

ATTO PARTNERS TERMS AND CONDITIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Words shall have the meanings given to them in these Conditions, including without limitation as set out below:

Acceptance Tests	means the mutually agreed tests in accordance with these Conditions to assess whether the Application conforms with the Specification;
Application	means the website or mobile application (as the case may be) identified in the Order as well as all associated documentation and Specifications for such website or mobile application;
Authorised Contact	means each authorised representative appointed by each of the Customer and the Supplier as their respective project managers, whose details are set out in the Order, or as otherwise notified to the other party in writing from time to time;
Bribery Laws	means the Bribery Act 2010 and all other applicable UK legislation, statutory instruments and regulations in relation to bribery or corruption and any similar or equivalent legislation in any other relevant jurisdiction;
Business Day	means a day, other than a Saturday, Sunday or public holiday in Northern Ireland, when banks in Belfast are open for business;
Change	means any change, amendment or alteration to the Specification or the Order;
Change Control Note	means a written note which details the impact the proposed Change will have on any part of the Specification or the Order, in such form as the parties may agree from time to time;
Change Control Procedure	means the procedure for agreeing Changes as set out in these Conditions;
Conditions	means these terms and conditions as amended from time to time in accordance with clause 28.6;
Confidential Information	means any confidential information (whether in oral, written or electronic form) given including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, know-how, intellectual property, assets, strategy, products and customers, including without limitation information relating to manufacturing or other processes,

management, financial, marketing, technical and other arrangements or operations of any person, firm, or organisation associated with that party;

Content	means all text, graphics, images, sound, data, software, and materials used in the provision of Services, but only in so far as it does not relate to the Software;
Contract	means the agreement between the Supplier and the Customer for the purchase of the Services incorporating these Conditions and the Order;
Controller	has the meaning given in the applicable Data Protection Laws from time to time;
Customer	means the person or firm who purchase Services from the Supplier;
Customer Content	means any Content provided or made available by the Customer;
Data Protection Laws	means, unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the UK, and then any successor legislation to the GDPR or the Data Protection Act 1998;
Data Protection Supervisory Authority	means any regulator, authority or body responsible for administering Data Protection Laws;
Data Subject	has the meaning given in applicable Data Protection Laws from time to time;
Fees	means the fees payable and other amounts payable under the Contract for the Services, as set out in the Order;
Force Majeure	means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including: war, revolution, terrorism, civil war, riot or civil commotion, war, threats of or preparation for war, armed conflict, imposition of sanctions, blockage or embargo, breaking off of diplomatic relations, labour or trade disputes, strikes, lock outs or other industrial action, whether of the affected party's own employees or others, non-performance by suppliers or subcontractors, nuclear, chemical or biological contamination or sonic boom epidemic or pandemic, acts of or restrictions imposed by government or public authority (including without limitation

imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent), collapse of buildings, explosion or accident, acts of God, fire, flood, interruption or failure of utility service, drought, earthquake, natural disaster, or adverse weather conditions;

Good Industry Practice

means the exercise of that degree of care, diligence and skill which 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;

Hosting Agreement

means a hosting agreement which may be to be entered into either between a Hosting Provider and the Customer, or the Hosting Provider and the Supplier (acting on behalf of the Customer) for the provision of Hosting Services;

Hosting Provider

means the third party service provider that will provide Hosting Services to the Customer under a Hosting Agreement, or the Supplier (as the case may be);

Hosting Services

means the provision by a Hosting Provider of hosting services for the Application;

Intellectual Property Rights

means any and all copyright and neighbouring and related rights, moral rights, rights in inventions, patents, know-how, trade secrets, trade marks and trade names, service marks, business names and domain names, design rights, rights in get-up and trade dress, database rights and rights in data, rights in computer software, rights to use, and protect the confidentiality of, confidential information, semiconductor chip topography rights, goodwill, mask works, the right to sue for passing off or unfair competition, utility models, domain names and all other intellectual property rights, in each case, whether registered or unregistered, including all applications to protect or register such rights, and all renewals and extensions of such rights or applications, and all rights to claim priority from, such rights, whether vested, contingent or future, and wherever existing, 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;

Logos

means any logos prepared or created by or on behalf of the Supplier for or on behalf of the Customer;

Milestone

means the significant tasks and dates specified in the Order, Project Plan, or other applicable Schedules (if any);

Non-Supplier Defect

shall have the meaning set out in clause 13.8;

Open-Source Software	means open-source software as defined by the Open Source Initiative (http://opensource.org) or the Free Software Foundation (http://www.fsf.org);
Order	means the Customer's order for the Services as set out overleaf;
Personal Data	has the meaning given in the applicable Data Protection Laws from time to time;
Personal Data Breach	has the meaning given in the applicable Data Protection Laws from time to time;
Phase	in relation to the Project Plan, one of the key phases of work identified in the Project Plan;
Processing	has the meaning given in applicable Data Protection Laws from time to time (and related expressions, including process, processing, processed, and processes shall be construed accordingly;
Processor	has the meaning given in the applicable Data Protection Laws from time to time;
Project Plan	means the outline timetable and sequence of events (if any) as set out in the Order, as updated from time to time in accordance with the Change Control Procedure;
Project Specific IPR	means (i) the Logos; and (ii) all design and content of the Application to the extent prepared or created by or on behalf of the Supplier exclusively for or on behalf of the Customer;
Services	means the obligations to be performed and services which are to be provided by the Supplier to the Customer in accordance with these Conditions and as set out in the Order including, as the context permits, branding, design services, website development, application development, Hosting Services (if supplied directly by the Supplier pursuant to clause 6.1.3) or associated hosting support services (if provided pursuant to clauses 6.1.1 or 6.1.2), consultancy services, training services, and performance of the Support and Maintenance Services;
Software	means (i) the operating system, source code, executable software, database software, reports and systems interfaces associated with the delivery of the applications; and (ii) any other software developed and/or provided by or on behalf of the Supplier to the Customer; in each case whether prior to, on or after the date of the Contract, and all updates, upgrades, releases and versions thereof, the source code and object code and all other works or materials recorded or embodied in the user interfaces;

Specification	means the specification for the Services as set out in the Order (or as otherwise agreed between the parties from time to time);
Sub-processor	means any sub-contractor engaged by the Supplier (or by any other Sub-processor) to carry out any processing activities in respect of the Personal Data;
Supplier	means Atto Limited, a company incorporated in Northern Ireland whose registered number is NI055249 and whose registered office is at 25 Donegall Street, Belfast, BT1 2FF;
Supplier Content	means any Content prepared, developed or created by the Supplier either before or during the term of the Contract in the provision of Services, which have not been prepared for or on behalf of the Customer on an exclusive basis;
Supplier Personnel	means any person tasked with providing the Services or otherwise performing the Supplier's obligations or exercising its rights under the Contract;
Support and Maintenance Services	has the meaning set out in Schedule 3;
Test Period	means the period of 30 days from delivery of the Application to the Customer or such longer period as set out in the Order;
Third Party Content	means any Content owned or licensed by a third party either before or during the term of the Contract, as detailed in the Specification;
User Acceptance Tests or UAT	means the Acceptance Tests to be carried out by the Customer in accordance with clause 13;
VAT	means United Kingdom value added tax, and any other tax imposed in substitution for it and any equivalent or similar tax imposed outside the United Kingdom.

1.2 INTERPRETATION

In these Conditions, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 a reference to the Contract includes these Conditions, the Order, and their respective Schedules, Appendices and annexes (if any);
- 1.2.3 references to subclauses, clauses, Schedules or Appendices are (unless otherwise provided) references to subclauses, clauses, Schedules or Appendices of this Contract, and references to paragraphs are to paragraphs in a Schedule or in an Appendix;

- 1.2.4 references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);
- 1.2.5 references to 'including', 'includes', 'in particular' or 'for example' or any similar words or expression, shall be construed as illustrative and shall not limit the sense of the word, description, definition, phrase or term preceding those terms;
- 1.2.6 clause, Schedule and other headings are included for convenience only and shall have no effect of the interpretation of these Conditions;
- 1.2.7 a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns;
- 1.2.8 references to legislation (including any subsidiary legislation) include any modification or re-enactment thereof;
- 1.2.9 in the event and to the extent only of any conflict between the clauses and the Schedules, the clauses shall prevail;
- 1.2.10 references to Content include any kind of text, information, image, or audio or video material which can be incorporated in a website or mobile application for access by a visitor to that site; and
- 1.2.11 references to writing or written includes email but not fax.

2 BASIS OF CONTRACT

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer to the exclusion of any other terms the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. They supersede any previously issued terms and conditions of purchase or supply.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract, shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Supplier.
- 2.4 Each Order by the Customer to the Supplier shall be an offer to purchase the Services subject to these Conditions.
- 2.5 An Order may be withdrawn or amended by the Customer at any time before acceptance by the Supplier. If the Supplier is unable to accept an Order, it shall notify the Customer promptly.
- 2.6 The offer constituted by an Order shall remain in effect and capable of being accepted by the Supplier until withdrawn by the Customer by giving notice to the Supplier after the expiry of 30 Business Days from the date on which the Customer submitted the Order.

- 2.7 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Services shall arise, until the earlier of:
- 2.7.1 the Supplier's written acceptance of the Order; or
 - 2.7.2 the Supplier delivering or performing the Services or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 2.8 Rejection by the Supplier of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Customer.
- 2.9 The Supplier may issue quotations to the Customer from time to time. Quotations are invitations to treat only. They are not an offer to supply Services and are incapable of being accepted by the Customer.
- 2.10 Any samples, drawings, descriptive matter, proposals, advertising or any other promotional material issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.

3 THE SERVICES

- 3.1 The Supplier shall provide the Services in accordance with the Specification, the Order and these Conditions in all material respects, and the Customer shall pay the Supplier the Fees in accordance with the Order, and shall otherwise comply with the terms of the Contract.
- 3.2 If the Supplier provides any other services that fall outside the scope of the Order, these services shall be provided to the Customer in accordance with these Conditions unless in relation to those particular services the parties have expressly agreed in writing to the contrary.
- 3.3 The Fees and any other amounts due under the Contract are exclusive of VAT, sales or other tax applicable which shall be paid in addition by the Customer on receipt of a valid VAT invoice at the rate and in the manner for the time being prescribed by law.

4 THE SPECIFICATION

- 4.1 The parties shall work together to prepare the Specification that will form part of the Order in advance of the Order being accepted by the Supplier.
- 4.2 To the extent the parties are unable to agree the Specification pursuant to clause 4.1, the Supplier shall not accept the Order and shall not be required to provide the Services.
- 4.3 In the event that the Customer reasonably requires amendments to the Specification after the Order has been accepted by the Supplier, the Supplier shall amend the Specification accordingly but only to the extent that such amendments are within the scope of the Order agreed between the parties.
- 4.4 If the Customer's requested amendments to the Specification change the scope of the Services as set out in the Order, the Supplier shall be entitled to request a Change to any price which may have been agreed between the parties in respect of the Specification and any reasonable and necessary time extensions

or alterations to the extent reasonably required to accommodate such change in scope. Any such Change shall be agreed between the parties in accordance with the Change Control Procedure. This process shall repeat until the Specification is agreed (both parties acting reasonably).

- 4.5 If the Supplier's performance of its obligations under the Contract is, for any reason 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 to the delay caused by the Customer.

5 SERVICES

- 5.1 The Supplier shall provide the Services in accordance with these Conditions, including as set out in the Order.
- 5.2 Unless otherwise agreed by the parties in an Order, and subject to clause 6 the Services provided by the Supplier under this Contract do not include:
- 5.2.1 the provision of Hosting Services;
 - 5.2.2 a requirement on the Supplier to enter into a Hosting Agreement with a Hosting Provider on behalf of the Customer; or
 - 5.2.3 any research and development work which the Supplier needs to undertake in order to perform the Services the costs for which (if applicable) will be agreed by the parties in advance of such work being undertaken by the Supplier.
- 5.3 The parties agree that the Supplier is being appointed as an exclusive supplier of the Services.
- 5.4 For the avoidance of doubt, any research and development undertaken by the Supplier will be outside the scope of the Order and will not form part of the Contract unless the fees for such work are agreed pursuant to clause 5.2.3.

6 HOSTING SERVICES

- 6.1 In addition to the obligations set out in clause 12, to the extent the Customer wishes to engage the Supplier to provide Hosting Services, the Customer:
- 6.1.1 is required to enter into a Hosting Agreement for the provision of Hosting Services on its own behalf;
 - 6.1.2 may instruct the Supplier to enter into a Hosting Agreement for and on its behalf; or
 - 6.1.3 may instruct the Supplier to provide Hosting Services directly in accordance with these Conditions and as set out in a Schedule to these Conditions.
- 6.2 In the event the Customer enters into a Hosting Agreement pursuant to clause 6.1.1, the Supplier may, at the request of the Customer, provide suggestions of Hosting Providers who may be able to offer Hosting Services, however, any such suggestions provided by the Supplier are not recommendations and the Supplier cannot give any guarantee about the nature or quality of Hosting Services that may be provided by a Hosting Provider. Any such suggestions should not be relied upon by the Customer, and the Customer shall carry out its own due diligence in relation to the appointment of a Hosting Provider, and shall review and satisfy itself of the ability of the Hosting Provider to perform the Hosting Services adequately and appropriately and in accordance with its

requirements. For the avoidance of doubt, the Customer shall be responsible for paying any charges to the Hosting Provider, and any such charges paid to the Hosting Provider are in addition to the Fees.

To the extent the Customer has entered into a Hosting Agreement pursuant to clauses 6.1.1 and 6.2, the Customer shall grant the Supplier the right to contact the Hosting Provider for the purpose of providing the Services, and to open any further accounts with the Hosting Provider or other associated service provider as may be required or which may be agreed between the parties from time to time.

- 6.3 To the extent the Customer requests that the Supplier enters into a Hosting Agreement pursuant to clause 6.1.2, the Customer acknowledges and agrees that the Supplier shall enter into the Hosting Agreement for and on behalf of the Customer, and the Supplier shall be entitled to agree any standard terms and pricing with the Hosting Provider, and the Customer agrees to comply with any such terms, including making any payments in respect of the Hosting Services that may be required, and not do, or fail to do, anything to put the Supplier in breach of any terms of the Hosting Agreement.

7 FEES AND EXPENSES

- 7.1 The Fees, including any payments and expenses for Services are as set out in the Order.
- 7.2 Time shall be of the essence in respect of the payments due under this clause 6.

8 PRICE VARIATION

- 8.1 The parties agree that the Fees for the provision of Services are fixed for the period as set out in the Order.
- 8.2 Thereafter any increase in the Fees shall be discussed and agreed between the parties. If agreement is not reached within 14 Business Days of the Supplier notifying the Customer of the proposed increase, the parties agree that these Conditions and any unfulfilled Orders may be terminated by either party by providing not less than 30 days' notice in writing.

9 INVOICING AND PAYMENT

- 9.1 The Supplier shall invoice the Customer electronically to the email address set out in the Order, or as otherwise notified by the Customer in writing to the Supplier from time to time, for all sums due under the Contract as follows:
- 9.1.1 Hosting Services (if applicable) shall be invoiced annually in advance;
- 9.1.2 Support and Maintenance Services shall be invoiced annually in advance; and
- 9.1.3 all other Services shall be invoiced (as the Supplier may determine from time to time) either monthly in arrears following supply of the relevant Service to which the invoice relates, on completion of an agreed milestone or as may otherwise be specified in the Order.
- 9.2 Notwithstanding clause 9.1, the Supplier reserves the right to request that the Customer makes a full or partial payment in advance of the Services being provided to the Customer. Any such required payment shall be set out in the Order.
- 9.3 The Customer shall pay such sums in full within 30 days from the date of invoice

or on the due date for payment specified in the Order, if earlier.

- 9.4 Amounts payable to the Supplier under the Contract shall be paid into the bank account details as set out on the Supplier's invoice by electronic funds transfer unless otherwise notified by the Supplier to the Customer in writing in accordance with these Conditions.

10 INTEREST

- 10.1 Where sums due hereunder are not paid in full by the due date, the Supplier may, without limiting its other rights, charge interest on such sums at 4 percentage points a year above the base rate of Santander UK plc from time to time in force.
- 10.2 Interest will apply from the due date for payment until actual payment in full, whether before or after judgment.

11 SUPPLY OBLIGATIONS

- 11.1 Each of the Supplier and the Customer shall comply with their respective designated responsibilities specified in these Conditions and any Schedules.
- 11.2 The Supplier shall provide the Services:
- 11.2.1 with all reasonable skill and care; and
 - 11.2.2 at the times and in the manner required in the Specification or otherwise specified in these Conditions;
- 11.3 The Supplier shall respond promptly from time to time to the Customer's reasonable requests for additional information or assistance to ensure the successful completion of the Services.
- 11.4 The Supplier shall procure that all advice, suggestions and recommendations given by the Supplier Personnel shall be made in good faith and upon the basis of information provided by the Customer and otherwise in accordance with Good Industry Practice.
- 11.5 Except as otherwise expressly stated, time shall not be of the essence in respect of the parties' obligations under the Contract.

12 CUSTOMER OBLIGATIONS

- 12.1 The Customer acknowledges that the Supplier's ability to provide the Services is dependent upon the full and timely co-operation of the Customer (which the Customer agrees to provide), as well as the accuracy and completeness of any Customer requirements and any other specifications provided by the Customer, and any information and data the Customer provides to the Supplier. Accordingly, the Customer shall:
- 12.1.1 provide accurate and complete Customer Content to the Supplier at the time and in the format required by the Specification to enable the Supplier to develop the Application and to provide the Services;
 - 12.1.2 provide the Supplier with access to, and use of, all other information, data and documentation reasonably required by the Supplier for the performance by the Supplier of its obligations under the Contract;
 - 12.1.3 respond promptly from time to time to the reasonable requests of the Supplier for relevant information, instructions and assistance, including reasonable access to and cooperation by the Customer personnel, to ensure the successful completion of the Services;

- 12.1.4 provide reasonable access to the Customer software, systems and data where necessary for the purposes of the Contract, and subject to any restrictions or conditions as the Customer considers necessary;
 - 12.1.5 provide any login details to the Supplier as may be necessary to enable the Supplier to provide the Services
- 12.2 The Customer undertakes to ensure that the computer and operating system and any other hardware or software which the Supplier is asked by the Customer to use or modify for the purposes of performing the Supplier's obligations is fully operational, is either the property of the Customer or is legally licensed to the Customer and that the Supplier is authorised to use the same.
- 12.3 The Application is provided at the Customer's request and the Customer is responsible for:
 - 12.3.1 verifying that the Application is suitable for its own needs;
 - 12.3.2 ensuring that the Application domain name(s) belong to it; and
 - 12.3.3 paying any and all registration and renewal fees.

13 ACCEPTANCE TESTS

- 13.1 The parties shall work together to agree within the timeframes set out in the Specification a set of Acceptance Tests which shall be sufficient to test whether or not the Application have the facilities and functions specified in, and perform in accordance with, the Specification or other agreed test standards, with such agreement not to be unreasonably withheld or delayed.
- 13.2 Before submitting the Application for UAT, the Supplier shall subject the relevant Application to its own internal quality control measures. The Supplier will provide such information as may reasonably be required by the Customer and agree the handover of any data to support the Customer in UAT.
- 13.3 The Customer shall, acting reasonably, execute all UAT within the Test Period. The Supplier shall be given reasonable notice of and be entitled to attend the Acceptance Test. The procedure set out in this clause 13 shall be repeated in respect of any further development works agreed by the parties from time to time.
- 13.4 The Supplier shall provide to the Customer any documentation including templates and testing environments necessary and reasonably requested by the Customer in order to conduct UAT.
- 13.5 If the Application being tested performs in accordance with the agreed Specification and meets the agreed testing criteria for the Acceptance Tests, it shall be deemed to have passed the Acceptance Tests. The Customer shall promptly notify the Supplier when the tests have been passed and provide the results of the Acceptance Tests to the Supplier in writing.
- 13.6 The Customer will report defects that have arisen during UAT to the Supplier. If the Application fails to pass the Acceptance Tests, the Customer shall cooperate with the Supplier in identifying in what respects the Application failed to conform to the Specification or otherwise failed to pass the Acceptance Tests. The Application shall not be deemed to have failed the Acceptance Tests

by reason of any failure to provide any facility or function not specified in the Specification or other agreed test standards.

- 13.7 In the event of a minor non-conformity with the Specification or other agreed test standards, the Customer shall not unreasonably delay in its Acceptance of the Application so long as the Supplier uses its reasonable endeavours in accordance with Good Industry Practice to rectify such non-conformity as soon as possible. For the purposes of this sub-clause, 'minor non-conformity' means a cosmetic defect or a failure of the Application to conform with the Specification but which does not have a material effect on any specified functionality
- 13.8 If any failure to pass the Acceptance Tests results from a defect which is caused by an act or omission of the Customer, or by one of the Customer's sub-contractors or agents for whom the Supplier has no responsibility ("Non-Supplier Defect"), the Application shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. The Supplier shall provide assistance reasonably requested by the Customer in remedying any Non-Supplier Defect by supplying additional services or products. The Customer shall pay the Supplier in full for all such additional services and products at the Supplier's then current fees and prices.
- 13.9 Acceptance of the Application shall be deemed to have taken place upon the occurrence of any of the following events:
 - 13.9.1 the Customer provides written acceptance of the Application to the Supplier;
 - 13.9.2 the Application passing the Acceptance Tests in accordance with this clause;
 - 13.9.3 the Application being used in a live environment or the Customer uses any part of the Application for any revenue-earning or commercial purposes or to provide any services to third parties other than for test purposes; or
 - 13.9.4 if the Customer unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of seven working days from the date on which the Supplier is ready to commence running such Acceptance Tests or retests, or any other expiration of the Test Period and any extension of the relevant Test Period (if any).

14 WARRANTIES

- 14.1 The Supplier warrants and represents to the Customer that:
 - 14.1.1 the Supplier has the right, power and authority to enter into the Contract;
 - 14.1.2 it will perform the Services with reasonable care and skill;
 - 14.1.3 the Application shall perform substantially in accordance with the Specification for a period of 90 days from Acceptance. If the Application does not so perform, the Supplier shall, for no additional charge, carry out any work necessary in order to ensure that the Application substantially complies with the Specification.

- 14.2 The warranty set out in clause 14.1.3 shall not apply to the extent that any failure of the Application to perform substantially in accordance with the Specification is caused by any Customer Content.
- 14.3 If, within the Warranty Period, the Customer notifies the Supplier in writing of any defect or fault in the Application in consequence of which it fails to conform in all material respects to the Specification, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer, having amended the Application or used it outside the terms of this Contract for a purpose or in a context other than the purpose or context for which it was designed or in combination with any other software not provided by the Supplier, or it has not been loaded onto the Supplier-specified or suitably configured equipment, the Supplier shall, at the Supplier's option, do one of the following:
- 14.3.1 repair the Application; or
- 14.3.2 terminate this licence immediately by notice in writing to the Customer and refund any of the Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Application to the date of termination) on return of the Application and all copies thereof,
- provided the Customer provides all the information that may be necessary to assist the Supplier in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable the Supplier to re-create the defect or fault.
- 14.4 The warranties set out in clause 14.1 are in lieu of all other express or implied warranties or conditions, including implied warranties or conditions of satisfactory quality and fitness for a particular purpose, in relation to this agreement, which are hereby excluded to the fullest extent as permitted by law. Without limitation, the Supplier specifically denies any implied or express representation that the Application will be fit:
- 14.4.1 to operate in conjunction with any hardware items or software products other than with those that are identified in the Specification as being compatible with the Application; or
- 14.4.2 to operate uninterrupted or error-free.
- 14.5 The Customer acknowledges that any Open-Source Software provided by the Supplier is provided "as is" and expressly subject to the disclaimer in clause 14.4.
- 14.6 The Customer acknowledges that the Supplier is not liable for any loss or damage incurred by the Customer to the extent that such loss or damage results from any failure by the Customer to discharge its obligations under the Contract.
- 14.7 The Customer warrants and represents to the Supplier that:
- 14.7.1 the Customer has the right, power and authority to enter into the Contract;
- 14.7.2 it has all rights and licences to provide the Customer Content and any Third Party Content (which it has been agreed in the Specification that

the Customer will license) and to grant all necessary licences to the Supplier to develop the Application and to provide the Services;

14.7.3 any Customer Content and any Third Party Content will not:

- (a) be fraudulent, defamatory, libellous, threatening or harassing, obscene, indecent or pornographic or otherwise contrary to law;
- (b) infringe the Intellectual Property Rights of any third party; or
- (c) contain any viruses or other harmful or intrusive programs or other code.

14.8 Any warranties given by the Supplier shall be subject to the Customer using the Application in compliance with the Contract and any documentation supplied with it. Any unauthorised modifications, use or improper installation of the Application, or any other part of the Services provided by the Supplier, by, or on behalf of, the Customer shall render all the Supplier's warranties and obligations under this agreement null and void.

15 INTELLECTUAL PROPERTY RIGHTS

15.1 In consideration of the Fees payable under the Contract (the receipt and sufficiency of which the Supplier hereby acknowledges) the Supplier assigns to the Customer the Intellectual Property Rights in the Project Specific IPR, provided that:

15.1.1 all Customer Content and Third Party Content shall remain the property of the Customer or its licensors (as the case may be), and the Customer grants (or shall procure the grant) to the Supplier a non-exclusive, worldwide, non-transferrable, royalty-free licence of such of the Customer's Intellectual Property Rights in the Customer Content and/or Third Party Content as are necessary for the Supplier to fulfil its obligations under the Contract; and

15.1.2 except for any Content created or obtained by the Supplier exclusively for the Customer for the Application, all Supplier Content, Software and Intellectual Property Rights created as a result of any R&D work undertaken as contemplated by clause 5, shall remain the property of the Supplier or its licensors (as the case may be) and, subject to the Customer's compliance with the terms of the Contract including payment of all Fees, the Supplier grants to the Customer a non-exclusive, non-transferrable, royalty-free licence (or sublicense (as the case may be)) of such of the Supplier's Intellectual Property Rights in the Supplier Content as are necessary for the Customer to fulfil its obligations under the Contract and to enable the Customer to make use of the Application and the Services, which licence or sublicense:

- (a) in the case of software, shall be a licence of object code only unless otherwise expressly provided;
- (b) in the case of Third Party Content it shall be on such terms as the Supplier may grant in accordance with the terms between the Supplier and the Third Party Content owner; and
- (c) shall be to the extent and for the purpose only of using and maintaining the Application.

15.2 For the avoidance of doubt, the Supplier does not make any warranty or representation that the Project Specific IPRs will not infringe any Intellectual

Property Rights of a third party. Accordingly, the Customer is required to undertake its own searches and satisfy itself that the Project Specific IPRs do not infringe the Intellectual Property Rights of a third party prior to their use.

- 15.3 Except as expressly agreed in this clause 15, no Intellectual Property Rights of either party are transferred or licensed as a result of the Contract. The Supplier shall have no ongoing right to use or license or otherwise encumber or exploit the Application or any part of it (or permit others to do so) following receipt by it of the Fees payable under the Contract, unless it is required to do so as part of the Support and Maintenance Services.
- 15.4 Subject to the foregoing, each party shall be entitled to use in any way it deems fit any skills, techniques or know-how acquired or developed or used in connection with the Application or otherwise in connection with the Contract provided always that such skills, techniques or know-how do not infringe the other party's Intellectual Property Rights now or in the future or disclose or breach the confidentiality of the other party's Confidential Information.

16 INTELLECTUAL PROPERTY RIGHTS INDEMNITY

- 16.1 The Customer shall indemnify and keep indemnified, and hold harmless, the Supplier against all claims, losses damages, costs and expenses incurred by the Supplier as a result of or in connection with any action, demand or claim that use or possession of any Customer Content or Third Party Content (as the case may be) infringes the Intellectual Property Rights of any third party.
- 16.2 The Supplier shall indemnify and keep indemnified, and hold harmless, the Customer against all claims, losses, damages, costs and expenses incurred by the Customer arising out of or in connection with any action, demand or claim that use of the Supplier Content (but excluding, for the avoidance of doubt, the Project Specific IPR and the Open-Source Software) infringes the Intellectual Property Rights of any third party.

17 DATA PROTECTION

- 17.1 The subject matter, nature, types, categories of data subjects purpose and duration of the processing of personal data by the Supplier is set out in the Specification.
- 17.2 The Supplier shall only process personal data in accordance with the Customer's documented instructions unless required to process such personal data for other purposes by applicable laws (including, where required by courts and tribunals). In such circumstances, the Supplier shall provide notice to the Customer unless the relevant law prohibits the giving of notice for any reason. The parties acknowledge and agree that for the purpose of this clause 17.2, processing of personal data by the Supplier in accordance with the terms of this Contract shall constitute processing of personal data on the documented instructions of the Customer.
- 17.3 The Supplier shall comply with the express obligations of a Processor as articulated in Articles 28(3)(b) to 28(3)(h) inclusive of the GDPR (or any equivalent provision of the Data Protection Laws), provided that:

- 17.3.1 the Customer may not instruct the Supplier to delete data that the Supplier holds on its own behalf as Controller;
- 17.3.2 the requirements of Article 28(3)(b) of the GDPR shall not apply to persons that the Supplier is required by applicable laws or regulatory requirements to grant access to personal data;
- 17.3.3 in respect of the requirements of Article 28(3)(h) of the GDPR, the Customer's right to carry out audits, including any inspections, is limited to a maximum of one audit request in any 12 month period, and provided also that the Supplier is given reasonable advance notice of any such audit, and that any audit is carried out during the Supplier's normal working hours, and that the Customer shall pay the Supplier's reasonable costs for assisting with the provision of information and allowing for and contributing to inspections and audits.
- 17.4 Following a written request from the Customer, the Supplier shall, in fulfilment of its obligation to demonstrate compliance with this clause 17, make available to the Customer such documentary information which in its discretion it considers relevant to its processing of Personal Information as part of providing the Services.
- 17.5 The Customer acknowledges that it has primary responsibility to the relevant Data Subjects for the processing of Personal Information as part of the Services and shall notify the Supplier of any assistance that the Customer requires pursuant to Articles 28(3)(a) to 28(3)(h) inclusive of the GDPR (or any equivalent provision of the Data Protection Laws). The Customer shall pay the Supplier for any reasonable costs incurred in providing such assistance within 30 days of receiving an invoice for such costs.
- 17.6 The Customer provides a general authorisation to the Supplier to engage further Processors to process personal data and any contract between the Supplier and a further Processor must impose obligations on the latter equivalent to those in this clause 17. A list of those further Processors (if any) will be available on [our website [INSERT HYPERLINK]]. The Supplier shall give the Customer prior notice of any intended addition to or replacement of those further Processors by updating that list. If the Customer reasonably object to a change to this list and have the right to object to such change pursuant to the express terms of the Data Protection Legislation, the Customer may (within 30 days of such change) escalate any reasonable objection to their relationship manager for discussion.
- 17.7 The Supplier may transfer Personal Information outside of the European Economic Area where it has a lawful basis for that transfer under Articles 44 to 49 (inclusive) of the GDPR.

18 LIMITS ON LIABILITY

- 18.1 Subject to the following sub-clauses, in no event shall the aggregate liability per year (including in respect of any indemnity given under the Contract) of any party to the other (whether in contract, tort (including negligence) or otherwise) and in respect of all claims, losses and damages arising under or in connection with the Contract exceed 100% of the total amounts paid under the Order in the calendar year in which the claim arises, in respect of any and all claims, losses and damages arising under or in connection with the Contract.

- 18.2 The parties agree that the limitations on liability in the Contract are fundamental to the Contract and are reasonable given their respective commercial positions and ability to purchase relevant insurance in respect of risks under the Contract.
- 18.3 Notwithstanding the above neither party excludes or limits any liability for:
- 18.3.1 personal injury (including sickness and death) to the extent that such injury results from the negligence or wilful default of a party or its employees; or
 - 18.3.2 fraud or fraudulent misrepresentation; or
 - 18.3.3 any other liability to the extent the same cannot be excluded or limited by law.

19 INSURANCE

- 19.1 The Supplier must for the duration of the Contract maintain appropriate insurance cover with a reputable insurance company against all relevant liabilities and indemnities that may arise under the Contract, and will provide to the Customer upon request sufficient evidence of such insurance cover.

20 FORCE MAJEURE

- 20.1 A party will not be liable if delayed in or prevented from performing its obligations hereunder due to Force Majeure, provided that it:
- 20.1.1 promptly notifies the other of the Force Majeure event and its expected duration, and
 - 20.1.2 uses reasonable endeavours to minimise the effects of that event.
- 20.2 If, due to Force Majeure, a party:
- 20.2.1 is unable to perform a material obligation, or
 - 20.2.2 is delayed in or prevented from performing its obligations for a continuous period of more than 6 months,
- the other party may, within a further *ten* days terminate the Contract and/or an Order (if applicable) on notice, otherwise the Contract shall continue in full force and effect.

21 CONFIDENTIAL INFORMATION

- 21.1 Each party shall maintain the confidentiality of the other party's Confidential Information and shall not without the prior written consent of the other use, disclose, copy or modify the other party's Confidential Information (or permit others to do so) other than as necessary for the performance of its rights and obligations under the Contract.
- 21.2 Each party undertakes to:
- 21.2.1 disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors (including the Supplier's personnel) to whom and to the extent to which such disclosure is necessary for the purposes contemplated under the Contract; and
 - 21.2.2 to procure that such persons are made aware of and agree in writing to observe the obligations in this clause.

- 21.3 Each party shall give notice to the other of any unauthorised misuse, disclosure, theft or loss of the other party's Confidential Information immediately upon becoming aware of the same.
- 21.4 The provisions of this clause shall not apply to information which:
- 21.4.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
 - 21.4.2 is lawfully received by the recipient from a third party free of any obligation of confidence at the time of its disclosure;
 - 21.4.3 is independently developed by the recipient, without access to or use of such information; or
 - 21.4.4 is required by law, by court or governmental or regulatory order to be disclosed provided that the relevant party, where possible, notifies the other party at the earliest opportunity before making any disclosure.
- 21.5 The obligations under this clause shall survive the variation, expiry or termination of the Contract for a period of two years thereafter.

22 ANTI-BRIBERY

- 22.1 Each party shall comply with applicable Bribery Laws relating to prevention of bribery and corruption (as updated from time to time) and each shall use all reasonable endeavours to ensure that:
- 22.1.1 all of that party's personnel;
 - 22.1.2 all of that party's subcontractors; and
 - 22.1.3 all others associated with that party,
- involved in performing services for or on behalf of that party or otherwise involved with the Contract so comply.
- 22.2 Without limitation to the above sub-clause:
- 22.2.1 neither party shall (directly or indirectly) offer or give or request, agree to receive or accept any bribe, other improper payment or advantage or bribe any UK or foreign public official in breach of applicable Bribery Laws; and
 - 22.2.2 each party shall implement, maintain and enforce adequate procedures designed to prevent persons associated with that party engaging in conduct which contravenes the Bribery Act 2010.
- 22.3 Each party shall immediately notify the other as soon as it becomes aware of a breach of any of the requirements in the foregoing sub-clauses.
- 22.4 The expressions 'adequate procedures', 'associated with' and 'foreign public official' shall be construed in accordance with the Bribery Act 2010.

23 TERMINATION

- 23.1 Either party may without prejudice to its other rights and remedies by notice in writing to the other party immediately terminate the Contract in whole or in part if the other:

- 23.1.1 is in material or persistent breach of any of its obligations under the Contract and if that breach is capable of remedy and the other has failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or
- 23.1.2 is unable to pay its debts (within the meaning of section 103 of the Insolvency (Northern Ireland) Order 1989) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction.
- 23.2 The Customer may without prejudice to its other rights and remedies by notice in writing to the Supplier immediately terminate the Contract if the Supplier ceases carrying on business in the United Kingdom.
- 23.3 In the event of termination of the Contract for any reason, each party shall within thirty days of such termination return (or, at the other party's option, destroy) all the other party's Confidential Information in its possession or under its control and all copies of such information.

24 CHANGE CONTROL

- 24.1 All Changes to the Services, the Specification and the Contract shall take place in accordance with the following Change Control Procedure. Either party may submit at any time a request for Change to the other party.
- 24.2 Where the Supplier originates a Change, it shall provide with the Change request, a Change Control Note.
- 24.3 Where the Customer originates a proposed Change, it shall provide the Supplier with such information (as is within the Customer's reasonable possession or control) which the Supplier reasonably considers is relevant to such Change or may assist the Supplier in the preparation of a Change Control Note. The Supplier will provide the Customer within 14 days of receiving the request for a Change (or such other period as may be agreed between the parties) with a Change Control Note.
- 24.4 The recipient of an Change request shall act reasonably and in good faith in deciding whether to accept or decline it in its sole discretion, but in any event do so within 14 days of receipt of the Change request (or such later time as may be agreed) indicating acceptance of the change, or setting out in full its reasons for declining.
- 24.5 Where the Customer and the Supplier agree to implement a Change, the costs of implementing a Change shall be paid in addition to the amounts due for providing the Application, relevant deliverables or allocation of resources associated with the Change (if any) as set out in the Change Control Note, except where the parties (acting reasonably) agree in writing that the Change is attributable to some act or default of the Supplier, in which case the Change shall be at the Supplier's expense.

- 24.6 The parties shall have no obligations in respect of a Change Control Note unless they expressly agree to do so by each party executing the Change Control Note or otherwise agreeing to do so in writing.

25 DISPUTE RESOLUTION

- 25.1 If there is a dispute between the parties in relation to any matter under the Contract, the parties' respective Authorised Contacts shall meet to try to resolve any such dispute and if they fail to do so with a reasonable time the matter in dispute shall be referred to a senior manager of the Supplier and the Customer respectively, for them to try to resolve the matter in dispute, failing which the provisions of clause 29 shall apply.

26 COMPLIANCE WITH LAW

- 26.1 Each party shall comply and shall (at its own expense unless expressly agreed otherwise) ensure that in the performance of its duties hereunder, its employees, agents and representatives will comply with all applicable laws and regulations, provided that neither party shall be liable for any breach to the extent that such breach is directly caused or contributed to by any act or default of the other party or its employees, agents and representatives.

27 ENTIRE AGREEMENT

- 27.1 The Contract contains the whole agreement between the parties relating to its subject matter and supersedes any prior agreements, representations or understandings between them unless expressly incorporated by reference in these Conditions. Each party acknowledges that it has not relied on, and shall have no remedy in respect of, any representation (whether innocent or negligent) made but not expressly embodied in the Contract. Nothing in this clause limits or excludes any liability for fraud or fraudulent misrepresentation.
- 27.2 For the avoidance of doubt, any proposal or quotation given by the Supplier is not incorporated into the Contract, unless expressly agreed otherwise in writing by the Supplier.

28 GENERAL

- 28.1 Each party is responsible for its legal and other costs in relation to the preparation and performance of the Contract.
- 28.2 Provisions which by their terms or intent are to survive termination of the Contract will do so.
- 28.3 The parties are independent businesses and not partners, principal and agent, or employer and employee, or in any other relationship of trust to each other.
- 28.4 For the purposes of the Contracts (Rights of Third Parties) Act 1999, the Contract is not intended to and does not give any person who is not a party to it any right to enforce any of its provisions. However, this does not affect any rights or remedy of such a person that exists or is available apart from that Act.
- 28.5 No party may assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the other's prior written consent or except as expressly permitted in these Conditions.
- 28.6 No amendment or variation of the Contract will be valid unless agreed in writing by an authorised signatory of each party.

- 28.7 If any clause in these Conditions (or part thereof) is or becomes illegal, invalid or unenforceable under applicable law, but would be legal, valid and enforceable if the clause or some part of it was deleted or modified (or the duration of the relevant clause reduced), the relevant clause (or part thereof) will apply with such deletion or modification as may be required to make it legal, valid and enforceable, and the parties will promptly and in good faith seek to negotiate a replacement provision consistent with the original intent of these Conditions as soon as possible.
- 28.8 Unless otherwise expressly agreed, no delay, act or omission by either party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy.
- 28.9 All payments under the Contract will be made without set-off or counterclaim, free and clear of and without deduction of any taxes, levies, duties, charges and withholdings of any kind now or in future imposed in any jurisdiction.
- 28.10 Each party will, at its own cost, do all further acts and execute all further documents necessary to give effect to the Contract.
- 28.11 Notices under the Contract must be in writing and sent to the other party's Authorised Contact..

29 GOVERNING LAW AND JURISDICTION

- 29.1 The Contract is governed by the law of Northern Ireland. All disputes under this Contract not otherwise resolved by the parties in accordance with the process set out in clause 25 (Dispute resolution) shall be subject to the exclusive jurisdiction of the courts of Northern Ireland.