

**PRINCIPAL SYSTEMS (HOLDINGS) LIMITED OR ONE OF ITS WHOLLY-OWNED SUBSIDIARIES (“SUPPLIER”)**

**GENERAL TERMS OF BUSINESS RELATING TO PROFESSIONAL AND IMPLEMENTATION SERVICES, USE OF SUPPLIER SOFTWARE AND SUPPORT AND MAINTENANCE SERVICES**

Please note that these general terms of business may be changed from time to time and the Customer is strongly advised to ensure that they review the terms regularly.

**1. COMMENCEMENT AND DURATION**

This agreement shall commence on the Execution Date. Unless otherwise agreed in the Order, the agreement will continue in full force and effect, unless terminated earlier in accordance with its terms, until:-

- (a) in the case of Professional and Implementation Services, completion of such Professional and Implementation Services in accordance with the terms of the Order; and
- (b) in the case of a Software Licence Renewal, either party gives to the other party 90 days’ written notice to terminate, such notice to expire no earlier than the date specified as the contractual renewal date in relation to such Software Licence Renewal (**Initial Term**). In the absence of any such notice, the Initial Term will automatically renew for an additional period equal to the term provided for in the Customer’s initial contract, and the Customer will continue to be liable for payment of the relevant Charges.

**2. SUPPLIER'S RESPONSIBILITIES**

2.1. The Supplier shall:

- 2.1.1. provide the Services in accordance with this agreement;
- 2.1.2. perform the Services with care, skill and diligence and in accordance with best practice in the Supplier's industry;
- 2.1.3. co-operate with the Customer in all matters relating to the Services, and comply with all reasonable Customer instructions;
- 2.1.4. obtain, and maintain during the term of this agreement, all necessary licences and consents and comply with all relevant legislation in relation to the Services; and
- 2.1.5. where any of the Services are to be performed at any of the Customer’s premises, observe all health and safety rules and regulations and any other reasonable security requirements that apply at any such Customer's premises

from time to time and that have been communicated to it under clause 3.1.5.

- 2.2. The Supplier shall use reasonable endeavours to meet any Milestones or other deadlines specified in relation to performance of the Services but any such dates shall be estimates only.

### **3. CUSTOMER'S OBLIGATIONS**

- 3.1. The Customer shall:

- 3.1.1. co-operate with the Supplier in all matters relating to the Services;
- 3.1.2. appoint a manager or managers in respect of the Services. That person or persons shall have authority to contractually bind the Customer on all matters relating to the Services (including by signing Change Orders) and shall be available at the Site at all relevant times;
- 3.1.3. provide, for the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data and other facilities as reasonably required by the Supplier for the Services;
- 3.1.4. provide to the Supplier in a timely manner all documents, information, items and materials in any form (whether owned by the Customer or a third party) reasonably required by the Supplier in connection with the Services and ensure that they are accurate and complete in all material respects;
- 3.1.5. where relevant, inform the Supplier of all health and safety and security requirements that apply at any of the Customer's premises;
- 3.1.6. provide assistance and advice, where applicable, regarding visa, permits, accommodation, personal security and such other matters as may arise to enable the Supplier's personnel to provide services at whatever location of the Customer the same need to be performed, and shall also provide assistance and advice to facilitate such personnel wishing, for any reason and at any time, to return home;
- 3.1.7. obtain and maintain all necessary licences and consents and comply with all relevant legislation as required to enable the Supplier to provide the Services;
- 3.1.8. take all precautions required to maintain the confidentiality of the Software and the Project Documents and, in particular, shall use the Software solely at the Site on the operating environment and in an area requiring authorised access and shall effect security measures to safeguard the Software from theft or from access by persons other than its own authorised employees or agents;

- 3.1.9. be responsible for all security aspects of and at the Site, including but not limited to, access to the Site, configuration of firewalls, routers, switches and web-servers and, while the Supplier will recommend secure configuration, the Supplier does not represent or warrant that this will fully protect the use of the Software and has no liability in respect of any such recommendation;
  - 3.1.10. maintain adequate, current and subsisting support contracts on any servers, PCs, mobile computing devices (radio frequency terminals, voice units), printers, wireless infrastructure, broadband, warehouse control or execution systems, or any other software or hardware upon which the Software relies, that is outside of the scope of this agreement;
  - 3.1.11. be responsible for ensuring that all IT infrastructure on which the Software is dependent is suitable to accommodate the extra processing necessitated by the Software, and will upgrade any such IT infrastructure accordingly as required; and
  - 3.1.12. be responsible for all IT Infrastructure management, disaster recovery, continuity, and systems security.
- 3.2. If the Supplier's performance of its obligations under this agreement is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Supplier shall be allowed an extension of time to perform its obligations equal in duration to the delay caused by the Customer.
- 3.3. Where the Services include development of integration channels or software between the Software and other hardware or software systems (**External Systems**) in use by the Customer, then:
- 3.3.1. the Customer shall provide access to detailed documentation for the External Systems, and fully installed and operative copies of all relevant software, databases, and development utilities or software (such as compilers, editors, etc.) on dedicated hardware for development and test purposes. This delivery will be at a location specified by the Supplier; and
  - 3.3.2. the Customer shall provide all reasonable assistance in development at the Customer's cost, including using all reasonable endeavours to procure the full co-operation of any third-parties, including software suppliers, in providing necessary assistance, granting of temporary licences, or additional detailed documentation as required by the Supplier; and
  - 3.3.3. the Customer shall ensure that all third-party software and hardware are fully licensed and that no third-party Intellectual Property Rights are breached; and

- 3.3.4. the Customer will be responsible for ensuring that all IT infrastructure on which the Software is dependent is suitable to accommodate the extra processing necessitated by the integration software, and will upgrade any such IT infrastructure accordingly if required; and
- 3.3.5. the Customer is responsible for all IT Infrastructure management, disaster recovery, continuity, and systems security.

If the relevant access or assistance as required by this clause 3.3 cannot be supplied in full, the Supplier may at its option terminate this agreement on 3 months' notice in writing.

- 3.4. The Customer agrees and acknowledges that any data input in relation to the Software by the Customer and its agents and matters such as environmental server specification and third-party software will be the entire responsibility of the Customer. The Supplier will have no responsibility for any such matters, in particular the accuracy and/or validity of any data output from the Software as a result of any data input by or on behalf of the Customer.
- 3.5. The Customer shall at all times comply with any obligations on licensees of any third-party products comprised within the Software.
- 3.6. The Customer shall not, without the prior written consent of the Supplier, at any time from the date of this agreement to the expiry of 12 months after the termination or expiry of this agreement for whatever reason, solicit or entice away from the Supplier or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or sub-contractor of the Supplier, or of any Affiliate of the Supplier, in the provision of the Services. The undertaking in this clause 3.6 is intended for the benefit of, and shall be enforceable by, the Supplier and its Affiliates and shall apply to actions carried out by the Customer, or an Affiliate of the Customer, in any capacity and whether directly or indirectly, on its own behalf or on behalf of, or jointly with, any other person.

#### 4. **CHANGE CONTROL**

- 4.1. Either party may propose changes to the scope or execution of the Services but no proposed changes shall come into effect until a relevant **Change Order** has been signed by both parties. A Change Order shall be a document setting out the proposed changes and the effect that those changes will have on:
  - 4.1.1. the Services;
  - 4.1.2. the Charges;
  - 4.1.3. any timetable for the Services; and

4.1.4. any of the other terms of this agreement.

The Customer accepts and agrees that any significant changes sought by it under this clause 4 are likely to affect agreed delivery dates and/or Milestones.

4.2. If the Supplier wishes to make a change to the Services, it shall provide a draft Change Order to the Customer.

4.3. If the Customer wishes to make a change to the Services:

4.3.1. it shall notify the Supplier and provide as much detail as the Supplier reasonably requires of the proposed changes, including the timing of the proposed change; and

4.3.2. the Supplier shall, as soon as reasonably practicable after receiving the information at clause 4.3.1, provide a draft Change Order to the Customer.

4.4. If the parties:

4.4.1. agree to a Change Order, they shall sign it and that Change Order shall amend this agreement accordingly; or

4.4.2. are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 24.124.124.1 (Multi-tiered dispute resolution procedure).

## **5. CHARGES AND PAYMENT**

5.1. In consideration of the provision of the Services by the Supplier, the Customer shall pay the Charges.

5.2. The Supplier may increase the annual Charges, or any part of them, on an annual basis with effect from each anniversary of the Operational Commencement Date by the higher of 3.5% or the applicable percentage increase in the UK or Republic of Ireland Consumer Prices Index (**CPI**) (as applicable to the jurisdiction in which the Customer is based) in the preceding 12-month period and the first such increase shall take effect on the first anniversary of the Operational Commencement Date and, if applicable, shall be based on the latest available figure for the percentage increase in the CPI. If the Customer is outside these jurisdictions, it will be the Republic of Ireland CPI which is used for this clause 5.2.

5.3. Unless otherwise agreed with the Customer, or for work performed after the implementation project is complete, the Supplier shall invoice the Customer at the end of each month for Services performed during that month, unless a separate payment plan is agreed in advance.

- 5.4. The Customer shall pay each invoice submitted to it by the Supplier within 30 days of receipt to a bank account nominated in writing by the Supplier from time to time.
- 5.5. Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier any sum due under this agreement on the due date:
- 5.5.1. the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
- 5.5.2. the Supplier may suspend part or all of the Services until payment has been made in full.
- 5.6. All sums payable to the Supplier under this agreement:
- 5.6.1. are exclusive of VAT, and the Customer shall in addition pay an amount equal to any VAT chargeable on those sums on delivery of a VAT invoice; and
- 5.6.2. shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **6. INTELLECTUAL PROPERTY RIGHTS**

- 6.1. The Supplier:
- 6.1.1. warrants that the receipt, use and onward supply of the Services and the use of the Software by the Customer in accordance with the terms of this agreement shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
- 6.1.2. shall, subject to clause 9, indemnify the Customer against all liabilities, costs, expenses, damages and losses suffered or incurred or paid by the Customer arising out of or in connection with any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights, arising out of, or in connection with, the receipt, use or onward supply of the Services and the use of the Software,

PROVIDED THAT the Supplier not be in breach of the warranty at clause 6.1.1, and the Customer shall have no claim under the indemnity at clause 6.1.2 to the extent the infringement arises from:-

- (i) any modification of the Services or the Software, other than by or on behalf of the Supplier; and

- (ii) compliance with the Customer's specifications or instructions, where infringement could not have been avoided while complying with such specifications or instructions and provided that the Supplier shall notify the Customer if it knows or suspects that compliance with such specification or instruction may result in infringement.
- 6.2. If the Supplier (**Indemnifying Party**) is required to indemnify the Customer (**Indemnified Party**) under this clause 6, the Indemnified Party shall:
  - 6.2.1. notify the Indemnifying Party in writing of any claim against it in respect of which it wishes to rely on the indemnity at clause 6.1.2 (**IPRs Claim**);
  - 6.2.2. allow the Indemnifying Party, at its own cost, to conduct all negotiations and proceedings and to settle the IPRs Claim, always provided that the Indemnifying Party shall obtain the Indemnified Party's prior approval of any settlement terms, such approval not to be unreasonably withheld or delayed;
  - 6.2.3. provide the Indemnifying Party with such reasonable assistance regarding the IPRs Claim as is required by the Indemnifying Party, subject to reimbursement by the Indemnifying Party of the Indemnified Party's reasonable costs properly so incurred; and
  - 6.2.4. not, without prior consultation with the Indemnifying Party, make any admission relating to the IPRs Claim or attempt to settle it, provided that the Indemnifying Party considers and defends any IPRs Claim diligently, using competent counsel and in such a way as not to bring the reputation of the Indemnified Party into disrepute.
- 6.3. If an IPRs Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:
  - 6.3.1. procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this agreement;
  - 6.3.2. modify the Software so that it ceases to be infringing;
  - 6.3.3. replace the Software with non-infringing software; or
  - 6.3.4. terminate this agreement immediately by notice in writing to the Customer and refund any of the Charges paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof.
- 6.4. This clause 6 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of IPRs Claims.

## **7. DATA PROTECTION**

Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.

## **8. CONFIDENTIALITY**

- 8.1. Each party undertakes that it shall not at any time during the term of this agreement and for a period of 3 years after termination or expiry of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs (including, in the case of the Customer, the Software), except as permitted by clause 8.2.
- 8.2. Each party may disclose the other party's confidential information:
  - 8.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 8; and
  - 8.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 8.3. No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.
- 8.4. No announcements or press releases concerning the subject-matter of this agreement will be made by either party without the prior written consent of the other party PROVIDED THAT the Supplier may use the Customer company name and logo and describe the Customer's use of the Software and receipt of the Services in its publicity and marketing material, including on its website.

## **9. LIMITATION OF LIABILITY**

- 9.1. References to liability in this clause 9 (Limitation of liability) include every kind of liability arising under or in connection with this agreement including but not limited to liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 9.2. Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.



- 9.3. Nothing in this clause 9 shall limit the Customer's payment obligations under this agreement.
- 9.4. Nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:
- 9.4.1. death or personal injury caused by negligence;
  - 9.4.2. fraud or fraudulent misrepresentation; and
  - 9.4.3. breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.5. Subject to clause 9.2 (No limitations in respect of deliberate default), clause 9.3 (No limitation on the Customer's payment obligations), and clause 9.4 (Liabilities which cannot legally be limited):-
- 9.5.1. neither party shall under any circumstances whatever be liable to the other, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss (whether direct or indirect) of actual or anticipated income, savings or profits, contracts, business, business opportunities, revenue, turnover, savings, goodwill, reputation, or wasted expenditure, or for any indirect or consequential loss arising under or in connection with this agreement whether or not such loss or damage is foreseeable, foreseen or known; and
  - 9.5.2. each party's total liability to the other in respect of all other losses arising under or in connection with this agreement, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed the amount of the Charges actually paid by the Customer to the Supplier under this agreement in relation to the Services in the 12-month period prior to any claim or claims in relation to any such losses.
- 9.6. Unless the Customer notifies the Supplier that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 6 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 9.7. Save as specifically provided for in this agreement, all conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded to the extent permitted by law, including any implied conditions, warranties, or other terms as to merchantable quality, fitness for purpose

or the use of reasonable skill and care.

## **10. TERMINATION**

- 10.1. Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:
- 10.1.1. the other party commits a material breach of any term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - 10.1.2. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (**IA 1986**) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
  - 10.1.3. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 10.1.4. the other party applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
  - 10.1.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
  - 10.1.6. an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
  - 10.1.7. the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
  - 10.1.8. a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;

- 10.1.9. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 10.1.10. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1.2 to clause 10.1.9 (inclusive); or
- 10.1.11. the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

## **11. AUDIT**

The Supplier or its designated agent or any third-party licensor of any software comprised within the Software, may, once in each 6-month period following the Operational Commencement Date and upon 5 days' advance written notice to the Customer, inspect any facility where the Software is used or hosted for the purpose of confirming the Customer's compliance with this agreement. Such inspection will be subject to the Customer's reasonable security and confidentiality requirements and be performed at the Supplier's sole expense; provided, however, that if, as a result of the audit, it is determined that the Customer owes the Supplier additional sums for exceeding the Permitted User Number, then the Customer will bear the reasonable cost of the audit and pay all sum due in relation to any such excess users as from the date the Permitted User Number was exceeded, together with applicable interest.

## **12. OBLIGATIONS IN RELATION TO TERMINATION AND SURVIVAL**

### **12.1. Obligations on termination or expiry**

On termination or expiry of this agreement:-

- 12.1.1. the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest; and
- 12.1.2. the Customer will immediately destroy or return to the Supplier (at the option of the Supplier) all copies of the Software then in its possession, custody or control and, in the case of destruction, certify to the Supplier by a director of the Customer that it has done so.

### **12.2. Survival**

- 12.2.1. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

12.2.2. Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

### 13. FORCE MAJEURE

13.1. **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:

13.1.1. acts of God, flood, drought, earthquake or other natural disaster;

13.1.2. epidemic or pandemic;

13.1.3. terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;

13.1.4. nuclear, chemical or biological contamination or sonic boom;

13.1.5. any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;

13.1.6. collapse of buildings, fire, explosion or accident;

13.1.7. any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and

13.1.8. interruption or failure of utility service.

13.2. Provided it has complied with clause 13.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

13.3. The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

13.4. The Affected Party shall:

13.4.1. as soon as reasonably practicable after the start of the Force Majeure Event,

notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

13.4.2. use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

13.5. If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 3 months, the party not affected by the Force Majeure Event may terminate this agreement by giving 10 days' written notice to the Affected Party.

#### **14. ASSIGNMENT AND OTHER DEALINGS**

14.1. The Customer may not at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement without the prior written consent of the Supplier. In the event of any such assignment, the assignee will as a condition of any such consent (i) be required to purchase a new licence in relation to the Software at a price equal to 50% of the Supplier's then current list price and (ii) to purchase a new licence for any third-party software supplied by the Supplier at its then current list price.

14.2. The Supplier may at any time assign, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

#### **15. VARIATION**

Subject to clause 4 (Change control), no variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **16. WAIVER**

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

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

#### **17. RIGHTS AND REMEDIES**

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

## **18. SEVERANCE**

- 18.1. If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement.
- 18.2. If any provision or part-provision of this agreement is deemed deleted under clause 18.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **19. ENTIRE AGREEMENT**

- 19.1. This agreement (which, for the avoidance of doubt, comprises these general terms of business and the applicable terms of use or terms of business of the Supplier relating to Professional and Implementation Services, Supplier Software and/or Support and Maintenance Services, together with the terms of the Order) constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 19.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

## **20. CONFLICT**

If there is an inconsistency between these general terms of business and any other terms of business applying as between the Supplier and the Customer, these general terms of business shall prevail.

## **21. NO PARTNERSHIP OR AGENCY**

- 21.1. Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 21.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **22. THIRD PARTY RIGHTS**

This agreement does not give rise to any rights under the Contracts (Rights of Third

Parties) Act 1999 to enforce any term of this agreement, save as set out in clause 3.6.

## 23. NOTICES

- 23.1. Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next Business Day delivery service to the address and person set out on the Order, or sent by email to the email address set out on the Order.
- 23.2. Any notice or communication shall be deemed to have been received:
- 23.2.1. if delivered by hand, at the time the notice is left at the proper address;
  - 23.2.2. if sent by pre-paid first-class post or other next Business Day delivery services, at 9.00 am on the second Business Day after posting; or
  - 23.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 23.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 23.3. This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 24. MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

- 24.1. If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:
- 24.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the relevant account executives of the Customer and of the Supplier shall attempt in good faith to resolve the Dispute;
  - 24.1.2. if the relevant account executives of the Customer and of the Supplier are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the CEO of the Customer and the CEO of the Supplier who shall attempt in good faith to resolve it; and
  - 24.1.3. if the CEO of the Customer and CEO of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with a reputable and common commercial mediation procedure in the relevant jurisdiction which is reasonably acceptable to both parties. Unless otherwise agreed between the

parties, the mediator shall be nominated in accordance with such mediation procedure. To initiate the mediation, a party must serve notice in writing (**ADR notice**) on the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent in accordance with such mediation procedure. The mediation will start not later than 30 days after the date of the ADR notice.

- 24.2. No party may commence any court proceedings under clause 24 in relation to the whole or part of the Dispute until 60 days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.
- 24.3. If the Dispute is not resolved within 60 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, the Dispute shall be finally resolved in accordance with clause 24.

## 25. **GOVERNING LAW**

This agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed, where the Services are primarily carried out in the United Kingdom, in accordance with the laws of England and Wales and, where the Services are primarily carried out in the Republic of Ireland, or any jurisdiction other than the United Kingdom, in accordance with the laws of the Republic of Ireland.

## 26. **JURISDICTION**

Each party irrevocably agrees that, where the Services are primarily carried out in the United Kingdom, the English courts and, where the Services are primarily carried out in the Republic of Ireland or any other jurisdiction other than the United Kingdom, the Irish courts 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.

## **DEFINITIONS AND INTERPRETATION**

### 1. **INTERPRETATION**

- 1.1. The following definitions and rules of interpretation apply in this agreement:

**Acceptance Date:** is as agreed in relation to the provision of Professional and Implementation Services.

**Affiliate:** includes, in relation to either party, any business entity from time to time controlling, controlled by, or under common control with, such party.



**Annual Licence Renewal Fee:** is as set out in the Order, as increased or varied from time to time.

**Applicable Data Protection Laws:** means the laws of the United Kingdom or of a part of the United Kingdom, or which apply in the jurisdiction in which the Services are performed, and, in any such case, which relate to the protection of personal data.

**Applicable Laws:** all applicable laws, statutes and regulation from time to time in force.

**Business Day:** a day, other than a Saturday, Sunday or public holiday in England or Ireland, (Depending on the location where the services are carried out), when banks in London and Dublin are open for business.

**Business Hours:** the period from 0900hrs to 1730hrs on any Business Day in the Republic of Ireland or the United Kingdom.

**Change Order:** has the meaning given in clause 4.1 of these general terms of business.

**Charges:** the sums payable for the Services and the Software as provided in the Order.

**Control:** a business entity shall be deemed to "control" another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities of such business entity, or any other comparable equity or ownership interest with respect to a business entity other than a corporation.

**Execution Date:** the date on which this agreement comes into force, as provided in the definition of "Order". .

**Go Live:** the first day of business reliance on any aspect of the Software, regardless of parallel running, one customer of the Customer being onboarded, goods in switched on before picking or any other similar such scenario.

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

**Maintenance Release:** release of the Software that corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

**Milestone:** any date or dates specified as such in the Project Documents or as otherwise agreed between the Supplier and the Customer, which may include Project Initiation, Customer Requirement, Acceptance and/or Go Live;

**New Version:** any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

**Operational Commencement Date:** where relevant, the first to occur of (i) any of the Customer's written acceptance of the Software; (b) the date falling 5 days after the Acceptance Date for the first module of the Software: or (c) on Go Live or any other productive use of any of the Software and (ii) the date falling 60 days after delivery of the first module of Software to the Customer which is ready for acceptance testing by the Customer.

**Order:** the offer by the Customer to purchase the Services and/or the Software Licence Renewal, as the case may be, on the basis of the Quote and on the terms of this agreement which offer is deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the agreement comes into force.

**Permitted User Number:** where relevant, the maximum permitted number of employees or other contracted individuals authorised to use the Software by the Customer as agreed in the Order or as otherwise agreed in writing between the Supplier and the Customer.

**Professional and Implementation Services:** those activities which are performed by the Supplier relating to the deployment, modification and configuration of the Software and which require an advanced level of specialised knowledge and expertise.

**Project Documents:** those documents produced and agreed by the parties during the execution of the project, including, but not limited to; project schedule, project initiation, customer requirements and as part of the Professional and Implementation Services, and which will be used to manage, maintain and govern the delivery of the Software and the Services, as modified or varied from time to time in accordance with clause **Error! Reference source not found.Error! Reference source not found.Error! Reference source not found.** of these general terms of business.

**Services:** the Professional and Implementation Services, and/or the Support and Maintenance Services.

**Site:** where relevant, is as specified in the Order.

**Software:** is as set out in the Order, which expression includes the Software as modified, upgraded or varied from time to time by New Versions or Maintenance Releases delivered to the Customer.

**Support and Maintenance Services:** are as set out in the terms of business for Support and Maintenance Services, where these are applicable.

**VAT:** value added tax or any equivalent tax chargeable in the UK or elsewhere.

- 1.2. Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5. Unless the context otherwise requires, words in the singular shall include the plural

and in the plural shall include the singular.

- 1.6. Unless the context otherwise requires, a reference to one gender shall include a reference to the other gender.