

# Terms and Conditions for the Sale of Goods and Services

BRISK Technology | EPOS NI

## 1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

<b>Affiliate</b>	means any entity that directly or indirectly Controls, is Controlled by or is under common Control with, another entity;
<b>Applicable Law</b>	means all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;
<b>Business Day</b>	means a day other than a Saturday, Sunday or bank or public holiday;
<b>Conditions</b>	means the Supplier's terms and conditions of sale set out in this document;
<b>Confidential Information</b>	means any commercial, financial or technical information, information relating to the Deliverables, private or commercial databases, proprietary code, plans, know-how or trade secrets which is obviously confidential in nature or has been identified as confidential, or which is developed by the Customer in performing its obligations under, or otherwise pursuant to the Contract;
<b>Contract</b>	means this agreement between the Supplier and the Customer for the sale and purchase of the Deliverables incorporating these Conditions and the Order, and including all its schedules, attachments, annexures and statements of work;
<b>Control</b>	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and <b>Controls, Controlled</b> and <b>under common Control</b> shall be construed accordingly;
<b>Controller</b>	shall have the meaning given in applicable Data Protection Laws from time to time;
<b>Customer</b>	means the named party in the Contract which has agreed to purchase the Deliverables from the Supplier and whose details are set out in the Order;

<b>Data Protection Laws</b>	means, as binding on either party or the Deliverables:  <ul style="list-style-type: none"> <li>(a) the GDPR;</li> <li>(b) the Data Protection Act 2018;</li> <li>(c) any laws which implement any such laws; and</li> <li>(d) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing;</li> </ul>
<b>Data Protection Supervisory Authority</b>	means any regulator, authority or body responsible for administering Data Protection Laws;
<b>Data Subject</b>	shall have the meaning in applicable Data Protection Laws from time to time;
<b>Deliverables</b>	means the Goods or Services or both as the case may be;
<b>Documentation</b>	means any descriptions, instructions, manuals, literature, technical details or other related materials supplied in connection with the Deliverables;
<b>Force Majeure</b>	means an event or sequence of events beyond a party's reasonable control (after exercise of reasonable care to put in place robust back-up and disaster recovery arrangements) preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;
<b>GDPR</b>	means the General Data Protection Regulation, Regulation (EU) 2016/679, as it forms part of domestic law in the United Kingdom by virtue of section 3 of the European Union (Withdrawal) Act 2018 (including as further amended or modified by the laws of the United Kingdom or

of a part of the United Kingdom from time to time);

**Goods**

means the goods and related accessories, spare parts and Documentation and other physical material set out in the Order or understood by the parties to be included in the Goods and to be supplied by the Supplier to the Customer in accordance with the Contract;

**Intellectual Property Rights**

means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in software, rights in Confidential Information, rights to invention, rights to sue for passing off, domain names and all other intellectual property rights and similar rights and, in each case:

- (a) whether registered or not
- (b) including any applications to protect or register such rights
- (c) including all renewals and extensions of such rights or applications
- (d) whether vested, contingent or future
- (e) to which the relevant party is or may be entitled, and
- (f) in whichever part of the world existing;

**International Organisation**

has the meaning given in the applicable Data Protection Laws from time to time;

**IPR Claim**

has the meaning given in clause **Error! Reference source not found.**;

**Location**

means the address or addresses for delivery of the Goods and performance of the Services as set out in the Order;

**Order**

means the Customer's order for the Deliverables in substantially the same form as set out in the Customer's accepted quotation, and invoice;

**Personal Data**

has the meaning given in the applicable Data Protection Laws from time to time;

<b>Personal Data Breach</b>	has the meaning given in the applicable Data Protection Laws from time to time;
<b>Price</b>	has the meaning given in clause 3.1;
<b>processing</b>	has the meaning given to it in applicable Data Protection Laws from time to time (and related expressions, including <b>process</b> , <b>processed</b> , and <b>processes</b> shall be construed accordingly);
<b>Processor</b>	has the meaning given to it in applicable Data Protection Laws from time to time;
<b>Protected Data</b>	means Personal Data received from or on behalf of the Customer in connection with the performance of the Supplier's obligations under the Contract;
<b>Quote</b>	means a document generated by the Supplier following consultation with the client, which sets out the Deliverables and Specification that are proposed to be included with the Order;
<b>Services</b>	means the services set out in the Order and to be supplied by the Supplier to the Customer in accordance with the Contract;
<b>Specification</b>	means the description or Documentation provided for the Deliverables set out or referred to in the Contract;
<b>Sub-Processor</b>	means any agent, subcontractor or other third party (excluding its employees) engaged by the Supplier for carrying out any processing activities on behalf of the Customer in respect of the Protected Data;
<b>Supplier</b>	means ITNI Limited, a company incorporated in Northern Ireland under number NI626326 whose registered office is at Scottish Provident Building, 7 Donegall Square West, Belfast, Northern Ireland, BT1 6JH;
<b>Supplier Personnel</b>	all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time;

**VAT** means value added tax under the Value Added Tax Act 1994 or any other similar sale or fiscal tax applying to the sale of the Deliverables; and

**Warranty Period** has the meaning given in clause 9.1.

1.2 In these Conditions, unless the context otherwise requires:

1.2.1 a reference to the Contract includes these Conditions, the Order, and their respective schedules, appendices, and annexes (if any).

1.2.2 any clause, schedule or other headings in these Conditions are included for convenience only and shall have no effect on the interpretation of these Conditions.

1.2.3 a reference to a 'party' means either the Supplier or the Customer and includes that party's personal representatives, successors and permitted assigns.

1.2.4 a reference to a 'person' includes a natural person, corporate or unincorporated body (in each case whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.2.5 a reference to a 'company' includes any company, corporation, or other body corporate, wherever and however incorporated or established.

1.2.6 a reference to a gender includes each other gender.

1.2.7 words in the singular include the plural and vice versa.

1.2.8 any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words.

1.2.9 a reference to 'writing' or 'written' includes any method of reproducing words in a legible and non-transitory form.

1.2.10 without prejudice to the provisions of clause 13, a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time except to the extent that any such amendment, extension or re-enactment would increase or alter the liability of a party under the Contract;

1.2.11 without prejudice to the provisions of clause 13, a reference to legislation includes all subordinate legislation made from time to time under that legislation; and

1.2.12 a reference to any action, remedy, method of judicial proceeding, court, official, legal document, legal status, legal doctrine, legal concept or thing shall, in respect of any jurisdiction other than Northern Ireland, be deemed to include a reference to that which most nearly approximates to the equivalent in that jurisdiction of the same in Northern Ireland.

## **2 Application of these conditions**

2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. 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 each of the Customer and the Supplier respectively.
- 2.4 Each Quote by the Supplier to the Customer shall be an invitation to treat with respect to the purchase of the Deliverables.
- 2.5 Each Order shall be finalized on the Customer's acceptance of the last Quote by the Supplier to the Customer.
- 2.6 Each Order by the Customer to the Supplier shall be an offer to purchase the Deliverables subject to the Contract including these Conditions. If the Supplier is unable to accept an Order, it shall notify the Customer as soon as reasonably practicable.
- 2.7 The offer constituted by an Order shall remain in effect and capable of being accepted by the Supplier for 14 Business Days from the date on which the Customer submitted the Order, after which time it shall automatically lapse and be withdrawn.
- 2.8 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of:
- 2.8.1 the Supplier's written acceptance of the Order including by issuing an invoice in respect of the Order; or
- 2.8.2 the Supplier delivering or performing the Deliverables or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 2.9 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.
- 2.10 The Supplier may issue further Quotes to the Customer from time to time. Quotes are invitations to treat only. They are not an offer to supply Deliverables and are incapable of being accepted by the Customer.
- 2.11 Marketing and other promotional material relating to the Deliverables are illustrative only and do not form part of the Contract.

### **3 Price**

- 3.1 The price for the Deliverables shall be as set out in the Order or, where no such provision is set out, shall be as advised by the Supplier from time to time before the date the Order is placed (the **Price**).
- 3.2 The Prices are exclusive of:
- 3.2.1 packaging, delivery, insurance, shipping carriage, and all other related charges or taxes or describe relevant elements of the goods and services which are not included in the standard price which shall be charged in addition at the Supplier's standard rates, and
- 3.2.2 VAT.

- 3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.4 The Supplier may increase the Prices at any time by giving the Customer not less than 15 Business Days' notice in writing provided that the increase does not exceed 15% of the Prices in effect immediately prior to the increase.
- 3.5 Notwithstanding clause 3.4, the Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Deliverables and which is due to any factor beyond the control of the Supplier.

#### **4 Payment**

- 4.1 The Customer shall comply with all or any requirements regarding the payment of monthly fees and/or charges in respect of the Deliverables, or the payment of fees and/or charges at any other reasonable interval(s) as may be required by the Supplier from the time to time, in accordance with the terms of the Contract and as are specified in the Order or any invoice(s) relating to the Order.
- 4.2 The Customer shall comply strictly with all or any requirements regarding the method of payment of any such fees as are referred to in clause 4.1, above, which is a material term of the Contract, and their failure to do so shall constitute a material breach of the Contract.
- 4.3 The Supplier shall otherwise invoice the Customer for the Deliverables, partially or in full, at any time following acceptance of an Order.
- 4.4 The Customer shall pay all invoices:
- 4.4.1 in full without deduction or set-off, in cleared funds within 14 of the date of each invoice; and
  - 4.4.2 to the bank account nominated by the Supplier.
- 4.5 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
- 4.5.1 the Supplier may, without limiting its other rights, charge interest on such sums at 8% a year above the base rate of the Bank of England from time to time in force, and
  - 4.5.2 interest shall accrue on a daily basis and apply from the due date for payment until actual payment in full, whether before or after judgment.

#### **5 Credit limit**

The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.

#### **6 Delivery and performance**

- 6.1 The Goods shall be delivered by the Supplier, or its nominated carrier, to the Location on the date(s) specified in the Order, if any.
- 6.2 The Goods shall be deemed delivered on arrival only of the Goods at the Location by the Supplier or its nominated carrier (as the case may be).



- 6.3 The Services shall be performed by the Supplier at the Location on the date(s) specified in the Order.
- 6.4 The Services shall be deemed delivered by the Supplier only on completion of the performance of the Services at the Location.
- 6.5 The Customer shall not be entitled to reject a delivery of the Goods on the basis that an incorrect volume of the Goods has been supplied.
- 6.6 The Supplier may deliver the Goods or perform the Services in instalments. Any delay or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.7 Each delivery or performance of the Deliverables shall be accompanied by a delivery note stating:
  - 6.7.1 the date of the Order.
  - 6.7.2 the relevant Customer and Supplier details.
  - 6.7.3 if Goods, the product numbers and type and quantity of Goods in the consignment.
  - 6.7.4 if Services, the category, type and quantity of Services performed;
  - 6.7.5 any special instructions, handling and other requests; and
  - 6.7.6 in the case of Goods, whether any packaging material is to be returned, in which case the Customer shall, after the Goods are unpacked, make them available for collection by the Supplier at the Supplier's expense.
- 6.8 Time is not of the essence in relation to the performance or delivery of the Deliverables. The Supplier shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are indicative only.
- 6.9 The Supplier shall not be liable for any delay in, or failure of performance caused by:
  - 6.9.1 the Customer's failure to make the Location available.
  - 6.9.2 the Customer's failure to prepare the Location in accordance with the Supplier's instructions or as required for the Deliverables.
  - 6.9.3 the Customer's failure to provide the Supplier with adequate instructions for performance or delivery or otherwise relating to the Deliverables.
  - 6.9.4 Force Majeure.
- 6.10 If the Customer fails to accept delivery of the Goods the Supplier shall store and insure the Goods pending delivery, and the Customer shall pay all costs and expenses incurred by the Supplier in doing so.
- 6.11 If 15 Business Days following the last day of the period for delivery or collection of the Goods, the Customer has not taken delivery of or collected them, the Supplier may resell or otherwise dispose of the Goods without any obligation or liability to the Customer, except as provided for in clauses 6.11.1 and 6.11.2. The Supplier shall:

- 6.11.1 deduct all reasonable storage charges and costs of resale; and
- 6.11.2 account to the Customer for any excess of the resale price over or invoice the Customer for any shortfall of the resale price below, the Price paid by the Customer for the Goods.

## **7 Risk**

Risk in the Goods shall pass to the Customer on delivery.

## **8 Title**

- 8.1 Title to the Goods shall pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.
- 8.2 Until title to the Goods has passed to the Customer, the Customer shall:
  - 8.2.1 hold the Goods as bailee for the Supplier.
  - 8.2.2 store the Goods separately from all other material in the Customer's possession.
  - 8.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered.
  - 8.2.4 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Supplier's interest on the policy.
  - 8.2.5 ensure that the Goods are clearly identifiable as belonging to the Supplier.
  - 8.2.6 not remove or alter any mark on or packaging of the Goods.
  - 8.2.7 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 15.1.1 to 15.1.4 or 15.2.1 to 15.2.14; and
  - 8.2.8 on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.
- 8.3 If, at any time before title to the Goods has passed to the Customer, the Customer informs the Supplier, or the Supplier reasonably believes, that the Customer has or is likely to become subject to any of the events specified in clauses 15.1.1 to 15.1.4 or 15.2.1 to 15.2.14, the Supplier may:
  - 8.3.1 require the Customer at the Customer's expense to re-deliver the Goods to the Supplier; and
  - 8.3.2 if the Customer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

## **9 Warranty**

- 9.1 The Supplier warrants that, at the time of performance, the Deliverables shall:

- 9.1.1 conform in all material respects to any sample, their description and to the Specification;
  - 9.1.2 be free from material defects in design, material and workmanship;
  - 9.1.3 if Goods, be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
  - 9.1.4 if Services, be supplied with reasonable care and skill within the meaning of the Supply of Goods and Services Act 1982, Part II, s 13; and
  - 9.1.5 any media on which the results of the Services are supplied shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979.
- 9.2 The Customer warrants that it has provided the Supplier with all relevant, full and accurate information as to the Customer's business and needs.
- 9.3 As the Customer's sole and exclusive remedy, the Supplier shall, at its option, correct, repair, remedy, re-perform or refund the Deliverables that do not comply with clause 9, provided that the Customer:
- 9.3.1 serves a written notice on Supplier not later than 5 Business Days from delivery or performance in the case of defects discoverable by a physical inspection, or within a reasonable period from delivery or performance in the case of latent defects,
  - 9.3.2 such notice specifies that some or all of the Deliverables do not comply with clause 9.1 and identifying in sufficient detail the nature and extent of the defects; and
  - 9.3.3 gives the Supplier a reasonable opportunity to examine the claim of the defective Deliverables.
- 9.4 The provisions of these Conditions shall apply to any Deliverables that are corrected, repaired, remedied, or re-performed with effect from delivery or performance of those Deliverables.
- 9.5 The Supplier shall not be liable for any failure of the Goods to comply with clause 9.1:
- 9.5.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods.
  - 9.5.2 to the extent caused by the Customer's failure to comply with the Supplier's instructions in relation to the Goods, including any instructions on installation, operation, storage, or maintenance.
  - 9.5.3 to the extent caused by the Supplier following any specification, instruction, or requirement of or given by the Customer in relation to the Goods.
  - 9.5.4 where the Customer modifies any Goods without the Supplier's prior written consent or, having received such consent, not in accordance with the Supplier's instructions; or
  - 9.5.5 where the Customer uses any of the Goods after notifying the Supplier that they do not comply with clause 9.1.
- 9.6 Except as set out in this clause 9:

9.6.1 the Supplier gives no warranty and makes no representations in relation to the Deliverables; and

9.6.2 shall have no liability for their failure to comply with the warranty in clause 9.1,

and all warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.

## **10 Indemnity and insurance**

10.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.

10.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom or such other country by agreement in writing with the Supplier to cover its obligations under the Contract. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.

## **11 Limitation of liability**

11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.

11.2 Subject to clauses 11.5 and 11.6, the Supplier's total liability shall not exceed the sum of £5,000.00.

11.3 Subject to clauses 11.5 and 11.6, the Supplier shall not be liable for consequential, indirect or special losses.

11.4 Subject to clauses 11.5 and 11.6, the Supplier shall not be liable for any of the following (whether direct or indirect):

11.4.1 loss of profit;

11.4.2 loss or corruption of data;

11.4.3 loss of use;

11.4.4 loss of production;

11.4.5 loss of contract;

11.4.6 loss of opportunity;

11.4.7 loss of savings, discount or rebate (whether actual or anticipated);

11.4.8 harm to reputation or loss of goodwill.

- 11.5 The limitations of liability set out in clauses 11.2 to 11.4 shall not apply in respect of any indemnities given by the Customer under the Contract.
- 11.6 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:
- 11.6.1 death or personal injury caused by negligence;
  - 11.6.2 fraud or fraudulent misrepresentation;
  - 11.6.3 any other losses which cannot be excluded or limited by Applicable Law.

## **12 Confidentiality and announcements**

- 12.1 The Customer shall keep confidential all Confidential Information of the Supplier and of any Affiliate of the Supplier and shall only use the same as required to perform the Contract. The provisions of this clause shall not apply to:
- 12.1.1 any information which was in the public domain at the date of the Contract;
  - 12.1.2 any information which comes into the public domain subsequently other than as a consequence of any breach of the Contract or any related agreement;
  - 12.1.3 any information which is independently developed by the Customer without using information supplied by the Supplier or by any Affiliate of the Supplier; or
  - 12.1.4 any disclosure required by law or a regulatory authority or otherwise by the provisions of the Contract.
- except that the provisions of clauses 12.1.1 to 12.1.3 shall not apply to information to which clause 12.4 relates.
- 12.2 This clause shall remain in force in perpetuity.
- 12.3 The Customer shall not make any public announcement or disclose any information regarding the Contract, except to the extent required by law or regulatory authority.
- 12.4 To the extent any Confidential Information is Protected Data such Confidential Information may be disclosed or used only to the extent such disclosure or use is in compliance with and does not conflict with any provisions of clause 15.

## **13 Processing of personal data**

- 13.1 The parties agree that the Customer is a Controller and that the Supplier is a Processor for the purposes of processing Protected Data pursuant to the Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to the Supplier in respect of Protected Data (including the terms of the Contract) shall at all times be in accordance with Data Protection Laws. Nothing in the Contract relieves the Customer of any responsibilities or liabilities under any Data Protection Laws.
- 13.2 The Supplier shall process Protected Data in compliance with the obligations placed on it under Data Protection Laws and the terms of the Contract.

- 13.3 The Customer shall indemnify and keep indemnified the Supplier against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a Data Protection Supervisory Authority) arising out of or in connection with any breach by the Customer of its obligations under this clause 5.
- 13.4 The Supplier shall:
- 13.4.1 only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with its own procedures as are compliant with the Data Protection Laws (including when making any transfer to which clause 13.8 relates), except to the extent:
- (a) that alternative processing instructions are agreed between the parties in writing; or
  - (b) otherwise required by applicable law (and shall inform the Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
- 13.4.2 without prejudice to clause 13.1, if the Supplier believes that any instruction received by it from the Customer is likely to infringe the Data Protection Laws it shall be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which are not infringing.
- 13.5 The Supplier shall implement and maintain the technical and organisational measures in accordance with its own policies to protect the Protected Data against accidental, unauthorised or unlawful destruction, loss, alteration, disclosure or access.
- 13.6 The Customer shall reply to any communication from the Supplier requesting any further prior specific authorisation of a Sub-Processor pursuant to clause 13.6 promptly and in any event within 10 Business Days of request from time to time. The Customer shall not unreasonably withhold, delay or condition any such authorisation.
- 13.7 The Supplier shall (at the Customer's cost):
- 13.7.1 assist the Customer in ensuring compliance with the Customer's obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the processing and the information available to the Supplier; and
- 13.7.2 taking into account the nature of the processing, assist the Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 13.8 The Supplier shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to any country or territory outside the United Kingdom or to any International Organisation without the prior written authorisation of the Customer.
- 13.9 The Supplier shall at the Customer's cost and expense refer to the Customer all requests it receives for exercising any Data Subjects' rights under Chapter III of the GDPR which relate to any Protected Data. It shall be the Customer's responsibility to reply to all such requests as required by applicable law.

- 13.10 The Supplier shall, in accordance with Data Protection Laws, make available to the Customer such information that is in its possession or control as is necessary to demonstrate the Supplier's compliance with the obligations placed on it under this clause 13 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any 12 month period under this clause 13.10).
- 13.11 On the end of the provision of the Services relating to the processing of Protected Data, at the Customer's cost and the Customer's option, the Supplier shall either return all of the Protected Data to the Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires the Supplier to store such Protected Data. This clause 13 shall survive termination or expiry of the Contract.

#### **14 Force majeure**

Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 30 days, either party may terminate the Contract by written notice to the other party.

#### **15 Termination**

- 15.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if:
- 15.1.1 the Customer commits a material breach of the Contract and such breach is not remediable;
  - 15.1.2 the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach;
  - 15.1.3 the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 30 days after the Supplier has given notification that the payment is overdue; or
  - 15.1.4 any consent, licence or authorisation held by the Customer is revoked or modified such that the Customer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 15.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 15.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 15.2.2 is unable to pay its debts either within the meaning of the Insolvency (Northern Ireland) Order 1989 or if the Supplier reasonably believes that to be the case;
  - 15.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;

- 15.2.4 becomes subject to a moratorium under Part A1 of the Insolvency (Northern Ireland) Order 1989;
  - 15.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
  - 15.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
  - 15.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 15.2.8 has a resolution passed for its winding up;
  - 15.2.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - 15.2.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
  - 15.2.11 has a freezing order made against it;
  - 15.2.12 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items;
  - 15.2.13 is subject to any events or circumstances analogous to those in clauses 15.2.1 to 15.2.12 in any jurisdiction; or
  - 15.2.14 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 15.2.1 to 15.2.13 including for the avoidance of doubt, but not limited to, giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.
- 15.3 The Supplier may terminate the Contract at any time by giving not less than four weeks' notice in writing to the Customer if the Customer undergoes a change of Control or if it is realistically anticipated that it shall undergo a change of Control within two months.
- 15.4 If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 15, it shall immediately notify the Supplier in writing.
- 15.5 The Supplier may, on giving notice to the Customer in writing on the occurrence of any the events referred to at clauses 15.1 or 15.2, above, also suspend its performance of the Services or the delivery of any Goods due to be delivered to the Customer, for any period it considers necessary pending such event ceasing, and without prejudice to any of its rights (to terminate the Contract) in accordance with this clause 15.
- 15.6 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.

## **16 Notices**

- 16.1 Any notice or other communication given by a party under these Conditions shall:



- 16.1.1 be in writing and in English;
  - 16.1.2 be signed by, or on behalf of, the party giving it (except for notices sent by email); and
  - 16.1.3 be sent to the relevant party at the address set out in the Contract
- 16.2 Notices may be given, and are deemed received:
- 16.2.1 by hand: on receipt of a signature at the time of delivery;
  - 16.2.2 by Royal Mail Recorded Signed For post: at 9.00 am on the second Business Day after posting;
  - 16.2.3 by Royal Mail International Tracked & Signed post: at 9.00 am on the fourth Business Day after posting; and
  - 16.2.4 by fax: on receipt of a transmission report from the correct number confirming uninterrupted and error-free transmission; and
  - 16.2.5 by email: on the absence of a non-delivery receipt email from the correct address.
- 16.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 16.1 and shall be effective:
- 16.3.1 on the date specified in the notice as being the date of such change; or
  - 16.3.2 if no date is so specified, 5 Business Days after the notice is deemed to be received.
- 16.4 All references to time are to the local time at the place of deemed receipt.
- 16.5 This clause does not apply to notices given in legal proceedings or arbitration.

## **17 Cumulative remedies**

The rights and remedies provided in the Contract for the Supplier only are cumulative and not exclusive of any rights and remedies provided by law.

## **18 Time**

Unless stated otherwise, time is of the essence for any date or period specified in the Contract in relation to the Customer's obligations only.

## **19 Further assurance**

The Customer shall at the request of the Supplier, and at the Customer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

## **20 Entire agreement**

- 20.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

20.2 Each party acknowledges that it has not entered into the Contract or any documents entered into pursuant to it in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract or any documents entered into pursuant to it. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

20.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

## **21 Variation**

No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

## **22 Assignment**

22.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent, which it may withhold or delay at its absolute discretion.

22.2 Notwithstanding clause 22.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Supplier prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.

## **23 Set off**

23.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract or under any other contract which the Supplier has with the Customer.

23.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

## **24 No partnership or agency**

The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

## **25 Equitable relief**

The Customer recognises that any breach or threatened breach of the Contract may cause the Supplier irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Supplier, the Customer acknowledges and agrees that the Supplier is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

## **26 Severance**

- 26.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 26.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

## **27 Waiver**

- 27.1 No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 27.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Supplier shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Supplier.
- 27.3 A waiver of any term, provision, condition or breach of the Contract by the Supplier shall only be effective if given in writing and signed by the Supplier, and then only in the instance and for the purpose for which it is given.

## **28 Compliance with law**

The Customer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

## **29 Conflicts within contract**

If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict.

## **30 Costs and expenses**

The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

## **31 Third party rights**

- 31.1 Except as expressly provided for in clause 31.2, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 31.2 Any Affiliate of the Supplier shall be entitled under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract. The consent of any such Affiliate is not required in order to rescind or vary the Contract or any provision of it.

**32 Governing law**

The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of Northern Ireland.

**33 Jurisdiction**

The parties irrevocably agree that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).