

PinacL Solutions UK Limited

Terms & Conditions of Sale

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2. Definitions and Interpretation

- 2.1 The definitions set out in Schedule 1 apply to these Conditions and the Contract.
- 2.2 In these Conditions, unless the context otherwise requires:
- a) the singular includes the plural and vice versa;
 - b) reference to a gender includes the other gender and the neuter;
 - c) references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
 - d) any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words.
- 2.3 The headings in these Conditions are for ease of reference only and shall not affect its interpretation.
- 2.4 References to clauses and schedules are unless otherwise provided, references to the clauses and schedules to these Conditions.

3. Application of Conditions

- 3.1. These terms and conditions may not be released, discharged, supplemented, interpreted, varied or modified in any manner except by an instrument in writing signed by a duly authorised representative of the Company. Further, these terms and conditions will prevail over any terms and conditions used by the Customer or contained or set out or referred to in any documentation sent by the Customer to the Company; by entering into a contract with the Company the Customer agrees irrevocably to waive the application of any such terms and conditions.
- 3.2. All illustrations and data contained in the Company's brochures, catalogues, advertisements, price lists or technical data sheets are approximate only and intended merely to give a general idea of the goods and/or works described therein and shall not form part of any contract with the Customer.
- 3.3. For the avoidance of doubt the Company's Sales and Marketing Documents are not incorporated into and do not form part of the Contract.
- 3.4. These conditions shall:
- a) apply to and be incorporated into the Contract;
 - b) prevail over any inconsistent terms or conditions contained in, or referred to, in the Customer's Order, confirmation of Order, or specification, or implied by law, trade custom, practice or course of dealing; and
 - c) for the avoidance of doubt the Vendor's Sales and Marketing Documents are not incorporated into and do not form part of the Contract.
- 3.5 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Company unless in writing and signed by an authorised representatives of both Parties.
- 3.6 The Customer's Order constitutes an offer by the Customer to purchase the Goods and/or Services specified in it; accordingly, the execution of the Contract by an authorised representative of each Party, or the Company's commencement or execution of work pursuant to the Order, shall establish a Contract on these Conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the Order or any other document shall not govern the Contract.
- 3.7 No Order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on the terms that the Customer shall indemnify the Company in full against all Loss incurred by the Company as a result of cancellation.
- 3.8 Any typographical, clerical or other error or omission in, including but not limited to these Conditions, Contract and Company's invoices shall be subject to correction without any liability on the part of the Company.
- 3.9 The Contract shall not prevent the Company from entering into similar agreements with third parties, or from independently developing, using, selling or licensing materials, products or services that are similar to those provided under the Contract.
- 3.10 For the avoidance of doubt, the Company does not manufacture any Goods and resells the Goods to the Customer only. The Customer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer to the Company. Where the Customer has purchased Goods only then the risk of the Goods not performing to the Customer's Requirements lies with the Customer. The Customer may be required to make any claims in relation to faulty Goods directly with the manufacturer.

4. Quotations and Orders

- 4.1. All quotations given by the Company are not binding on the Company until accepted by the Customer. If the Customer instructs the Company to provide the goods and/or carry out the works specified in the quotation within 30 days of the quotation the Customer shall be deemed to have accepted the quotation. Any quotation shall remain valid and open for acceptance for a period of 30 days from its date or as otherwise stated on the quotation. All quotations are subject to revision by the Company prior to acceptance by the Customer.
- 4.2. Where goods/or works are to be supplied at a date occurring more than 30 days after the date of quotation, the Company reserves the right to increase the quotation.
- 4.3. Unless otherwise stated, the Company's charges will be based upon goods and/or works being provided during Normal Working Hours. If the Customer requires such goods and/or works to be supplied outside Normal Working Hours the Company shall be entitled to increase the charge to the Customer and the customer shall provide all attendances the Company requires free of charge.
- 4.4. Receipt of an order from the Customer whether written or oral shall constitute the Customer's offer to purchase the goods and/or provision of the works on these terms and conditions and the order shall be deemed to be accepted only upon issue of a written order acknowledgement by the Company. The Customer's Order constitutes an offer by the Customer to purchase the Goods and/or Services specified in it; accordingly, the execution of the Contract by an authorised representative of each Party, or the Customer's commencement or execution of work pursuant to the Order, shall establish a Contract on these Conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in, the Order or any other document shall not govern the Contract.

- 4.5. No Order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on the terms that the Customer shall indemnify the Company in full against all Loss incurred by the Company as a result of cancellation.
- 4.6. Where the equipment originates from a country utilising a differing currency and there is a change in currency rate greater than 10% either way, the Company reserves the right to re-quote for the equipment.
- 4.7. The Company reserves the right, giving written notice, to increase the price of goods and services to reflect any increase in its costs due to factors outside of its control such as but without limitation to; foreign exchange fluctuation, currency regulation, change in delivery dates, any delay caused by instruction from the Customer or inadequate/inaccurate provision of information from the customer.
- 4.8. If the transaction includes a trade in arrangement, the Customer responsibilities are (unless included in the quotation of works);
 - a) Decommissioning of equipment including deletion of data;
 - b) Packaging equipment in suitable containers for shipment;
 - c) Making all equipment available for collection in a single shipment.
- 4.9. Where the Customer fails to carry out these actions, the Company reserves the right to charge the Customer additional monies to cover this service.
- 4.10. Orders will not be accepted for a value below £500 plus VAT.

5. Variations

- 5.1. Where the Customer instructs the Company to provide goods and/or carry out works in addition to those specified in the order or order acknowledgement the charges for such goods and/or works will be made at the Company's current rates for such goods and/or works unless otherwise agreed between the Company and the Customer in writing.
- 5.2. Any additional goods and/or works supplied by the Company will be in accordance with these terms and conditions.

6. Supply of Goods

- 6.1. Goods shall be produced and/or works carried out substantially to the plans and specifications provided by the Customer. The Company shall not be held liable if the goods produced to the plans and specification provided by the Customer are not suitable for the intended works.
- 6.2. All specifications, figures, sizes, performance outcomes and other descriptions are approximations only.
- 6.3. Where goods are manufactured and/or processed by the Company in accordance with the Customer's specification. The Customer shall indemnify the Company in respect of any infringement or alleged infringement of any patent, design, copyright, trademark, or other intellectual property of any third party.

7. Delivery

- 7.1. Where the Contract is for the sale and supply of goods to the Customer, the Company shall make delivery of the goods to the place directed by the Customer at the Customer's expense.
- 7.2. Where delivery involves the use of a common carrier or any freight service the customary conditions of the industry shall apply in addition to these terms and conditions.
- 7.3. The Company reserves the right to choose the form of transport for goods and the composition of the consignment load.
- 7.4. If within 14 days from the date of notification to the Customer that goods are ready for delivery the Customer defers accepting delivery, the Company may charge the Customer for storage and additional transport costs.
- 7.5. Where the charges include for storage or when the Customer delaying accepting goods necessitates storage, storage shall be at such premises as the Company shall determine at the Customer's expense. Either party may give the other party 7-days notice to withdraw/remove the goods from storage. Throughout any period of storage, the goods shall remain entirely at the sole risk of the Customer and the Company shall not be liable for any loss or damage to goods.
- 7.6. The Customer is solely responsible for the unloading of goods. On arrival at the place of delivery the Customer shall promptly provide unloading facilities, and when the goods are ready to be unloaded, shall unload the goods promptly. The Company shall be entitled to recover from the Customer any costs and expenses incurred because of the Customer's failure so to do.
- 7.7. On arrival at the place of delivery, the Customer shall ensure that there will be free access to the place of delivery for the vehicle delivering the goods and a suitable area for unloading and storing of the goods.
- 7.8. If the Customer fails to take delivery of the Goods on the agreed dates, or fails to give the Company adequate delivery instructions or fails to make necessary arrangements for accepting delivery at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and other expenses incurred and time expended.
- 7.9. The Customer must check the quality and quantity of the Goods on arrival and the Company shall have no responsibility for any loss or damage to Goods after the Customer has signed the delivery note or other delivery documents as received in good condition.
- 7.10. The Goods may be delivered to the Customer in advance of the quoted delivery date upon giving reasonable notice to the Customer.
- 7.11. The Customer shall not be entitled to reject any goods on the grounds that they have been delivered in incomplete quantities.
- 7.12. All distribution equipment is the property of the Company and must be returned to the Company on demand. Any re-use of such equipment by the Customer is entirely at the Customer's own risk. Any deposit which has been charged thereon will only be credited to the Customer if and when the Customer returns same to the Company, carriage paid and in good condition within a period of three months from dispatch to the Customer by the Company.
- 7.13. The Company shall not be liable for non-delivery of goods unless written notice is given to the Company within 30- days of the date when the goods would be in the ordinary course of events have been received.

- 7.14 Any liability of the Company for non-delivery of goods shall be limited to replacing the goods within a reasonable time or issuing a credit note against any invoice raised for such goods.

8. Circuit Installation

- 8.1 All circuit quotes are subject to Survey, Wayleave and Excess Construction Charges.
- 8.2 Wayleave - Due to legislation Pinacl will not be a party to the Wayleave legal agreement between the equipment owner and the property owner. Once a circuit goes into wayleave all provisioning work stops and the circuit is put on hold until the wayleave is agreed. In the instance of a circuit entering Wayleave, the Wayleave is the responsibility of the customer to facilitate / provide – either via their own estates team or with their landlords as applicable. Pinacl are not responsible for obtaining this – responsibility remains with the customer. Any subsequent delay in delivery due to a Wayleave is not down to Pinacl and as a result Pinacl cannot be held responsible for any delays or any financial implications.
- 8.3 Excess Constructions Charges (ECC) - Excess Construction Charges (ECCs) cover the additional costs found at survey of either providing additional service or dealing with situations than the original price list. The ECC cost will be passed directly onto the customer to approve before work continues. ECCs are often raised where additional infrastructure is required to:
- Provide new or extended service at a customer's site, or at another requested location where we would otherwise not choose to extend the network based on normal commercial criteria.
 - Situations involving extended reach including the provision of a new installation within your customer's site, as well as to those where existing capacity needs to be increased.

9. Risk and Title to Goods

- 9.1 Title to and property in goods and/or works carried out shall remain vested in the Company, form the subject of any claim for injury, loss, damage or any expense however so incurred whether arising directly or indirectly from such alleged defects or the Company's negligence other than in the case of fraud by the Company or death or personal injury resulting from the Company's negligence; but such goods, if demonstrated by the Customer within 7- days of receipt of same to be in breach of the Customer's contract with the Company will at the discretion of the Company, be replaced free of charge or credited to the account of the Customer, and the Company will have no further liability to the Customer.
- 9.2 Risk in the goods shall pass to the Customer either
- on collection by the Customer or;
 - if the Company has agreed to deliver the Goods as soon as they are available for unloading at the premises specified by the Customer; or c) in accordance with Clause 9.3.
- 9.3 Until payment has been paid in accordance with clause 19, the Company has the right:
- to claim re-delivery of any such goods supplied by the Company to the Customer; and/or
 - to repossess such goods and/or
 - to enter upon the premises where such goods are held for the time being and to collect such Goods.
- 9.4 Until ownership of goods has passed to the Customer, the Customer shall:
- hold the goods on a fiduciary basis as the Company's bailee;
 - store the goods (at no costs to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - not destroy, deface or obscure any identifying mark or packaging on or relating to the goods;
 - maintain the goods in a satisfactory condition, insured on the Company's behalf for their full price against all reasonable risks and on request of the Customer shall produce the policy of insurance to the Company; and
 - hold the proceeds of the insurance referred on trust for the Company and not mix with any other money, nor pay the proceeds into an overdrawn bank account.

10. Time is Not of the Essence

- 10.1 The Company shall use reasonable endeavours to meet any delivery or completion dates specified by the Customer. Time shall not be of the essence of the contract unless the Company otherwise agrees in writing. Estimates or times given by the Company in respect of delivery will not be binding on the Company. The Company will not be liable for any delay in starting or completing the provision of any goods and/or the carrying out of any works for any reason other than the wilful neglect or negligence of the Company. If the Customer or any matter beyond the reasonable control of the Company causes any delay or interruption in the delivery or provision of the goods and/or works the Company reserves the right to make additional charges. No delay in delivery of goods and/or works shall entitle the Customer to terminate or rescind the contract unless such delay exceeds 180 days.

11. Demurrage

- 11.1 The Company shall not be responsible for any demurrage or other detention charges whatsoever.

12. Schedule of Work

- 12.1 Prior to the commencement of the work, the Customer shall provide a detailed programme of work, indicating the expected time period for the works to be supplied by the Company and any additional works to be undertaken by the Customer and/ or third parties on the site. This shall be updated whenever necessary and provided to the Company.

13. Customer Responsibilities

- 13.1 In order to enable the Company to provide the Goods and/or Services under these Conditions and the Contract the Customer agrees that it shall (at its own expense) pursuant to these Conditions and the Contract, (including but not limited to):
- provide the Company with all necessary co-operation in relation to the Contract; and

- b) provide the Company with all necessary access to such information as may be required by the Company in order to render the Services, including but not limited to Customer Data, security access information and software interfaces, to the Customer's other business applications; and provide such personnel assistance, including the Customer Representatives and other Customer personnel, as may be reasonably requested by the Company from time to time; and
 - c) observe Vendor's directions and implement any changes as directed by the Company, in the event that the customer fails to do so, then Service Levels under the Contract shall become null & void. The Company may reasonably require so as to enable it to provide the Services to the Customer under the Contract; and
 - d) comply with all applicable laws and regulations with respect to its activities under this Contract; and
 - e) carry out all other Customer Responsibilities as set out in the Contract or otherwise communicated to the Customer in an efficient manner; and
 - f) ensure timely completion of 3rd party actions and/or responsibilities so as to not impact upon project and contractual timescales; and
 - g) provide the Company with access to data and systems that allow for an accurate assessment of timescales for data migration/management; and h) provide the Company with unfettered access to current infrastructure and systems; and
 - i) provide the Company with access to incident/call data to assess the likely Operational Service demand; and
 - j) ensure timely procurement of the licenses needed for each project stage; and
 - k) ensure Customer attendance to any project definition workshops and timely review of documentation and materials needed for project progression; and l) employ suitably trained personnel; and
 - m) be responsible to the Company for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Customer; and
 - n) be responsible for preparing the Customer Premises for the supply of the Services; and
 - o) prior to or within 30 days of the commencement of the Services, if applicable at the sole discretion of the Company, undertake remedial action for any Customer Equipment not in a Supportable Condition or accept the Company undertaking such remedial action. In the event that the Company undertakes such remedial action, the Customer agrees that it has requested Additional Services and has agreed to be subject to any Additional Service Charges thereof; and
 - p) provide the Company with all necessary co-operation, information and Data as may be required including but not limited to Customer Data, security access information, and software interfaces to the Customer's other business applications. The Customer shall ensure the accuracy of all data and information; and
 - q) make such parts of the Company's Operating Environment available to the Company as the Company may reasonably require; and
 - r) carry out all other Customer responsibilities set out in these Conditions or in the Contract (including any Pre-Requisites) in a timely and efficient manner. In the event of any delays in the Company's provision of such assistance as agreed by the Parties, the Company may adjust any timetable or delivery schedule set out in the Contract as reasonably necessary; and
 - s) make no alteration or modification to the software element of the Product covered by the Contract without the prior written approval of the Company; and
 - t) in the event that the Company collects hardware from the Customer, for example for a trade in, the Customer shall be responsible for:
 - i) decommissioning the Company Assets including; deleting any data, advising the Company of any potential security risks;
 - ii) packing the hardware in suitable containers;
 - iii) making all the Company Assets available for collection within a pre-agreed time between the parties.
- 13.2 In the event that the Customer fails to perform any provisions of where it relates to a Vendor Trade-In offer, the Company reserves the right to retract any or charge Additional Charges.
- 13.3 The Customer shall request permission from the Company in writing in the event that the Customer wishes to change the location of the Customer Assets and/or Company Assets from the address specified in the Contract.
- 13.4 The failure of the Customer to adhere to the Customer Responsibilities shall result in a breach of these Conditions which shall in turn allow the Company to invoke any or all of the remedies outlined in these Conditions, including Customer Cause.
- 13.5 The disposal of all packaging for products provided as part of the installation, unless by prior arrangement where the Company will deal with such in line with its ISO14001 Environmental Policy.

14. Customer's Responsibilities for Managing Projects

- 14.1 Where the Customer is having construction or building work carried out as part of their project, the Customer shall take reasonable steps to ensure that the arrangements made for managing the project (including the allocation of sufficient time and other resources) by persons with a duty under the CDM Regulations 2007 (including the Customer himself) are suitable to ensure that;
- a) the construction work can be carried out so far as is reasonably practicable without risk to the health and safety of any person;
 - b) the requirements for the Welfare Facilities are clearly detailed in respect of any person carrying out the construction work; and
 - c) any structure designed for use as a workplace has been designed taking account of the provisions of the Workplace (Health, Safety and Welfare) Regulations 1992 which relate to the design of, and materials used in, the structure;
 - d) an up to date Asbestos Register is available;
 - e) details of all relevant structural surveys and known structure/building hazards are available.
- 14.2 The Customer shall take reasonable steps to ensure that the arrangements referred to in 14.1 are maintained and reviewed throughout the project.
- 14.3 On all projects the Customer will need to;
- a) check the competence and resources of all appointees;
 - b) ensure there are suitable management arrangements for the project including welfare facilities;
 - c) allow sufficient time and resources for all stages;
 - d) provide pre-construction information to designers and contractors.
- 14.4 For projects classed as 'Notifiable' the Customer will need to;
- a) appoint a CDM co-ordinator;
 - b) appoint a principal contractor;
 - c) make sure that construction work does not start unless a construction phase plan is in place and there are adequate welfare facilities on site.
 - d) provide information relating to the health and safety file to the CDM co-ordinator.
 - e) retain and provide access to the health and safety file.

15. Professional Services

- 15.1. The Company shall use reasonable endeavours to provide the Professional Services in all material respects in accordance with the Statement of Works and/or Solution Design Document and the Professional Services shall be delivered in accordance with the Project Plan set out in those documents.
- 15.2. If at any time, the Company becomes aware that it will not, or it is improbable that it will achieve a Professional Services completion date, it shall inform the Customer and both Parties shall mutually agree reasonable steps deemed necessary to achieve an agreed revised completion date. If the Customer causes any delay to the Professional Services completion date, the Company shall reserve the right to utilise remedies in line with clause 16 Effect of Customer Cause.
- 15.3. For Projects undertaken on a Time & Materials basis, Professional Services and Project Management is charged on a man-day basis at the day–rate specified and agreed. The number of man-days quoted in the Contract is an estimation of the time required to complete the tasks in the Project Stage Plan. Reasonable endeavours will be used to achieve the completion of the tasks within the timeframe quoted. Where additional man-days are required, the Customer will be charged accordingly.

16. Acceptance Tests

- 16.1. Where the Statement of Works and/or Solution Design Document refer to Acceptance Tests, the following procedure shall apply.
- a) The Customer shall provide the Company with details of its intended test criteria prior to the start of the Acceptance Tests. For the avoidance of doubt if the test criteria is not received by the Company within a reasonable time prior to the start of each testing phase, then the Company shall provide the Customer with the test criteria and this shall be utilised and take precedence for the Acceptance Tests.
 - b) If testing and handover of a solution is not completed before the Customer commences use of the solution in a operational environment then the Company shall not be liable for any adverse consequences, including but not limited to adverse impact on the Company's ability to complete the Project. Additional costs may result if extra work is required from the Company as a result of such adverse impact.
 - c) Following completion of the Acceptance Test, if in the reasonable opinion of both Parties that the test criteria has been met, then the Acceptance Test will be considered successful.
 - d) If in the reasonable opinion of both Parties that the test criteria fails to meet the agreed criterion, the Customer shall notify the Company of this, in writing, within 5-working days of completion of the relevant test, together with a detailed explanation of the reasons why it has so failed. In such a situation, the Company shall within a reasonable period of time remedy the issues and the Parties shall conduct further testing in accordance with this clause 16.
 - e) If the Customer does not provide any written confirmation of success of the Acceptance Tests within 5-working days as described in clause 15.1.d) then the Stage of the Acceptance Tests shall be deemed accepted.
 - f) If at any time, the Company becomes aware that it will not, or it is improbable that it will achieve an Acceptance Test completion date, it shall inform the Customer and both Parties shall mutually agree reasonable steps deemed necessary to achieve an agreed revised completion date. If the Customer causes any delay to the Professional Services completion date, the Company shall reserve the right to utilise remedies in line with clause 16 Effect of Customer Cause.
 - g) Each Party shall bear its own costs in respect of Acceptance Tests. In the event that a revised Acceptance Test is required, then the Customer shall bear the all costs of such revised Acceptance Test.
 - h) Any disputes about or arising out of this clause 16 shall be resolved through the Dispute Resolution Procedure. Pending a resolution of the Dispute both Parties shall continue to attempt to resolve the causes of, and mitigate the effects of, any delay or otherwise in the execution of the Acceptance Tests.

17. Effect of Customer Cause

- 17.1 If the Company fails to provide the Goods and/or Services in accordance with the Contract and pursuant to these Conditions or the provision of the Services is delayed as a result of a Customer Cause the Company shall at its sole discretion, invoke any or all of the following:
- a) determine that such delay or failure shall not be treated as being in breach of these Conditions or the Contract; and/or
 - b) in measuring the performance of any affected Services be treated as though the relevant Service had not been delayed and had met the applicable Service Level; and/or
 - c) in the event a Customer Cause result in a Service failure, the Company reserves the right to step in and remedy the failure at Customer's costs; and/or
 - d) determine that the Service Levels become null and void until the Customer has remedied its Customer Cause; and/or
 - e) determine that any Service Credits are not payable to the Customer until the Customer has remedied its Customer Cause; and/or
 - f) adjust any timetable or delivery date as set out in these Conditions and/or the Contract as reasonably necessary; and/or
 - g) be entitled to the Charges for the relevant Services affected by the Customer Cause as if it had not occurred and recover from the Customer any Additional Service Charges that the Company may incur by reason of the Customer Cause; and/or
 - h) In the instance where there has been a delay of more than one month due to a Customer Cause, resulting in the Company not being able to perform further Services then the Company may invoice the Charges for Services completed to date; and/or
 - i) if the Company's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to the Company on demand all reasonable costs, charges or/and Loss sustained, subject to the Company confirming such costs, charges and losses to the Customer in writing.

18. Personnel

- 18.1. If applicable, the Customer shall appoint the Named Contacts who shall be responsible for the matters allocated to such Named Contacts. The Named Contacts shall be those people who are identified by each Party as being key to the success of the Professional Services and for operation of the Services and who shall be retained on the Professional Services and/or operation of the Services for such time as a person is required to perform the role which has been allocated to the applicable Named Contacts. The Named Contacts shall have the authority to act on behalf of its respective party on the matters for which they are expressed to be responsible.
- 18.2. The Company shall use reasonable endeavours to ensure continuity of the Company's key personnel but has the right to replace them from time to time where reasonably necessary in the interests of the Company's business.

- 18.3. Each Party appoints the persons named as such in the Contract as the „Customer Representative“ and the „Company Representative“ respectively. The Representatives shall have the authority to act on behalf of its respective Party on the matters set out in, or in connection with, these Conditions. Either Party may, by further written notice to the other Party, revoke or amend the authority of its Representative or appoint a new Representative.
- 18.4. The respective representatives shall be sufficiently senior within the organisation (Director level or above) of the appointing Party, and granted sufficient authority by that Party, to ensure full cooperation in relation to the operation and the management of these Conditions.
- 18.5. The Customer and the Company agree that any transfer of a contract of employment to the Company by reason of the Parties entering into this Agreement shall only occur by operation of and in accordance with TUPE.
- 18.6. Without prejudice to any other term of these Conditions, the Customer shall be responsible for all Employment Costs in respect of the Transferring Employees up to and including the Relevant Transfer Date and shall indemnify and keep indemnified the Company against such Employment Costs.
- 18.7. The Customer shall provide to the Company Employee Liability Information for the Transferring Employees together with such other information in relation to the Transferring Employees as the Company may require and the Customer shall ensure that such information is kept up to date up to and including the Relevant Transfer Date. The Customer warrants that such information is complete and accurate as at the date it is disclosed.
- 18.8. The Customer warrants that in the 6-month period prior to the Relevant Transfer Date (save as disclosed) no changes have been made to the identity of the personnel involved in carrying out the activities which are essentially the same as the Services (or parts of them) and further that no changes have been made to the terms and conditions of employment of any Transferring Employee.
- 18.9. The Customer shall indemnify and keep indemnified the Company against any Employment Liabilities incurred by the Company arising out of or in connection with;
- a) the employment of any Transferring Employee prior to the Relevant Transfer Date;
 - b) the termination of employment of any employee of the Customer (or of any of its subcontractors) before, on, or after the Relevant Transfer Date.
- 18.10. If it is alleged that the contract of employment of any employee of the Customer (or any of its subcontractors) who is not a Transferring Employee has transferred to the Company, the Company shall be entitled to terminate any such alleged contract of employment and the Customer shall indemnify the Company in relation to all Employment Costs and Employment Liabilities arising in connection with the employment of such employee (incurred before or after the Relevant Transfer Date) and its termination.
- 18.11. The Customer shall indemnify and keep indemnified in full the Company against all Employment Liabilities arising from or connected with any failure, act or omission by the Customer or any of its subcontractors), whether such claim arises or has its origin before or after the Relevant Transfer Date, including (without limitation) any failure to comply with TUPE and in particular obligations pursuant Regulations 11, 13 and 14 of TUPE.
- 18.12. In relation to the termination of the Services, in whole or in part, for any reason, the Customer agrees:
- a) that such event may have effect so as to transfer the contract of employment of employees of the Company to either the Customer and/or a Replacement Company pursuant to TUPE; and
 - b) that the Customer will indemnify the Company in relation to any Employment Costs or Employment Liabilities arising in connection with the failure of the Customer and/or any Replacement Company to comply in full with their obligations pursuant to TUPE, including without limitation, obligations pursuant to Regulations 13 and 14 of TUPE; and
 - c) that the Customer will indemnify the Company in relation to any Employment Liabilities arising pursuant of TUPE or in connection with the termination of employment by an employee in acceptance of an anticipated breach of contract by the Customer or Replacement Company.

19. Non-Solicitation

- 19.1. The Customer shall not during the Initial Term and/or the Term and/or any Renewal thereafter and for 12 months following the termination or expiry of the Contract either directly or indirectly solicit or entice away (or seek to attempt to solicit or entice away) or employ or attempt to employ any person from the employment of the Company in the provision of the Goods and/or Services, whether an employee or sub-contractor of the Company.
- 19.2. If the Customer commits any breach of clause 191, the Customer shall, pay to the Company a sum equal to 12 months" salary of the Company's employee or sub-contractor and any recruitment costs incurred by the Company in replacing such person.

20. Invoicing and Payment

- 20.1. The Price for the Goods and/or Services shall be at the Company's quoted price as confirmed within the Quotation. Unless otherwise agreed, all prices quoted shall be valid for a period 30-days only. Following acceptance by the Customer, the Charges shall be contained within the Contract and be binding on the Parties from the Effective Date.
- 20.2. Where the Company has agreed a fixed price and confirmed a date for the Goods and/or Services to be delivered to the Customer, then the price will remain fixed until the date. Subject to the following exceptions; any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions may result in the Company charging the Customer an Additional Service Charge and/or invoking any of the remedies under Customer Cause.
- 20.3. The Company reserves the right, by giving notice to the Customer at any time before delivery, to increase the Charge of the Goods and/or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (including but not limited to, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods and/or Services which is requested by the Customer, or any delay caused by any instructions of the

- Customer or failure of the Customer to give the Company adequate information or instructions may result in the Company charging the Customer an Additional Service Charge and/or any of the remedies under Customer Cause.
- 20.4 Unless otherwise agreed in writing between the Parties, the Charges shall be invoiced as follows:
- a) Goods are invoiced 100% on delivery (whether delivered to Customer Premises or Company Premises). In the case of special manufactured Goods, these shall be invoiced at 100% on receipt of Customer Order;
 - b) Professional Services charges shall be invoiced at 50% of the total Professional Services charge on receipt of the order and the remaining 50% over mutually agreed milestones.
- 20.5 Should there be a delay from the agreed plan of greater than 30-days, the Company reserves the right to invoice for any work completed to date and may levy a reasonable storage charge.
- 20.6 The Customer shall pay the Charges in accordance with the terms stated in these Conditions and/or the Contract.
- 20.7 Time of payment shall be of the essence. Subject to clause 20.9 unless otherwise agreed in Contract and subject to Customer's satisfactory credit check, the Customer shall pay the Company within 30- days of the date of the invoice issued in respect of the relevant payment (without any deduction or right of set off whatsoever).
- 20.8 No payment for the Goods and/or Services shall be considered made until received in cleared funds by the Company.
- 20.9 If the price charged by the Company is payable in instalments, then each instalment shall be payable within 30-days of the relevant invoice being issued.
- 20.10 If the Customer fails to pay the price or any instalment thereof within such 30-day period interest shall accrue at the rate of 8 percent (8%) above the Base Lending Rate of The Bank of England in operation during the duration when the debt was outstanding from the due date of payment until full payment has been received.
- 20.11 The Customer shall not withhold any payment or exercise any right of set-off or compensation. If the Customer does delay payment the Company shall be entitled to recover in addition to the interest stated above, all extra costs, charges and expenses legal or otherwise incurred by the Company as a result of non-payment or late payment of the invoice.
- 20.12 Failure by the Customer to pay for part delivery of Goods and/or Services when payment is due shall entitle the Company to withhold further delivery of Goods and/or Services.
- 20.13 The Company may at any time suspend the performance of its obligations until the Company is satisfied that the Customer is able to pay, intends to pay or has given security for payment for the goods and/or works.
- 20.14 Unless otherwise agreed in the Contract, reasonable out-of-pocket expenses may be charged by the Company on production of reasonable evidence of expenditure to the Customer.
- 20.15 All quoted Charges are-exclusive of VAT, which shall be invoiced to and paid by the Customer at the rate and in a manner for the time being prescribed by Law.
- 20.16 In the event that the Customer amends or cancels any of the Confirmed Professional Services within 14-days prior to that date then the Customer shall be liable to pay the Company the following Charges:
- a) where the Company is not able to utilise its personnel on other chargeable work a full day will be charged at the Company's Published Rates; or
 - b) where the Company is able to utilise its personnel on alternative equivalent chargeable work with another customer one quarter of a day will be charged at the Company's Published Rates.
- 20.17 In the event that the Customer leases the Goods from a lease company and the lease company fails to pay the Company for the Goods, then the Customer shall be liable to pay the Company (on behalf of the lease company) in full for any outstanding Charges.

21. Value Added Tax

- 21.1 Quotations and prices are exclusive of Value Added Tax, which will be charged where appropriate at the rate applicable at the date of the relevant invoice.

22. Freedom of Information

- 22.1 All the information contained in the Contract is provided to the Customer in confidence and therefore shall be deemed commercially sensitive. This shall include (but not be limited to):
- a) information relating to charges and invoicing;
 - b) pricing structure;
 - c) service levels;
 - d) methodology.

23. Intellectual Property Rights

- 23.1 Except as expressly set out in these Conditions, the Customer shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Company or its licensors (whether created before, during or after the Services), including but not limited to:
- a) Company Software;
 - b) Company Assets;
 - c) Company Know-How;
 - d) Third Party Hardware or Software; v) Company's Background IPRs,
 - e) Company's Documentation, processes and procedures (including but not limited to, operating manuals, user instructions, technical literature);
 - f) Company's System;
 - g) Probe.
- 23.2 the Company shall not acquire any right, title or interest in or to the Intellectual Property Rights of the Customer or its licensors, including:
- a) Customer Software;
 - b) Customer Data;
 - c) Customer's documentation, processes and procedures; or
 - d) Customer's Know-How;

- e) Customer's Database;
 - f) Customer's Background IPRs
- 23.3 Where either Party acquires, by operation of Law, title to Intellectual Property Rights that is inconsistent with the allocation of title, it shall assign in writing such Intellectual Property Rights as it has acquired to the other Party on the request of the other Party (whenever made) with full title guarantee.
- 23.4 Neither Party shall have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 23.5 The Company shall not be liable for any infringement by the Customer of Intellectual Property Right if the Customer uses Third Party's Software used in a manner other than intended for under the Contract, misuses of Third Party's Software and/or alters Third Party's Software without the Company's prior consent. The Company warrants that it owns (or is authorised to licence) all Intellectual Property Rights required by the Customer to make full use of the Services. Each Party shall indemnify the other Party against all Loss awarded against or incurred by the other Party in connection with or paid or agreed to be paid by the other Party in settlement of any alleged infringement, whether or not under English law of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services.

24. Sub-Contracting

- 24.1 The Company reserves the right to sub-contract any part of its obligations to a suitably qualified third party chosen by the Company. Where the Company is bound by the terms of a contract with any such sub-contractor in respect of the sub-contracted part of the contract, the Customer shall also be bound by those terms and any obligations of the Company under these Conditions or any Contract, which are inconsistent with such sub-contractor's terms, shall be disregarded.

25. Assignment

- 25.1 The Customer must not assign sub-let or otherwise transfer the Contract or any part of it without the Company's prior written approval. The Company may assign its contract with the Customer or any part of it.
- 25.2 The Company may at any time assign, novate, transfer, charge, subcontract or deal in any other manner, or otherwise dispose of or create any trust in relation to all or any of its rights or obligations under these Conditions without the consent of the Customer.
- 25.3 The Customer shall not, without the consent of the Company, assign, novate, transfer, charge, subcontract or deal in any other manner, or otherwise dispose of or create any trust in relation to all or any of its rights or obligations under the Contract.

26. Waiver

- 26.1 Any waiver by the Company of any breach of, or any default under, any provisions of the contract with the Customer by the Company will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the contract with the Customer.

27. Limitations on Liability

- 27.1 Except in respect of fraud or death or personal injury caused by the Company's negligence the Company shall not be liable to the Customer for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise and whether caused by negligence or otherwise) which may arise in connection with the carrying out of works and/or the supply of goods or their use or resale by the Customer.
- 27.2 Where the Customer has a contract for the supply of goods only, the Customer and any persons to whom he is responsible shall install and use the Goods in accordance with any current instructions and/or drawings supplied by the Company or to the specification set out in any British standard or other standard specification relating to the goods.
- 27.3 The Company warrants;
- a) that the goods conform to the order specification and with any sample referred to
 - b) save as provided for in this clause the Company shall have no liability for any defect in the quality of the goods or their failure to correspond to any description or sample or to be fit for any purpose and all other conditions, warranties, stipulations and undertakings, whether express or implied by statute or common law are excluded,
- 27.4 Where the Customer has a contract with the Company for sale of goods only, the Customer shall ensure that the correct materials are used for any particular installation of goods supplied by the Company and that such installation complies with all relevant standards, building regulations and codes or practice.
- 27.5 Where a Customer has a contract for the sale of goods only, the Customer shall be solely responsible for the installation of the goods supplied to the Company. The Customer shall indemnify the Company from and against all actions, expenses, damages, legal costs or demands of whatsoever arising out of or in connection with the installation or use of goods caused by or arising from any negligent act or omission of the Customer or his contractors or his agents. The Company shall at any time have access to the premises where the goods are installed or situated to inspect them, their installation or their use.

28. GDPR General Obligations

- 28.1 Each term used in this Clause 28 shall have the same meaning given in the Data Protection Legislation, unless otherwise stated. References to Articles in this condition 28 shall mean the Articles of the GDPR.
- 28.2 The Supplier acknowledges and agrees that for the purposes of this Contract, the Customer is the Data Controller and the Supplier is a Data Processor in respect of all Personal Data processed pursuant to this Contract. The details of the Processing carried out by the Supplier on behalf of the Customer are set out in Schedule 2 which forms part of this Contract.

- 28.3 The only processing that the Supplier is authorised to do is listed in Schedule 2 (Processing Personal Data) by the Customer, or as provided in writing by the Customer to the Supplier from time to time, and may not otherwise be determined by the Supplier.
- 28.4 The Customer shall comply with its obligations under Data Protection Legislation in respect of all Personal Data Processed pursuant to this Contract.
- 28.5 The Supplier shall provide all reasonable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- i. a systematic description of the envisaged processing operations and the purpose of the processing;
 - ii. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - iii. an assessment of the risks to the rights and freedoms of Data Subjects; and
 - iv. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 28.6 The Supplier shall provide all reasonable assistance to the Customer as requested by the Customer from time to time to ensure the Customer's compliance with its obligations under the Data Protection Legislation which shall include, but not be limited to:
- a) implementing measures to mitigate against any data protection risks;
 - b) implementing such technical and organisational measures to enable the Customer to respond to requests from Data Subjects exercising their rights under the Data Protection Legislation which shall include but not be limited to:
 - i. providing Customer Personal Data and details of the processing of Customer Personal Data to the Customer in response to a subject access request; and
 - ii. deleting and/or rectifying Customer Personal Data in response to a request on behalf of a Data Subject;
 - c) assisting with any enquiries from Regulators.
- 28.7 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
- a) ensure that it has in place Protective Measures which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
 - i. nature of the data to be protected;
 - ii. harm that might result from a Data Loss Event;
 - iii. state of technological development; and
 - iv. cost of implementing any measures.
 - b) ensure that:
 - i. the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 2 (Processing Personal Data));
 - ii. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - SA2.1 are aware of and comply with the Processor's duties under this Clause;
 - SA2.2 are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - SA2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
 - SA2.4 have undergone adequate training in the use, care, protection and handling of Personal Data;
 - c) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - i. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - iv. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data.
 - d) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.
- 28.8 **Security**
- When Processing Customer Personal Data under this Contract, the Supplier shall take all necessary technical and organisational precautions and measures to preserve the confidentiality and integrity of Customer Personal Data and prevent any unlawful processing or disclosure taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of the Data Subjects. These shall include, but not be limited to:
- i. Encrypting the Customer Personal Data stored on any mobile media or transmitted over public or wireless networks;
 - ii. Implementing and maintaining business continuity, disaster recovery and other relevant policies and procedures to ensure:
 - a) the confidentiality, integrity, availability and resilience of processing systems and services; and
 - b) the availability and access to Customer Personal Data in a timely manner in the event of a physical or technical incident; Ensuring that all employees and contractors who are involved in the Processing of Customer Personal Data are trained in the policies and procedures set out in Clause 28 and are under

contractual or statutory obligations of confidentiality concerning Customer Personal Data; Pseudonymise the Customer Personal Data on request by the Customer.

28.8.1 (the "Protective Measures")

The Protective Measures shall be regularly tested by the Supplier to assess the effectiveness of the measures in ensuring the security, confidentiality, integrity, availability and resilience of the Customer Personal Data and shall maintain records of the testing.

28.9 Records of processing

The Supplier shall maintain accurate written records of the Processing it undertakes in connection with this Call-Off Contract which shall contain at a minimum:

- a) Its details, the Customer's details, the details of its data protection officer;
- b) the categories of Processing carried out on behalf of the Customer;
- c) the details of any transfers to any third countries, where applicable, and the safeguards in place for that transfer; and
- d) an accurate record of the Protective Measures it has in place.

The Supplier shall provide the records to the Customer or a Regulator on request.

28.10 Subject to Clause 28.12, the Processor shall notify the Controller promptly (but in any event within 24 hours) if it:

- a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- b) receives a request to rectify, block or erase any Personal Data;
- c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- f) becomes aware of a Data Loss Event.

28.11 The Processor's obligation to notify under Clause 28.10 shall include the provision of further information to the Controller in phases, as details become available.

28.12 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 28.10 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- a) the Controller with full details and copies of the complaint, communication or request;
- b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- d) assistance as requested by the Controller following any Data Loss Event;
- e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

28.13 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

- a) the Controller determines that the processing is not occasional;
- b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

28.14 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

28.15 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

- a) notify the Controller in writing of the intended Sub-processor and processing;
- b) obtain the written consent of the Controller;
- c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Clause 23.11 such that they apply to the Sub-processor; and
- d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

28.16 The Processor shall remain fully liable for all acts or omissions of any Sub-processor.

28.17 The Buyer may, at any time on not less than 30 Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

28.18 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Buyer may on not less than 30 Working Days' notice to the Supplier to amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

28.19 This clause 28.19 applies only to Joint Controllers.

28.19.1 In respect of Personal Data identified in Schedule 2 as under Joint Control, Clause 28.1-28.18 shall not apply and shall be replaced by a Data Sharing Agreement which must be entered into by both Parties.

29. Warranties

29.1 All electronic products supplied but not manufactured by the Company are supplied with a factory repair warranty for twelve (12) months from the date of dispatch by the Company, subject to:

- a) the Customer complying fully with all his obligations under these terms and conditions; and

- b) the goods being handled, stored, installed and maintained completely in accordance with the recommendations of the Company or the Company's Company or any other relevant standard covering the use of the goods; and
 - c) the goods being installed in normal building service conditions.
- 29.2 The Company warrants that (subject to the other provisions of these terms and conditions) upon delivery and for a period of 12 months from the date of delivery of goods represented by the Company, to the Company, will be of satisfactory quality within the meaning of the Sale of Goods Act 1994.
- 29.3 Goods represented by the Customer to be defective shall not, save as expressly provided for in these conditions, or in any specific written warranty issued by the
- 29.4 The Warranty in 17.1 and 17.2 do not include and shall not require the company to carry out any work or repairs or decoration or restoration consequent on the removal and return to us or the repair or replacement of defective goods by the Company other than in accordance with condition 17.3.
- 29.5 Any unauthorised modifications, use or improper installation of the System by or on behalf of the Customer shall render all the Company's warranties and obligations under these Conditions and/or the Contract null and void.

30. Termination

- 30.1 The contract may be terminated by the Company forthwith by written notice on the happening of any of the following events:
 - a) if the Customer shall give notice to its creditors or any of them that the Customer has suspended or is about to suspend its business or payments of its accounts; or
 - b) if the Customer shall be unable to pay its debts or being a Company shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; or
 - c) if an order shall be made or an effective Resolution passed for the bankruptcy or the winding up of the Customer (other than the purpose of a solvent reconstruction or amalgamation); or
 - d) if an administrator, receiver or manager or administrative receiver shall be appointed over the whole or any part of the undertaking or assets of the Customer.

31. Force Majeure

- 31.1 If the performance of any obligation is prevented by force majeure, the Company shall be excused performance, provided that the Company shall use reasonable endeavours to remove such cause(s) of non-performance, and shall continue performance thereunder without delay whenever such cause(s) are removed.
- 31.2 For the purposes of these terms and conditions, the term 'Force Majeure' includes acts of God, strikes, lock-outs, other industrial action, fire, accident, lighting, earthquakes, storms, floods, explosion, war, terrorist attacks, any other circumstances, whether similar or dissimilar, beyond the reasonable control of the Seller.
- 31.3 Subject to the remaining provisions of this clause 30, either Party to the Contract may claim relief from liability for non-performance of its obligations to the extent this is due to a Force Majeure Event.
- 31.4 In the event that either Party is delayed or prevented from performing its obligations under the Contract by a Force Majeure Event, such party shall:
 - a) give notice in writing of such delay or prevention to the other Party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof its estimated duration;
 - b) use reasonable endeavours to mitigate the effects of such delay or prevention of the performance of its obligations under the Contract; and
 - c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 31.5 As soon as practicable following the Affected Party's notification, the Parties shall consult with each other in good faith and use reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the Contract.
- 31.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with its obligations under the Contract. Following such notification, these Conditions shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure Event, unless agreed otherwise by the Parties.

32. Dispute Resolution

- 32.1 The Parties shall attempt, in good faith, to resolve any Dispute promptly by negotiation which shall be conducted as follows:
- 32.2 The Dispute shall be referred, by either Party, first to the Managers of each of the parties for resolution;
- 32.3 If the Dispute cannot be resolved within 14-days after the Dispute has been referred to the Manager then either Party may give notice to the other Party in writing ("Dispute Notice") that a Dispute has arisen and could not be resolved by the Managers; and
- 32.4 Within 7-working days of the date of the Dispute Notice, each Party shall refer the Dispute to a Company Director for resolution.
- 32.5 If the Company Directors are unable, or fail, to resolve the Dispute within 21 Working Days of the date of the Dispute Notice, or within 14 Working Days of the reference to the Company Directors pursuant to this clause 31 the Parties may attempt to resolve the Dispute by mediation.
- 32.6 If within 30-days of the Dispute Notice the parties have failed to agree on a resolution, either Party may refer any Dispute for mediation pursuant to this clause 30 but neither shall be a condition precedent to the commencement of any court proceedings, and either Party may issue and commence court proceedings prior to or contemporaneously with the commencement of mediation. The following provisions shall apply to any such reference to mediation:
 - a) The reference shall be a reference under the Model Mediation Procedure (MMP) of the Centre of Dispute Resolution (CEDR) for the time being in force;
 - b) Both parties shall, immediately on such referral, co-operate fully, promptly and in good faith with CEDR and the mediator and shall do all such acts and sign all such documents as CEDR or the mediator may reasonably require to give effect to such mediation, including an agreement in, or substantially in, the form of CEDR Model Mediation Agreement for time being in force; and
 - c) To the extent not provided for by such agreement of the MMP:
 - i) the mediation shall commence by either Party serving on the other written notice setting out, in summary form the issues in Dispute and calling on that other Party to agree the appointment of a mediator; and

- ii) the mediation shall be conducted by a sole mediator (which shall not exclude the presence of a pupil mediator) agreed between the Parties or, in default of agreement, appointed by CEDR.

32.7 If and to the extent that the Parties do not resolve any Dispute or any issue in the course of any mediation, either Party may commence or continue court proceedings in respect of such unresolved Dispute or issue.

32.8 Nothing in this clause 31 shall prevent either Party from instigating legal proceedings where an order for an injunction, disclosure or legal precedent is required.

33. Right or Remedy

Each right or remedy of the Company is without prejudice to any other right or remedy of the Company.

34. Damages

34.1 Save in the case of the Company's fraud or in the case of personal injury caused by the Company's negligence, the Company's liability for damages in relation to the carrying out of the works (including damages caused by the Company's negligence) is limited to the total price paid by the Customer for the works.

35. Governing Law

35.1 These terms and conditions shall be construed in accordance with English Law and the Customer agrees to submit to the non-exclusive jurisdiction of the English Courts.

36. Schedule 1 - Definitions

In these terms and conditions, the following words and phrases have the meanings set out below:-

Term	Definition
“Acceptance Test”	The tests carried out by the Company and Customer to ascertain whether the Professional Services Criteria have been met (if applicable as stated in the SOW and/or PDD);
“Additional Service Charge”	A Charge relating to any Additional Services, at the Company’s quoted rates unless otherwise agreed;
“Additional Services”	Any Services not covered within the Statement of Works and/or Solution Design Document and/or Conditions and/or Contract;
“Assumptions”	Actions performed by the Customer that the Company relies upon to perform the Services;
“Authority”	Any authoritative body or its successor or replacement body which has regulatory or enforcement powers against person who store, control, use or process Data, including but not limited to the Financial Services Authority (FSA) and the Information Commissioner’s Office.
“Background IPR”	Any and all IPRs that are owned by or licensed to either Party and which are or have been developed independently of these Conditions (whether prior to the Effective Date or otherwise);
“Data Backup”	Copies of Customer data (if applicable in the Contract) backed up to magnetic media from the Commencement Date including but not limited to individual files, folders, databases and virtual machines;
“Change Control Procedure”	Where applicable, the procedure for changing these Conditions and/or the Contract;
“Change of Control”	A change in control of a Party;
“Change Request”	A request for Change in the configuration of the Services provided by the Customer;
“Charges”	Any amounts due to the Company under the Contract;
“Company”	Means Pinacl Solutions UK Limited;
“Company Assets”	Means all assets and rights (whether owned, leased or otherwise) used by the Company to provide the Services in accordance with the Contract; including but not limited to the hardware, computer and telecoms devices and equipment supplied (but not hired, leased, loaned or sold to the Customer) by the Company or its Sub-contractors for the provision of the Services;
“Company Background IPR”	IPRs proprietary to the Company which is or will be used by the Company for the purposes of providing the Services which comprise: (a) IPRs owned by the Company before the Effective Date, for example those subsisting in the Company’s standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Company’s Know- How or generic business methodologies; and/or (b) IPRs created by the Company independently of these Conditions, but excluding IPRs owned by the Company subsisting in the Company Software;
“Company Director”	A member of the board of directors of a company, appointed or elected to control and govern the affairs and policies of a corporation;
“Company Documentation”	Including but not limited to; descriptions of the Services and Service Levels, technical specifications, user manuals, operating manuals, process definitions and procedures, and all such other documentation as: (a) is required to be supplied by the Company to the Customer under these Conditions; (b) is required by the Company in order to provide the Services; or (c) has been or shall be generated for the purpose of providing the Services;
“Company Software”	The software which is owned or licensed by the Company and which is to be used by the Company and/or the Customer in the context of the provision or receipt of any of the services

“Company System”	The information and communications technology system to be used by the Company in performing its duties and activities, including the Software, Company Assets and communications links between the Company’s Assets;
“Conditions”	These standard Terms and Conditions to include any Special Terms and Conditions as set out in the Contract;
“Confidential Information”	All information or data disclosed (whether in writing, orally or by any other means) to one party by the other party or by a third party on behalf of the other party and shall include but not be limited to; <ul style="list-style-type: none"> (a) any information ascertainable by the inspection or analysis of samples; (b) the information described in these Conditions as having been disclosed prior to the date hereof and; (c) any information relating to that party’s business, operations, processes, plans, intentions, product information, know-how, design rights, trade secrets, software, market opportunities, customers and business affairs, IPRs, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not marked "confidential") or which ought reasonably be considered to be confidential;
“Contract”	The Company's acceptance of the Customer's Order and/or Customer’s acceptance of the Company’s Quotation, Invitation to Tender, Proposal and/or Scope of Work; The contract between the Supplier/Company and the Customer for the Services which incorporates these Conditions, the Order, and the specification;
“Control”	Means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by agreement or otherwise) and "Controls" and "Controlled" shall be interpreted accordingly;
“Customer Assets”	Means the specially written material, the Customer infrastructure and any other data, software, assets, Equipment or other property which is either owned or leased by the Customer or otherwise and which is or may be used in connection with the provision or receipt of the Services;
“Customer Cause”	Any breach by the Customer of any of these Conditions and/or the Contract and/or Customer’s default;
“Customer Data”	Means; <ul style="list-style-type: none"> (a) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and/or; (b) any Personal Data for which the Customer is Data Controller in each case which are; <ul style="list-style-type: none"> (i) supplied to the Company by or on behalf of the Customer; or; (ii) which the Company is required to generate, process, store or transmit pursuant to these Conditions;
“Customer”	The person, firm or company whose Order for the Goods and/or Services is accepted by the Company and detailed in the Contract;
“Customer's Responsibilities”	The responsibilities of the Customer as specified in the Contract;
“Data Controller”	Has the meaning given in the GDPR;
“Data Loss Event”	Means any event that results, or may result in unauthorised access to Personal Data held by the Supplier under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement including any Personal Data Breach.
“Data Processor”	has the meaning given in the GDPR;
“Data Protection Legislation”	Means: (a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (b) the DPA to the extent that it relates to processing of personal data and privacy; (c) all applicable Law about the processing of personal data and privacy.
“DPA”	Means the Data Protection Act 2018 as amended from time to time;
“Data Protection Officer”	Has the meaning given in the GDPR;
“Data Restoration”	The process of returning data from a Data Back-up to its original location or to its successor;
“Data Subject”	Shall have the same meaning as set out in the GDPR;
“Data Subject Access Request”	Means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
“Data”	Means data in its electronic form, stored and processed by a computer, including but not limited to individual files, folders, databases and virtual machines;

“Deliverable”	An item, feature or service associated with the provision of the Services or a change in the provision of the Services which is required to be delivered by the Company at any stage during the performance of the Contract;
“Dispute Resolution Procedure”	The dispute resolution procedure set out in clause 30 (Dispute Resolution Procedure);
“Dispute”	Any dispute, difference or question of interpretation arising out of or in connection with these Conditions, including any dispute, difference or question of interpretation relating to the Services, failure to agree in accordance with the Change Control Procedure or any matter where these Conditions directs the Parties to resolve an issue by reference to the Dispute Resolution Procedure;
“Effective Date”	The date when the Contract comes into force and is binding upon both Parties. The effective date is the date of the Contract.
“Employee Liability Information”	the information that a transferor is obliged to notify to a transferee under Regulation 11(2) of TUPE: <ul style="list-style-type: none"> (a) the identity and age of the employee; and (b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996); and (c) information about any disciplinary action taken against the employee and any grievances raised by the employee, relating exclusively or primarily to the resolution of disputes applied, within the previous two years; and (d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought; and (e) information about any collective agreement that will have effect after the Effective Date in relation to the employee under regulation 5(a) of TUPE
“Employment Liabilities”	All claims, including claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including any investigation by the Equal Opportunities Commission, the Disability Rights Commission, or the Commission for Racial Equality or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses;
“Equipment”	Any hardware or software which the Customer or Company either owns or is responsible for as located at the Customer Premises, Company Premises or otherwise;
“Exclusions”	Any service which is outside the scope of the Contract. If the Customer requests such services that are deemed by the Company to fall under the Exclusions or the Company notifies the Customer that such Exclusions are required to enable the Company to perform their duties under these Conditions, then this shall be an Additional Service and the Company reserves the right to Charge the Customer an Additional Service Charges;
“Force Majeure Event”	Any cause affecting the performance by a Party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control, including but not limited to; strikes, lock-outs or other industrial disputes (whether involving the workforce of the Company or any other party), failure of a utility service or transport network, interruption, shortage or regional or national failure of power supplies or disruption to networks, difficulty, delay or failure in manufacture, production or supply by third parties of any Goods or Services (to the extent that such difficulty, delay or failure was caused by a Force Majeure Event affecting that party), act of God, war, riot, civil commotion, acts of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, earthquake or Default of Company's sub-contractors;
“Goods”	Means any apparatus goods (not being the Equipment) purchased by the Customer;
“GDPR”	Means the General Data Protection Regulation (Regulation (EU) 2016/679);
“Intellectual Property Rights” or “IPRs”	Means; <ul style="list-style-type: none"> (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs, Know-How, trade secrets and other rights in Confidential Information; (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and (c) all other rights having equivalent or similar effect in any country or jurisdiction;

“IPR Claim”	Any claim of infringement or alleged infringement (including the defence of such infringement or alleged infringement) of any IPR used to provide the Services or as otherwise provided by the Company (or to which the Company has provided access) to the Customer in the fulfilment of its obligations;
“Know-How”	All ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know-how relating to the Services but excluding know-how already in the Company’s or the Customer’s possession before these Conditions and/or Contract;
“Law”	Any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body governed by English Law;
“LED”	Means the Law Enforcement Directive (Directive (EU) 2016/680)
“Loss”	Claims, demands, fees, costs or damages (including the cost of all labour and materials used), damages, charges and expenses, including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere;
“Managers”	The personnel with management responsibility (excluding Directors) within both the Customer and Company;
“Milestone Date”	The date set against the relevant Milestone in the Contract or as otherwise agreed between the Parties;
“Milestone”	An event or task described in the Contract which if applicable, shall be completed by the relevant Milestone Date or other date agreed between the Parties;
“Month”	A calendar month, and “monthly” shall be interpreted accordingly;
“Named Contacts”	The persons who are authorised to notify the Company of an Incident, for the avoidance of doubt the Company will only supply Service to the Named Contacts and only when the person’s identity can be verified;
“Operating Environment”	The Customer software, hardware, systems, locations, sites, passwords or any other items as required to enable the Company to provide the Service;
“Order”	An Order from the Customer to the Company for the Goods and/or Services to which these Conditions apply;
“Parties”	Means the Customer and the Company, and includes their permitted successors and assigns;
“Personal Data”	Shall have the same meaning as set out in the GDPR;
“Personal Data Breach”	Has the meaning given in the GDPR;
“Stage”	Each of the Stages identified in the Statement of Work and/or the Solution Design Document;
“Pre-Requisites”	A customer responsibility as detailed in the Contract prior to the commencement of the Services;
“Process”	Has the meaning given to it under the Data Protection Act 1998 but, for the purposes of these Conditions, it shall include both manual and automatic processing. “Processing” and “Processed” shall be construed accordingly;
“Processor Personnel”	All directors, officers, employees, agents, consultants and contractors of the Processor and/or of any sub-contractor of the Processor;
“Product Originator”	The Third Party that created or manufactured the Product;
“Product Releases”	Third Party hardware or software releases that are not end of life;
“Product”	Third Party hardware or software;
“Professional Services Completion Date”	The estimated date identified for completion of the Stages of the Professional Services in the Statement of Work and/or the Solution Design Document such date as may be amended from time to time by agreement between the parties. For the avoidance of doubt, if applicable the Professional Services Completion Date may be completed after the Commencement Date;
“Professional Services Criteria”	The criteria mutually agreed between the Parties in the Statement of Work and/or the Solution Design Document;
“Professional Services”	The work which the Company needs to carry out to configure, customize, build, test, implement and rollout the Customer’s System in order to support the provision of the Operational Service and/or delivery of the Contract. Professional Services may also be referred to as; Implementational Services, Transitional Services, Project Management, Design Services, and Consulting;
“Project Work”	The Professional Services relating to a project;

“Protective Measures”	Appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
“Quotation”	Document signed or authorised by the Customer detailing the Goods and/or Services to be supplied;
“Regulatory Bodies”	Those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this contract or any other affairs of the Customer and “Regulatory Body” shall be construed accordingly;
“Relevant Transfer”	A relevant transfer for the purposes of TUPE;
“Resolution”	The time from an Incident being logged by the Customer to request an assistance to the time that the Company is able to re-establish the impaired service or provide a work around it;
“Retail Price Index”	The Retail Price Index (all items, excluding mortgages) as published by the Office of National Statistics from time to time, or failing such publication that other index as the parties may agree most closely resembles such index;
“Service Levels”	The service levels to which the Managed Services are to be provided;
“Solution Design Document”	Document detailing the scope of the Services and the obligations of the Company and Customer (and any other documents referred to within the Solution Design Document) as specified in the Statement of Work, updated as agreed between the Parties from time to time. For the avoidance of doubt the Solution Design Document shall take precedence over the SOW, where the Company invokes a Solution Design Document. There shall not be an increase in Charges to the Customer, save in the circumstances whereby the mutually agreed assumptions in the Statement of Work are found to be incorrect or the Customer requests Additional Services not already included in the Statement of Works;
“Special Terms and Conditions”	Additional terms and conditions as agreed between the Parties and as specified in the Contract;
“Statement of Work” “(SoW)”	The document detailing the Professional Services (including any other documents referred to within the SoW) updated as agreed between the Parties from time to time;
“Sub-Contract”	Any contract between the Company and a third party pursuant to which the Company agrees to source the provision of any of the Services from such third parties;
“Sub-Contractors”	Those persons with whom the Company enters into a Sub-Contract or their servants or agents, and any third party with whom that third party enters into a sub-contract or its servants or agents;
“Sub-Processor”	Any third party appointed to process Personal Data on behalf of the Processor related to this agreement;
“Supplier”	Means Pinacl Solutions UK Ltd
“Supplier Personnel”	The personnel, including sub-contractors, engaged by the Supplier in the performance of the Contract;
“Technical Advice”	The advice given relating to the Company’s obligations as detailed in the Contract;
“Term”	The time period within which the Statement of Work and/or the Solution Design Document remain valid and until the Customer accepts the Company’s final Deliverable in accordance with the Acceptance Criteria. The parties may, in accordance with these Conditions, mutually agree in writing to terminate the Statement of Work and/or the Solution Design Document;
“Third Party Software”	Software and any documentation which is proprietary to any third party;
“Transferring Employees”	Employees of the Customer whose contract of employment transfer to the Company by virtue of the application of TUPE;
“TUPE”	The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246);
“UK”	The United Kingdom;
“Use”	With respect to each of the following IPRs and, in each case, in connection with the Services; <ul style="list-style-type: none"> a) the right to load, execute, store, transmit, display and copy (for the purposes of loading, execution, storage, transmission or display) the Third Party Software and the Company’s Background IPRs; b) the right to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance, reverse compile, decode, translate and otherwise utilise the Company’s Software;

“VAT”	Value added tax as provided for in the Value Added Tax Act 1994;
“Vendor Maintenance”	Relates to hardware and software support provided by the applicable third party vendor. This support usually includes the ability to request replacement hardware components and/or software updates. Included services vary depending on the third party vendor involved.
“Vendor Sales and Marketing Documents”	The documents and/or information that the Company may provide to the Customer in relation to the Goods and/or Services, including but not limited to proposals, leaflets and/or documents Vendor’s website;
“Vendor Trade In”	Any Goods that the Customer is returning to the Vendor via the Company in exchange for credits to be used for the purchase of Goods.
“Working Day”	Any day other than a Saturday, Sunday or public holiday in England and Wales;

36. Schedule 2 - PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. The contact details of the Supplier Data Protection Officer is: -

Alasdair Rettie, Technical Director
Pinacl Solutions UK Ltd
Pinacl House, Carlton Court
St Asaph Business Park
St Asaph
Denbighshire
LL17 0JG
Tel: +44(0)1745 535330

2. The Processor shall comply with any further written instructions with respect to processing by the Controller.
3. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	The subject matter of the Processing is the Customer Personal Data.
Duration of the processing	The duration of the Processing shall be from the date of this Contract until the expiry or earlier termination of this Contract.
Nature and purposes of the processing	The nature of the Processing shall include: collection, recording, scanning, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of Customer Personal Data (whether or not by automated means). The Customer Personal Data is being Processed by the Supplier to enable the Supplier to provide the Services set out in this Contract to the Customer.
Type of Personal Data	The types of Customer Personal Data that will be Processed by the Supplier include: name, address, email address, telephone number, other contact details, IP addresses, MAC addresses.
Categories of Data Subject	The categories of Data Subjects whose Personal Data will be Processed include Staff (including volunteers, agents, and temporary workers), customers and end-users who access the Services provided under this agreement.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	We will keep your information only for as long as We need it to provide you with the services or information you have required, to administer your relationship with us, to comply with the law, or to ensure we do not communicate with people that have asked us not to. When we no longer need information, we will always dispose of it securely, using specialist companies if necessary to do this work for us.