the Provider to pay taking into account the Provider's responsibility for the loss or damage in question and comparing that responsibility with that of all other third parties providing services for the Project for the same loss or damage. The net contribution shall be assessed on the following assumptions:
  - 10.6.1 that such third parties have provided to the Customer contractual undertakings which are no less onerous than those under the Agreement with the Provider with respect to liability for such loss or damage;
  - 10.6.2 that there are no exclusions or limitations of liability nor joint insurance or co-insurance provisions between the Customer and any such third party; and
  - 10.6.3 that such third parties are deemed to have paid to the Customer such sums as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss or damage in question.
- 10.7 The Provider shall not be liable for any loss or damage suffered by the Customer that results from the Customer's failure to follow any instructions given by the Provider.
- 10.8 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.
- 10.9 In no event will the Provider be liable by reason of any breach by it of any of these Terms and Conditions or breach by it of any implied warranty, condition or other term of the Agreement, or any negligent or innocent misrepresentation, or any negligence or other duty at common law, for any:
  - 10.9.1 loss of or damage to data;
  - 10.9.2 loss of use of data;
  - 10.9.3 loss of use of any hardware or software;
  - 10.9.4 interruption to business;
  - 10.9.5 loss of income or revenue;
  - 10.9.6 loss of profit, contracts, business, business opportunity, or goodwill;
  - 10.9.7 loss of anticipated savings; or
  - 10.9.8 any indirect, special or consequential loss, damage, costs, expenses or other claims, whether or not the same were reasonably foreseeable or actually foreseen

arising from any act or omission of the Provider in connection with the performance of its obligations under the Agreement.

- 10.10 The Parties acknowledge and agree that the limitations contained in this Clause 10 are reasonable in the light of all the circumstances.
- 10.11 These limitations shall apply cumulatively, and shall apply regardless of the form of action, whether under statute, in contract or tort, including negligence, or any other form of action.
- 10.12 Nothing in these Terms and Conditions is intended to or will exclude or limit the Provider's liability for death or personal injury caused by the Provider's negligence, or for fraud or fraudulent misrepresentation by the Provider.
- 10.13 For the purposes of this clause, the 'Provider' includes its employees, sub-contractors and suppliers.
- 10.14 The employees, sub-contractors and suppliers of the Provider shall all have the benefit of the limits and exclusions of liability set out above in terms of the Contracts (Rights of Third Parties) Act 1999.

## 11. Confidentiality

- 11.1 During the term of the Agreement and after termination of the Agreement for any reason for a period of 2 years starting on the date of termination, the following obligations shall apply to the Party disclosing Confidential Information ('the Disclosing Party') to the other Party ('the Receiving Party').
- 11.2 Subject to sub-Clause 11.3, the Receiving Party:
  - 11.2.1 may not use any Confidential Information of the Disclosing Party for any purpose other than the performance of its obligations under the Agreement;
  - 11.2.2 may not disclose any Confidential Information of the Disclosing Party to any person except with the prior written consent of the Disclosing Party; and
  - 11.2.3 shall make every effort to prevent the use or disclosure of the Confidential Information of the Disclosing Party.
- 11.3 The obligations of confidence referred to in the provisions of this Clause shall not apply to any Confidential Information of the Disclosing Party that:
  - 11.3.1 is in the possession of and is at the free disposal of the Receiving Party or is published or is otherwise in the public domain before its receipt by the Receiving Party;
  - 11.3.2 is or becomes publicly available on a non-confidential basis through no fault of the Receiving Party;
  - 11.3.3 is required to be disclosed by any applicable law or regulation;
  - 11.3.4 is received in good faith by the Receiving Party from a third party who, on reasonable enquiry by the Receiving Party claims to have no obligations of confidence to the Disclosing Party in respect of it and who imposes no obligations of confidence upon the Receiving Party.
- 11.4 Without prejudice to any other rights or remedies the Disclosing Party may have, the Receiving Party acknowledges and agrees that in the event of breach of this clause the Disclosing Party shall, without proof of special damage, be entitled to an injunction or other equitable remedy for any threatened or actual breach of the provisions of this clause in addition to any damages or other remedies to



which it may be entitled.

11.5 The obligations of the Parties under the provisions of this clause shall survive the expiry or the termination of the Agreement for whatever reason.

## 12. Data Protection

12.1 The Provider will only use the Customer's personal information as set out in the Provider's Privacy Notice available from the Provider's website.

## 13. Data Processing

13.1 In this Clause 13 and in the Agreement, "personal data", "data subject", "data controller", "data processor", and "personal data breach" shall have the meaning defined in Article 4 of the UK GDPR.

13.2 Both Parties shall comply with all applicable data protection requirements set out in the Data Protection Legislation. Neither this Clause 13 nor the Agreement shall relieve either Party of any obligations set out in the Data Protection Legislation and shall not remove or replace any of those obligations.

13.3 For the purposes of the Data Protection Legislation and for this Clause 13 and the Agreement, the Provider is the "Data Processor" and the Customer is the "Data Controller".

13.4 The type(s) of personal data, the scope, nature and purpose of the processing, and the duration of the processing shall be set out in a Schedule to the Agreement.

13.5 The Data Controller shall ensure that it has in place all necessary consents and notices required to enable the lawful transfer of personal data to the Data Processor for the purposes described in these Terms and Conditions or the Agreement.

13.6 The Data Processor shall, with respect to any personal data processed by it in relation to its performance of any of its obligations under these Terms and Conditions or the Agreement:

13.6.1 Process the personal data only on the written instructions of the Data Controller unless the Data Processor is otherwise required to process such personal data by law. The Data Processor shall promptly notify the Data Controller of such processing unless prohibited from doing so by law.

13.6.2 Ensure that it has in place suitable technical and organisational measures (as approved by the Data Controller) to protect the personal data from unauthorised or unlawful processing, accidental loss, damage or destruction. Such measures shall be proportionate to the potential harm resulting from such events, taking into account the current state of the art in technology and the cost of implementing those measures. Measures to be taken shall be agreed between the Data Controller and the Data Processor and set out in the Schedule to the Agreement.

13.6.3 Ensure that any and all staff with access to the personal data (whether for processing purposes or otherwise) are contractually obliged to keep that personal data confidential; and

13.6.4 Not transfer any personal data outside of the UK without the prior written consent of the Data Controller and only if the following conditions are satisfied:

- 13.6.4.1 The Data Controller and/or the Data Processor has/have provided suitable safeguards for the transfer of personal data;
  - 13.6.4.2 Affected data subjects have enforceable rights and effective legal remedies;
  - 13.6.4.3 The Data Processor complies with its obligations under the Data Protection Legislation, providing an adequate level of protection to any and all personal data so transferred; and
  - 13.6.4.4 The Data Processor complies with all reasonable instructions given in advance by the Data Controller with respect to the processing of the personal data.
- 13.6.5 Assist the Data Controller at the Data Controller's cost, in responding to any and all requests from data subjects and in ensuring its compliance with the Data Protection Legislation with respect to security, breach notifications, impact assessments, and consultations with supervisory authorities or regulators (including, but not limited to, the Information Commissioner's Office);
- 13.6.6 Notify the Data Controller without undue delay of a personal data breach;
- 13.6.7 On the Data Controller's written instruction, delete (or otherwise dispose of) or return all personal data and any and all copies thereof to the Data Controller on termination of the Agreement unless it is required to retain any of the personal data by law; and
- 13.6.8 Maintain complete and accurate records of all processing activities and technical and organisational measures implemented necessary to demonstrate compliance with this Clause 13 or the Agreement and to allow for audits by the Data Controller and/or any party designated by the Data Controller.
- 13.7 The Data Processor shall not sub-contract any of its obligations to a sub-contractor with respect to the processing of personal data under this Clause 13 or the Agreement without the prior written consent of the Data Controller (such consent not to be unreasonably withheld). In the event that the Data Processor appoints a sub-contractor, the Data Processor shall:
- 13.7.1 Enter into a written agreement with the sub-contractor, which shall impose upon the sub-contractor the same obligations as are imposed upon the Data Processor by this Clause 12 or the Agreement and which shall permit both the Data Processor and the Data Controller to enforce those obligations; and
  - 13.7.2 Ensure that the sub-contractor complies fully with its obligations under that agreement and the Data Protection Legislation.
- 13.8 Either Party may, at any time, and on at least 30 calendar days notice, alter the data protection provisions of the Agreement, replacing them with any applicable data processing clauses or similar terms that form part of an applicable certification scheme. Such terms shall apply when replaced by attachment to the Agreement.

**14. Sub-Contracting**

14.1 Subject to the provisions of Clause 13, or the Agreement, the Provider may sub-contract to third parties all or any part of the Services to be carried out under the Agreement. The Provider will notify the customer of any sub-contractors providing Services for the Customer.

**15. Appointment of Third Party Consultants and Contractors**

15.1 The Customer may, from time to time, appoint such other third party consultants and contractors as required to perform other services necessary for the Project. The Provider's involvement in such appointments shall not be required except in the event that the services provided by such third parties are likely at any time to duplicate, overlap, or in any other manner interfere with the Services provided by the Provider.

15.2 Any and all third party consultants and contractors appointed to the Project shall be required to cooperate fully with the Provider and to promptly provide any and all such information reasonably required by the Provider to enable the Provider to provide the Services and comply with the Agreement.

15.3 The Provider shall be required to cooperate fully with any and all third party consultants and contractors appointed to the Project and to promptly provide any and all such information reasonably required by any such consultants and contractors to enable them to provide the relevant agreed services to the Customer in compliance with all relevant agreements.

15.4 The Provider may, from time to time, identify certain parts of the Project which require the services of a third party specialist. In such cases, the Provider shall inform the Customer of the need for such a specialist and it shall be the Customer's responsibility to appoint and contract with the specialist. The Provider shall not be a party to any such contracts.

15.5 The Customer shall keep the Provider fully informed of any and all third party consultants and contractors appointed to the Project within 7 days of the appointment and shall provide contact details of the same.

15.6 In certain cases, the Provider may require third party consultants and contractors appointed by the Customer to consider and comment upon certain work completed by the Provider, where such work relates to the services provided by those third party consultants and contractors, in order that the Provider may make any reasonably necessary and appropriate adjustments and revisions to that work.

**16. Force Majeure**

Neither Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, Internet Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action, pandemic / epidemic or any other event that is beyond the control of the Party in question. As a result of a Force Majeure event, the Customer and the Provider may mutually agree in writing to a time extension to comply with their obligations.

**17. Waiver**

17.1 No waiver by the Provider of any breach of these Terms and Conditions by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision. A waiver of any term, provision or condition of these Terms and Conditions shall be effective only if given in writing and signed by the waiving party and then only in the instance and for the purpose for which any waiver is given.

17.2 No failure or delay on the part of any Party in exercising any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise of or the exercise of any other right, power or privilege.

**18. Severance**

If any provision of these Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provision in question shall not be affected thereby.

**19. Further Assurance**

Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

**20. Costs**

Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

**21. Set-Off**

Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

**22. Assignment**

22.1 The Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

**23. Time**

23.1 Unless otherwise stated in this Agreement or agreed in writing between the Parties, the times and dates referred to in the Agreement shall be for guidance only and shall not be of the essence of the Agreement and may be varied by mutual agreement between the Parties.

**24. Relationship of the Parties**

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

**25. Non-Solicitation**

25.1 Neither Party shall, for the term of the Agreement and for a period of 2 years after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement without the express written consent of that Party.

25.2 Neither Party shall, for the term of the Agreement and for a period of 2 years after its termination or expiry, solicit or entice away from the other Party any customer or Customer where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

**26. Third Party Rights**

26.1 No part of the Agreement is intended to confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

26.2 Subject to Clause 22 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

**27. Notices**

27.1 All notices under these Terms and Conditions shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer (CEO / Director / Operations Manager) of the Party giving the notice.

27.2 Notices shall be deemed to have been duly given:

27.2.1 when delivered, if delivered by courier or other messenger (including recorded delivery mail) during normal Working Hours of the recipient; or

27.2.2 when sent, if transmitted by e-mail and a successful transmission report or return receipt is generated; or

27.2.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

27.2.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

in each case addressed to the most recent address or e-mail address notified to the other Party.

27.3 Service of any document for the purposes of any legal proceedings concerning or arising out of the Agreement shall be affected by either Party by causing such document to be delivered to the other Party at its registered or principal office, or to such other address as may be notified to one Party by the other Party in writing from time to time.

**28. Entire Agreement**

- 28.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 28.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

**29. Counterparts**

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

**30. Dispute Resolution (ADR and Arbitration)**

- 30.1 The parties shall attempt to resolve any dispute arising out of or relating to this Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 30.2 If negotiations under sub-Clause 30.1 do not resolve the matter within 21 days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (“ADR”) procedure.
- 30.3 If the ADR procedure under sub-Clause 30.2 does not resolve the matter within 28 days of the initiation of that procedure, or if either party will not participate in the ADR procedure, the dispute may be referred to arbitration by either party.
- 30.4 The seat of the arbitration under sub-Clause 30.3 shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the parties. In the event that the parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either party may, upon giving written notice to the other party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.
- 30.5 Nothing in this Clause 30 shall prohibit either party or its affiliates from applying to a court for interim injunctive relief.
- 30.6 The costs may be determined as part of the Alternative Dispute Resolution (“ADR”) procedure and in default of any agreement or determination, the costs will be shared equally between the parties.
- 30.7 The parties hereby agree that the decision and outcome of the final method of dispute resolution under this Clause 30 shall be final and binding on both parties.

**31. Law and Jurisdiction**

- 31.1 Each party irrevocably agrees that the laws and courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.
- 31.2 Any dispute between the Parties relating to the Agreement shall fall within the exclusive jurisdiction of the courts of England and Wales.