



**AVM SOLUTIONS (UK) LTD
TERMS AND CONDITIONS
FOR THE SUPPLY OF GOODS AND SERVICES**

AVM Solutions (UK) Ltd is a company incorporated in England and Wales under company registration number 07950131, and whose registered office is at Minerva House, 8-10 Minerva Road, Farnworth, Bolton, BL4 0HX (the '**Supplier**').

The Contract contains the following Parts:

PART 1 -	DEFINITIONS AND INTERPRETATION
PART 2 -	AGREEMENT
PART 3 -	TERM OF ENGAGEMENT
PART 4 -	SUPPLY OF GOODS
PART 5 -	DELIVERY OF GOODS
PART 6 -	QUALITY OF GOODS
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PART 10 -	CHARGES AND PAYMENT
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PART 16 -	FORCE MAJEURE
PART 17 -	INSURANCE
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THE PARTIES AGREE:

PART 1 – DEFINITIONS AND INTERPRETATION

- 1.1 For clarity and mutual understanding, in addition to the words previously defined in the Contract, the following words contained within the Contract are defined below:

Business Day	Any day except Saturdays, Sundays and bank and public holidays.
Confidential Information	Any information or know-how concerning the business, affairs, customers, clients or suppliers of the other party, including but not limited to information relating to a party's operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers which is by its nature confidential or is marked confidential.
Contract	Refers to this contractual agreement (and the terms and conditions within it as amended from time to time in accordance with clause 20.3) between the parties.
Conditions	The terms and conditions set out in this Contract.
Control	The beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and Controls and Controlled will be interpreted accordingly.
Customer	Refers to the party to which the Supplier is supplying the Goods and/or Services.
Data Protection Legislation	The UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
Engagement	The engagement of the Supplier by the Customer on the terms of this Contract.
Facilities	The equipment (electronic, telephonic or otherwise) and facilities both on and off the Customer's premises made available by the Customer to the Supplier or its Sub-contractors to support the provision of the Services.
Good Industry Practice	All practices, methods, techniques and standards the exercise of which the degree of care, diligence and skill would reasonably and ordinarily be expected from a skilled professional and experienced person engaged in the same type of undertaking under the same or similar circumstances.
Goods	The goods (or any part of them) set out in the Order.

Insurance Policies	Refers to employer's liability insurance cover, professional indemnity insurance cover, product liability insurance cover and public liability insurance cover.
Intellectual Property	All patents, copyrights, design rights, trade marks, domain names, goodwill, trade secrets, know-how, database rights, moral rights, right to sue for passing off, rights in designs, rights in computer software, and other rights in the nature of intellectual property rights (whether registered or unregistered) existing under the laws of England, and all pending applications for and rights to apply for or register such rights.
Materials	Any materials, hard copy documents, hardware documents, operating or training manuals, instructions, bespoke specifications and software, notes and data.
Official Information	All information and data: <ul style="list-style-type: none"> (a) relating to the System; and/or (b) of a financial nature in relation to the Supplier or the Customer.
Order	The Customer's order for the supply of Goods and/or Services, as set out initially in the Quotation Form and confirmed in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation as the case may be.
Personal Data	The personal data (as defined in the Data Protection Act 1998) provided by either party to the other or processed (as defined in the DPA) by either party in connection with the Contract.
Quotation Form	The form, which includes the quote, the description of the Goods and/or Service Specification, provided for the Order by the Supplier to the Customer.
Services	The services supplied by the Supplier to the Customer as set out in the Order.
Service Specification	The description or specification for the Services provided in writing by the Supplier to the Customer in the Quotation Form.
Sub-contractors	The agreed sub-contractors of the Supplier providing the Services on behalf of the Supplier.
System	The secured servers and databases owned and operated by the Customer to store and manage Personal Data, Confidential Information and Official Information.

1.2 In this Contract, the following rules apply:

- 1.2.1 Clause and paragraph headings shall not affect the interpretation of this Contract.
- 1.2.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.2.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.4 A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- 1.2.5 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.2.6 A reference to the Customer includes the Customer's employees, authorised representatives, directors and partners.
- 1.2.7 Unless the context otherwise requires, words in the singular shall include the plural and vice versa.
- 1.2.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.2.9 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.10 A reference to writing or written includes e-mails.
- 1.2.11 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

PART 2 – AGREEMENT

- 2.1 The Contract, and the Quotation Form, constitutes the entire agreement between the parties. By signing the Contract both parties are automatically agreeing to the provisions of the entire contract. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.3 Any estimate provided by the Supplier for the provision of Goods and/or Services prior to the Customer submitting an Order is not a binding offer by the Supplier to supply Goods and/or Services.
- 2.4 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 2.5 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.6 After the Customer has placed an Order, the Supplier may email an acknowledgement of receipt of the Customer's Order or a Quotation Form, but this does not mean that the Order has been accepted by the Supplier. Any quotation is only valid for a period of 20 Business Days from its date of issue.

- 2.7 The Supplier reserves the right to reject any Order for any reason, although the Supplier will try to inform the Customer promptly the reason for our decision, which must be due to running out of stock or resources, a price or description mistake, inability to obtain the Customer's payment or other genuine fair reason.

PART 3 – TERM OF ENGAGEMENT

- 3.1 The Customer shall engage the Supplier and the Supplier shall make itself available to the Customer to provide the Services on the terms of the Contract.
- 3.2 The Engagement shall commence on the Commencement Date and shall continue unless and until terminated in accordance with Part 15.

PART 4 – SUPPLY OF GOODS

- 4.1 The Goods are described in the Quotation Form. The Customer acknowledges that the Goods are procured by the Supplier from a third-party supplier or manufacturer. Prior to placing an Order it is the Customer's responsibility to check the full description of the Goods directly with the third party supplier or manufacturer to ensure the Goods will meet the Customer's requirements.
- 4.2 Occasionally an item ordered by the Customer will be out of stock and if this is the case the Supplier shall notify the Customer upon receiving the Order.

PART 5 – DELIVERY OF GOODS

- 5.1 The Goods shall be delivered to the Customer's delivery address specified on the Order or any other location as otherwise specified in writing by the Customer and agreed by the Supplier (**Delivery Location**).
- 5.2 Unless the Customer agrees to collect the order at a place mutually agreed by both parties, the Supplier shall use a courier service of its choice to deliver the Goods to the Customer. The Customer shall take any risk of deterioration in the goods which are incident of the course of delivery by a courier.
- 5.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 5.4 The Supplier shall ensure that:
- 5.4.1 each delivery of the Goods is accompanied by a delivery note which shows the shipping date, all relevant Customer and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 5.4.2 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
- 5.5 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 5.6 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event the Customer's failure to provide the Supplier with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 5.7 If the Customer fails to accept or take delivery of the Goods within 14 (fourteen) Business Days of the Supplier notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:
- 5.7.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the 15th (fifteenth) Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- 5.7.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.8 If 14 (fourteen) Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 5.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.10 Upon receipt of the Goods the Supplier shall examine all of the Goods within 7 (seven) Business Days after which time the Customer shall be deemed to have accepted the Goods. The Supplier reserves the right to refuse claims for damaged or missing goods made by the Customer after this time unless a longer period of time has been previously agreed in writing.

PART 6 – QUALITY OF GOODS

- 6.1 The Supplier warrants that on delivery, and for a time period of 12 months, from the date of delivery (**Warranty Period**), the Goods shall:
- 6.1.1 conform in all material respects with their description;
- 6.1.2 be free from material defects in design, material and workmanship;
- 6.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
- 6.1.4 be fit for any purpose held out by the Supplier; and
- 6.1.5 comply with all applicable statutory and regulatory requirements for selling the Goods in the United Kingdom.
- 6.2 Subject to clause 6.3, if:

- 6.2.1 the Customer gives notice in writing during the Warranty Period, within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 6.1;
- 6.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
- 6.2.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's own risk and cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

6.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 6.1 if:

- 6.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 6.2;
- 6.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- 6.3.3 the Customer alters or repairs such Goods without the written consent of the Supplier;
- 6.3.4 the defect arises as a result of the Customer or a third party moving the Goods;
- 6.3.5 the defect arises as a result of maintenance, alteration, modification or adjustment performed by persons other than the Supplier or its employees or agents (unless approved by the Supplier in writing);
- 6.3.6 the defect arises as a result of modification of software by the Customer;
- 6.3.7 the defect arises as a result of fair wear and tear, wilful damage, misuse, negligence, or abnormal working conditions; or
- 6.3.8 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.4 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 6.1.

6.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 6.2.

PART 7 – RISK AND TITLE

7.1 The risk in the Goods shall pass to the Customer on completion of delivery.

7.2 Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.

7.3 Until title to the Goods has passed to the Customer, the Customer shall:

- 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 7.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 7.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
 - 7.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 14.2.2 to clause 14.2.13; and
 - 7.3.5 give the Supplier such information relating to the Goods as the Supplier may require from time to time.
- 7.4 Subject to clause 7.5, the Customer may use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 14.2.2 to clause 14.2.13, then, without limiting any other right or remedy the Supplier may have:
- 7.5.1 the Customer's right to use the Goods in the ordinary course of its business ceases immediately; and
 - 7.5.2 the Supplier may at any time:
 - 7.5.2.1 require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - 7.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

PART 8 – SUPPLY OF SERVICES

- 8.1 The Supplier shall:
- 8.1.1 provide the Services to the Customer in accordance with the Service Specification in all material respects;
 - 8.1.2 use all reasonable endeavours to meet any performance dates for the Services agreed by both parties, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services;
 - 8.1.3 have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event;
 - 8.1.4 provide the Services using its own equipment, and upon termination of this Contract shall deliver up to the Customer, the Materials and, to the extent that these have not already been provided, all materials and/or equipment belonging to the Customer in its or its Sub-contractors' possession;

- 8.1.5 without charge, during the period which the Services are being delivered and for a period of 12 months from the date of completion of the Services, to correct any defective works (**Corrective Works**) within a reasonable time and commence the Corrective Works as soon as is reasonably practicable, provided that such defective works are notified to the Supplier by the Customer in accordance with clause 9.1.10; and
- 8.1.6 not use any Facilities or Systems provided to it by the Customer for any purpose other than for the purposes of performing the Contract or for that which has been authorised in advance by the Customer.
- 8.2 The Supplier warrants to the Customer that the Services will be provided using all reasonable care, skill and attention in the provision of the Services and to provide them in accordance with Good Industry Practice and subject to the reasonable instructions of the Customer to the extent that the Services are within the range of services ordinarily provided by the Supplier, and/or Sub-contractors, and subject to there being no legal prohibition to providing the Services.

PART 9 – CUSTOMER’S OBLIGATIONS

- 9.1 The Customer shall:
- 9.1.1 ensure that the description of the Order is complete and accurate;
 - 9.1.2 co-operate with the Supplier in all matters relating to the Services;
 - 9.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation, Systems and Facilities as reasonably required by the Supplier to provide the Services;
 - 9.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
 - 9.1.5 acknowledge and respond to communications (oral or written) from the Supplier within a reasonable time;
 - 9.1.6 prepare the Customer's premises for the supply of the Services;
 - 9.1.7 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - 9.1.8 keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
 - 9.1.9 agree any reasonable request from the Supplier for an extension of any date or period, if it appears to the Supplier that, for reasons (including Force Majeure) that were not apparent on the commencement date of this Contract, an extension of time would be required in order to complete the Services, but so that there is no obligation on the Supplier to provide any work other than that already included in the Services;
 - 9.1.10 notify the Supplier in writing immediately of any failure by the Supplier to perform the Services to the standard required by this Contract, where in the reasonable

opinion of the Customer, the relevant individual's work is not of a satisfactory standard in accordance with Good Industry Practice; and

9.1.11 comply with any relevant and current health, safety, fire and environmental statutes, bye-laws and official codes of practice and guidance, including, for the avoidance of doubt, but not limited to, the requirements of the Health and Safety at Work etc Act 1974, the Management of Health and Safety at Work Regulations 1999, the Provision and Use of Work Equipment Regulations 1992, and maintain appropriate insurance.

9.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

9.2.1 the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

9.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 9.2; and

9.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

PART 10 – CHARGES AND PAYMENT

10.1 The price for Goods shall be the price set out in the Quotation Form. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods which shall be paid by the Customer when it pays for the Goods.

10.2 The charges for Services shall be on a time and materials basis:

10.2.1 the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Quotation Form;

10.2.2 the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day from 8.00 am to 5.00 pm worked on Business Days;

10.2.3 the Supplier shall be entitled to charge an overtime rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in clause 10.2.2. Any additional charges shall be calculated from when the individuals arrive at the Customer's premises until they leave the Customer's premises. Different rates will apply for the following time periods during which the Services are delivered by an individual person:

10.2.3.1 5.00 pm to 11.00 pm and 5.00 am to 8.00 am worked on Business days;

10.2.3.2 11.00 pm to 5.00 am worked on Business Days; and

10.2.3.3 any time worked on Saturday or Sunday;

- 10.2.4 where the Supplier completes the Services prior to an agreed performance date the Supplier shall be entitled to charge the full fees rate as set out in the Quotation Form; and
- 10.2.5 the Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials;
- 10.2.6 the Supplier shall be entitled to charge for any expenses reasonable incurred at clause 10.2.5 where:
- a. the Customer cancels the Order;
 - b. the Customer changes the agreed dates for the performance of the Services;
 - c. the Supplier is unable to complete the delivery of the Services because performance is prevented or delayed by any act or omission by the Customer, its employees, contractors or agents, or failure by the Customer to perform any relevant obligation in accordance with this Contract.
- 10.3 The Supplier may require the Customer to pay the total price for Goods and/or Services (as set out in the Quotation Form) in periodic stages (**Stage Payments**). In such circumstances, the amounts of each Stage Payment, the times at which each Stage Payment becomes due, and the timeframes within which the Stage Payments must be paid by the Customer, shall be agreed by the parties in writing prior to the Customer submitting the Order. Time for payment of the Stage Payments shall be of the essence of the Contract. All of the Supplier's other rights and remedies set out in this Contract shall be reserved.
- 10.4 In circumstances where Stage Payments have not been agreed by both parties in accordance with clause 10.3, then:
- 10.4.1 in respect of Goods, where the Customer has not been granted credit by the Supplier, the Supplier shall invoice the Customer on accepting the Order in accordance with clause 2.5 and the Customer shall pay the invoice immediately in order for the Supplier to release the Goods for delivery to the Customer. For the avoidance of doubt, the Supplier reserves the right to withhold delivery of the Goods to the Customer until full payment for the Goods has been received by the Supplier;
 - 10.4.2 in respect of Goods, where the Customer has been granted credit by the Supplier, the Supplier shall invoice the Customer on or after the date of delivery of the Goods and the Customer shall pay the invoice by the due date as specified on the invoice;
 - 10.4.3 in respect of Services, where the Customer has been granted credit by the Supplier, the Supplier shall invoice the Customer on the date of completion of the delivery of the Services and the Customer shall pay the invoice by the due date as specified on the invoice; and
 - 10.4.4 the Customer shall pay each invoice submitted by the Supplier:
 - 10.4.4.1 in full and in cleared funds to a bank account nominated in writing by the Supplier, and

10.4.4.2 time for payment shall be of the essence of the Contract.

- 10.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 10.6 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 10.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 10.8 In the event that the Supplier is required to take action to enforce payment as a result of non-payment of Fees, the Supplier will charge any reasonable expenses it has incurred associated with such collection including, but without limitation, legal costs, court fees and collection agency fees.
- 10.9 The Supplier reserves the right to discontinue work on all of the Customer's current matters and to terminate the Contract immediately if any invoice is not settled promptly. This will occur at forty-five (45) days from the date of the invoice unless an alternative arrangement has been agreed in writing.
- 10.10 The Supplier may use Personal Data to check the Customer's records now or in future at a credit reference agency or an insurance agency.

PART 11 – INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services, including but not limited to all software, schematic diagrams, drawings and designs created by the Supplier, shall be owned by the Supplier.
- 11.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.
- 11.3 All Supplier Materials are the exclusive property of the Supplier.

PART 12 – CONFIDENTIALITY

- 12.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees,

agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 12.1 shall survive termination of the Contract.

PART 13 – DATA PROTECTION

- 13.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Part 13 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 13.2 The parties acknowledge that:
- 13.2.1 if the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Contract, the Customer is the controller and the Supplier is the processor for the purposes of the Data Protection Legislation; and
- 13.2.2 the personal data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and the Supplier's other obligations under this Contract.
- 13.3 Without prejudice to the generality of Clause 13.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to the Supplier for the duration and purposes of this Contract so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Contract on the Customer's behalf.
- 13.4 Without prejudice to the generality of Clause 13.1, the Supplier shall, in relation to any personal data processed in connection with the performance by the Supplier of its obligations under this Contract:
- 13.4.1 process that personal data only on the documented written instructions of the Customer unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where the Supplier is relying on Applicable Laws as the basis for processing personal data, the Supplier shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Supplier from so notifying the Customer;
- 13.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Supplier, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- 13.4.3 not transfer any personal data outside of the EEA unless the following conditions are fulfilled:
- 13.4.3.1 the Customer or the Supplier has provided appropriate safeguards in relation to the transfer;
 - 13.4.3.2 the data subject has enforceable rights and effective legal remedies;
 - 13.4.3.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - 13.4.3.4 the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 13.4.4 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 13.4.5 notify the Customer without undue delay on becoming aware of a personal data breach;
- 13.4.6 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
- 13.4.7 maintain complete and accurate records and information to demonstrate its compliance with this Clause 14 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.

- 13.5 The Customer consents to the Supplier appointing third party processors where required by the Supplier to perform its obligations under this Contract. The Supplier confirms that it will enter with third-party processors into a written agreement which the Supplier confirms will reflect the requirements of the Data Protection Legislation. As between the Customer and the Supplier, the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Part 13.
- 13.6 Either party may, at any time on not less than 30 days' notice, revise this Part 13 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Contract).
- 13.7 Except as expressly provided otherwise, this Contract does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any (non-personal) data.
- 13.8 The provisions of this Part 13 shall continue to apply after termination of this Contract.

PART 14 – LIMITATION OF LIABILITY

- 14.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 14.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

- 14.1.2 fraud or fraudulent misrepresentation;
- 14.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- 14.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- 14.1.5 defective products under the Consumer Protection Act 1987.

14.2 Subject to clause 14.1:

14.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of business, loss of use, loss of data, loss of reputation, or any indirect or consequential loss arising under or in connection with the Contract; and

14.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the total amount payable by the Customer for the Goods and/or Services as set out in the Quotation Form.

14.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

14.4 This Part 14 shall survive termination of the Contract.

PART 15 – TERMINATION

15.1 Following the Commencement Date the Contract will continue until:

15.1.1 the date of actual completion of the Services and/or the delivery of the Goods;

15.1.2 either Party provides a written offer to terminate the Contract with not less than four (4) weeks' notice (unless otherwise agreed between the parties in writing) to the other Party, either by post or email, and the other Party provides written acceptance of the offer to terminate the Contract;

15.1.3 it is terminated by the order of a court of law or under a provision of the law; or

15.1.4 it is terminated at any time in accordance with its provisions.

15.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

15.2.1 the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 14 (fourteen) days after receipt of notice in writing to do so;

15.2.2 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 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so

doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

- 15.2.3 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 its creditors;
 - 15.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
 - 15.2.5 the other party (being an individual) is the subject of a bankruptcy petition or order;
 - 15.2.6 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within fourteen (14) days;
 - 15.2.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
 - 15.2.8 the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 15.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - 15.2.10 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 15.2.2 to clause 15.2.9 (inclusive);
 - 15.2.11 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
 - 15.2.12 the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
 - 15.2.13 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 15.3 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
 - 15.4 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 15.2.1 to clause 15.2.13, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
 - 15.5 On termination of the Contract for any reason:

- 15.5.1 the Customer shall retain financial responsibility (in accordance with the Contract) and shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 15.5.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- 15.5.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 15.5.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

PART 16 - FORCE MAJEURE

- 16.1 Neither party shall be liable to the other for any failure to fulfill the Contract or any provision of the Contract if fulfillment has been delayed, hindered or prevented by circumstances beyond our reasonable control including but not limited to fire, explosion, flood, tempest, unusually adverse weather conditions, failure or shortage of power supplies, fault or failure of plant or machinery of manufacturers, war, hostilities, riot, acts of terrorism, strikes, lock-outs or other industrial action or trade dispute ('a Force Majeure Event').
- 16.2 Where one party becomes aware of a Force Majeure Event arising, that party shall immediately notify the other.
- 16.3 If a Force Majeure Event exceeds 30 days, either party may immediately terminate the Contract without liability, notwithstanding the requirements under Part 12, by providing written notice to the other party.

PART 17 - INSURANCE

- 17.1 The Supplier shall, during the term of this Contract hold and maintain appropriate Insurance Policies in respect of the performance of its obligations under this Contract providing for cover to meet its liabilities for any single claim or series of claims arising from a single event of breach.

PART 18 - NON-SOLICITATION

- 18.1 During the term of this Contract and for a period of two years thereafter, the Customer shall not directly or indirectly engage or employ or solicit the engagement or employment of the Supplier's employees, consultants, sub-contractors or other clients, whether for their own benefit, or for the benefit of others, without the prior written consent of the Supplier.

PART 19 - ANTI-BRIBERY

- 19.1 Each party shall comply with applicable Bribery Laws, including ensuring that it has in place adequate procedures to prevent bribery and comply with any policies notified to it by the other party relating to prevention of bribery and corruption (as updated from time to time), and each shall ensure that:

19.1.1 all of that party's personnel;

19.1.2 all others associated with that party; and

19.1.3 all of that party's authorised representatives, employees, agents and sub-contractors,

involved in performing the Services or with this Contract so comply. The expressions 'adequate procedures' and 'associated' shall be construed in accordance with the Bribery Act 2010 and documents published under it.

19.2 Without limitation to the above sub-clause, neither party shall make or receive any bribe (as defined in the Bribery Act 2010) or other improper payment, or allow any such to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or payments are not made or received on its behalf.

PART 20 – TRANSFER OF AGREEMENT AND VARIATIONS

20.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

20.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

20.3 Variations to this Contract will have effect when agreed in writing by the parties' authorised representatives.

PART 21 – NOTICES

21.1 Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally or sent by prepaid first-class post or other next working day delivery service, or by commercial courier, fax or e-mail.

21.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address of either Party as notified by that party in writing; if sent by pre-paid first class post or other next working day delivery service, at 9.00am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

21.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action

PART 22 – GENERAL

22.1 Governing law and Jurisdiction:

22.1.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with, the laws of England and Wales.

22.1.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

22.2 Relationship:

22.2.1 This Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties other than the contractual relationship expressly provided in this Contract.

22.3 Third party rights:

22.3.1 This Contract is not enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999.

22.4 Survivorship:

22.4.1 To the extent that any clause is intended to have effect following termination of this Contract, such clause shall survive and continue in effect notwithstanding termination.

22.4.2 Termination of this Contract, for any reason, will not affect the accrued rights and obligations of the parties as at the date of termination, including the right to recover damages against the other or remit payment for sums incurred prior to the date of termination.

22.5 Severability:

22.5.1 The unenforceability of any part of this Contract shall not affect the enforceability of any other part.

22.6 Waiver:

22.6.1 A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.