

LICENCE AGREEMENT

BARRACHD LIMITED, registered in Scotland with company number SC330153 and having its registered office at Pavilion Building, Ellismuir Way, Tannochside Park, Uddingston, Glasgow G71 5PW (the “**Supplier**”)

hereby offers to provide the data, software and/or the services described below (the “**Offer**”) to

[INSERT COMPANY NAME] a company incorporated in **[Scotland]** **[England and Wales]** under the Companies Acts (Company Number **[Insert Company Number]**) and having its registered office at **[Insert Registered Office Address]** (the “**Customer**”)

in terms of this Offer and in accordance with the terms and conditions of the Schedule(s) annexed hereto (the “**Schedule(s)**”).

The following words shall have the following meanings: -

Agreement	means this Offer and the Conditions set out in the Schedule together with any acceptance thereof (an Order)
Conditions	means the conditions contained in part 1 of the Schedule annexed hereto
Effective Date	means [insert start date of Agreement]
Initial Subscription Term	means [insert duration of the Agreement]
Fee	means as detailed in [insert]
Location	means [insert]
Services	the [insert description of services] provided by the Supplier to the Customer under this Agreement
Software	[insert definition of software to be provided under the Agreement] to be supplied by the Supplier in accordance with the terms set out in the Schedule annexed hereto
Supplier Contact	means [insert name and full contact details]
Customer Contact	means [insert name and full contact details]
User Subscriptions	means [insert]

International Business Machines Corporation (“IBM”) is an intended third party beneficiary to this Agreement and shall have the right to enforce the terms of this Agreement and any licence agreement to which it is a party, provided to the Customer under this Agreement. By agreeing to this Offer, you agree that the Supplier can provide IBM with the Customer’s contact information.

In the event of any conflict between the terms of this Offer and the Conditions, the Offer will take precedence.

The return of one copy of this Offer (bearing an original signature) to the Supplier constitutes an acceptance from the Customer of the Offer in accordance with the Conditions (an “Order”).

Signed for and on behalf of the Supplier as follows:

Signature

Name: _____ Date: _____

Designation: _____ Place: _____

Witness

Signature: _____

Full Name: _____

Address: _____

Accepted for and on behalf of the Customer as follows:

Signature

Name: _____ Date: _____

Designation: _____ Place: _____

Witness

Signature: _____

Full Name: _____

Address: _____

This is the Schedule referred to in the foregoing offer between Barrachd Limited and [insert] dated [insert] setting out the Conditions, which form part of the Agreement between the Parties.

PART 1 THE CONDITIONS

1. THE DEFINITIONS AND RULES OF INTERPRETATION IN THIS CLAUSE AND THE DEFINITIONS SET OUT IN THE OFFER SHALL APPLY IN THIS AGREEMENT.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation at the Location only, as further described in clause 2.2(d).

Business Day: a day other than a Saturday, Sunday or public holiday in Scotland when banks in London are open for business.

Change of Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Documentation: the document made available to the Customer by the Supplier from time to time which sets out a description of the Services and the user instructions for the Services.

Initial Subscription Term: the initial term of this Agreement as set out in the offer.

Renewal Period: the period described in clause 14.1.

Subscription Term: has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

User Subscriptions: the user subscriptions specified in the Offer and purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

2. USER SUBSCRIPTIONS

2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions

set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term at the location solely for the Customer's internal business operations.

2.2 In relation to the Authorised Users, the Customer undertakes that:

- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
- (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
- (c) each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than quarterly and that each Authorised User shall keep his password confidential;
- (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier or IBM on request from time to time;
- (e) it shall permit the Supplier or IBM (or their appointed representative) to audit the Services and the use of the Software and Services by the Customer in order to ensure its compliance with this Agreement;
- (f) if any of the audits referred to in clause 2.2(e) reveal that any password has been provided to any individual who is not an Authorised User or that the Customer has breached the terms of this Agreement, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual;
- (g) if any of the audits referred to in clause 2.2(e) reveal that the Customer has underpaid Fees

to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment; and

- (h) if any of the audits referred to in clause 2.2(e) reveal that the Customer has breached the terms of this Agreement in any way, the Supplier will inform IBM of such breach and the Customer will indemnify the Supplier against any payments IBM require to be made in respect of such breach.

2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images;
- (d) promotes unlawful violence;
- (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
- (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

2.4 The Customer shall not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

- (c) use the Services and/or Documentation to provide services to third parties; or

- (d) subject to clause 2.2.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or

- (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; and

2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. ADDITIONAL USER SUBSCRIPTIONS

3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in the Offer and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.

3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request [(such approval not to be unreasonably withheld)].

3.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. SERVICES

4.1 The Supplier shall, during the Subscription Term, provide the Services in accordance with the Suppliers standard Service Level Agreement, subject to the parties agreeing to the terms in writing. The Service Level

Agreement will terminate on termination of this Agreement for any reason. In the event of a conflict between the terms of this Agreement and the Service Level Agreement, this Agreement will take precedence.

4.2 If the Customer wishes the Supplier to provide any consultancy or training services, such services will be provided in accordance with the Supplier's standard Consultancy Agreement and at the day rates of the Supplier from time to time.

5. CUSTOMER DATA

5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

5.2 The Supplier shall follow its archiving procedures for Customer Data as set out in its Back-Up Policy as may be notified to the Customer from time to time, as such document may be amended by the Supplier in its sole discretion from time to time. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in its Back-Up Policy. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up).

5.3 The Supplier shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data as may be notified to the Customer from time to time, as such document may be amended from time to time by the Supplier in its sole discretion.

5.4 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:

- (a) the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this Agreement;
- (b) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;

(c) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;

(d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

6. THIRD PARTY PROVIDERS TERMS

6.1 IBM (or one of its subsidiaries or a third party licensor) is the provider of the Software. The Software is licensed and is protected by copyright and not sold. It cannot be used by the customer for service bureau application.

6.2 The Supplier is the provider of the Services and any other products or services that are not exclusively provide by IBM (IBM shall have no liability for the provision of the Services).

6.3 The Customer undertakes that it will comply with the IBM Licence Documentation (as amended from time to time) made available to you and the Customer acknowledges that it will be solely responsible for a breach of the relevant IBM Licence Documentation. The Customer further undertakes that it and the Authorised End Users will not: - (i) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part without the prior written consent of the Supplier; or ii) sub-licence, rent or lease, distribute, sell or licence the Software.

6.4 The Customer will be solely responsible for complying with all import and export laws and regulations.

6.5 IBM reserves the right to request changes to the terms of this Agreement and or the IBM Licence Documentation from time to time. The Supplier will notify you of any such change and will inform you of the effective date of the relevant change.

6.6 The Customer shall not be entitled to use the Software for any purpose other than receipt of the Services in accordance with the terms of this Agreement.

6.7 IBM has the right to contact the Customer directly in relation to the use of the Software and Service under this Agreement and in particular, to resolve any issues with the Software and to monitor the Customer's satisfaction with the Supplier's Services. Notwithstanding the foregoing, the Customer should contact the Supplier with any issues it may have.

6.8 The Customer undertakes not to provide IBM with any "personal data" as defined in the Data Protection Act 1998.

6.9 If the Software is upgraded under this Agreement, the parties will agree if the update should be provided/installed and the Customer may only use the upgraded version and may not transfer the original Software to a third party.

- 6.10 If IBM terminates its relationship with the Supplier, if directed to by IBM (at their sole discretion) and subject to agreement of the relevant terms with IBM, the Customer may contract directly with IBM.
- 6.11 If the Customer is licensing any of IBM;s Sub-Capacity Products based on Virtualisation Capacity, it must comply with the terms set out in Part 2 of the Schedule and assist the Supplier in its compliance with the same. Under the terms set out in Part 2 of the Schedule, the Customer will be regarded as the End-User and shall comply with the End-User's obligations thereunder.
- 6.12 These Conditions expressly exclude any moneyback guarantee provided by IBM.
- 6.13 If the Software is provide to the Customer in machine readable form and uploaded onto the Customer's system rather than provided on the web, the following terms will apply: -
- 6.14 BY DOWNLOADING, INSTALLING, COPYING, ACCESSING, CLICKING ON AN "ACCEPT" BUTTON, OR OTHERWISE USING THE IBM SOFTWARE, THE CUSTOMER AGREES TO COMPLY THE TERMS OF THESE CONDITIONSS. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF THE END USER, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THE AUTHORISED USERS TO THESE CONDITIONS.
- 6.15 In the event that the Customer or any End Users do not comply with the terms of this clause 3, this will be regarded as a material breach and the licence will be terminated.
- 6.16 On termination of this Contract, the Customer will on the Supplier's instruction, return to the Supplier, or destroy all copies of the Software and related documentation.
- 7. SUPPLIER'S OBLIGATIONS**
- 7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1. Notwithstanding the foregoing, the Supplier:
- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.3 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 7.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 8. CUSTOMER'S OBLIGATIONS**
- The Customer shall:
- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this Agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier;
 in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
 - (b) comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - (c) carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
 - (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for

the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;

- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time;
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet;
- (h) ensure that it provides the computing environment notified to it by the Supplier.

9. CHARGES AND PAYMENT

9.1 The Customer shall pay the Fees to the Supplier for the User Subscriptions in accordance with this clause 9.

9.2 The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

- (a) its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:
 - (i) on the Effective Date for the Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 14.1, on each anniversary of the Effective Date for the Fees payable in respect of the next Renewal Period;
- (b) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
 - (i) on the Effective Date for the Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 14.1, at least 30 days prior to each anniversary of the Effective Date for the Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 30 days after the date of such invoice.

9.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Royal Bank of Scotland plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.4 All amounts and fees stated or referred to in this Agreement:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 13.4(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

9.5 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation, the Supplier shall charge the Customer, and the Customer shall pay, the Supplier's then current excess data storage fees..

9.6 The Supplier shall be entitled to increase the Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3 and/or the excess storage fees payable pursuant to clause 9.5 at the start of each Renewal Period upon 90 days' prior notice to the Customer.

10. PROPRIETARY RIGHTS

10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

10.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

11. CONFIDENTIALITY

11.1 Each party may be given access to Confidential Information from the other

party in order to perform its obligations under this Agreement. A party's Confidential Information shall not be deemed to include information that:

- (a) is or becomes publicly known other than through any act or omission of the receiving party;
- (b) was in the other party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
- (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
- (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

11.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

11.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

11.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

11.7 This clause 11 shall survive termination of this Agreement, however arising.

11.8 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

12. INDEMNITY

12.1 The Customer shall defend, indemnify and hold harmless the Supplier and IBM against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:

- (a) the Customer is given prompt notice of any such claim;
- (b) the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
- (c) the Customer is given sole authority to defend or settle the claim.

12.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any [United Kingdom] patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:

- (a) the Supplier is given prompt notice of any such claim;
- (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
- (c) the Supplier is given sole authority to defend or settle the claim.

12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

12.4 In no event shall the Supplier or IBM or their employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
- (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
- (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

12.5 The foregoing and clause 13.4(b) state the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. LIMITATION OF LIABILITY

13.1 This clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its

employees, agents and sub-contractors) to the Customer:

- (a) arising under or in connection with this Agreement;
- (b) in respect of any use made by the Customer of the Services and Documentation or any part of them; and
- (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

13.2 Except as expressly and specifically provided in this Agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Services, the Software and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
- (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
- (c) the Services, the Software and the Documentation are provided to the Customer on an "as is" basis.

13.3 Nothing in this Agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

13.4 Subject to clause 13.2 and clause 13.3:

- (a) the Supplier shall not be liable whether in tort/delict (including for breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- (b) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort/delict (including negligence or breach of statutory duty), misrepresentation, restitution

or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the total Fee paid during the 12 months immediately preceding the date on which the claim arose.

14. TERM AND TERMINATION

14.1 This Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Initial Subscription Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

14.2 The Supplier may terminate this Agreement on providing the Customer with 30 days notice in writing.

14.3 Either party shall have the right to terminate this Agreement forthwith by notice in writing to the other in the event of any material or persistent breach by the other party of any of its duties or obligations hereunder or in the event of failure by the other party to remedy to the reasonable satisfaction of the party serving the notice any breach of any of its duties or obligations hereunder within thirty days following written notice requiring it to do so.

14.4 In the event of the liquidation or receivership of the Customer or in the event of an administrator being appointed to the Customer, the Supplier shall be entitled to terminate this Agreement forthwith.

14.5 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.

14.6 On termination of this Agreement for any reason:

- (a) all licences granted under this Agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier

receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. CONFLICT

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

17. VARIATION

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the 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.

19. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. SEVERANCE

20.1 If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

20.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

21. ENTIRE AGREEMENT

21.1 This Agreement, and any documents referred to in it, constitute the whole Agreement between the parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter they cover.

21.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

22. ASSIGNMENT

22.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

22.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

23. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. THIRD PARTY RIGHTS

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. NOTICES

25.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-

class post or recorded delivery post to the other party at its address set out in this Agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Agreement.

25.2

A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the

time of transmission (as shown by the timed printout obtained by the sender).

26.

GOVERNING LAW

This Agreement 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 construed in accordance with the law of England and Wales.

27.

JURISDICTION

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 Agreement or its subject matter or formation (including non-contractual disputes or claims).