

NDL Software Limited

Terms and Conditions of Business 2020-07-02

PART A- GENERAL TERMS AND CONDITIONS

The terms and conditions in this PART A, apply to the Licence of Software and the performance of all Services.

1 Definitions and Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these Terms of Business.

Affiliate: includes, in relation to either party, each and any subsidiary or holding company of that party and each and any subsidiary of a holding company of that party.

Agreement: this agreement between NDL and the Customer for the Licence of the Software and provision of Services and shall incorporate the terms and conditions in PART A, PART B and PART C of these Terms and Conditions of Business, together with the Quotation and the Software Description.

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

Consultancy Services: any consultancy services which NDL may agree to perform from time to time and which are more particularly described in the Quotation.

Control: a business entity shall be deemed to “control” another business entity if it owns, directly or indirectly, in excess of 50% of the outstanding voting securities or capital stock of such business entity, or any other comparable equity or ownership interest with respect to a business entity other than a corporation.

Commencement Date: the date on which this Agreement comes into force in accordance with its terms.

Customer: the customer whose details are set out in the Quotation.

Data Protection Legislation: the UK Data Protection Legislation and any other applicable legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

EIRs: means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Equipment: equipment designated to be used in connection with the Software as recommended by NDL.

FOIA: means the Freedom of Information Act 2000 and any replacement, amendment, re-enactment or consolidation of the same from time to time together with all subordinate legislation and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Heightened Cybersecurity Requirements: any laws, regulations, codes, guidance (from regulatory and advisory bodies, whether mandatory or not), international and national standards, industry schemes and sanctions, which are applicable to either the Customer or its end users (but not NDL) relating to security of network and information systems and security breach and incident reporting requirements, which may include the Cybersecurity Directive ((EU) 2016/1148)), Commission Implementing Regulation ((EU) 2018/151), the Network and Information Systems Regulations 2018 (SI 506/2018), all as amended or updated from time to time.

Holding company and subsidiary: mean a “holding company” and “subsidiary” as defined in section 1159 of the Companies Act 2006.

IPR: patents, utility models, rights to inventions, copyright and related rights, trademarks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair

competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.

Information: has the meaning given under section 84 of FOIA.

Licence: the licence of the Software granted by NDL to the Customer subject to the terms of this Agreement.

Licence Commencement Date: the date from which the Customer is entitled to use the Software, being the date on which the Customer is provided with the access licence key and serial number required in order to gain access to the Software.

Licence and Support Fee: the annual (unless specified other than annual in the Quotation) fee for the Licence of the Software and the performance of the Support and Maintenance Services as detailed in the Quotation.

Maintenance Release: release of the Software that corrects faults, adds functionality or otherwise amends or updates the Software.

NDL: NDL Software Limited (registered in England with company number 1579602) whose registered office is at Parkhill Business Centre, Walton Road, Wetherby, West Yorkshire, LS22 5DZ.

New Version: any new version of the Software which from time to time is publicly marketed and offered for licence by NDL in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.

Open-Source Software: open source software as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>).

Purchase Order: any purchase order issued by the Customer for the Software and/or Services.

Quotation: the written quotation document provided by NDL to the Customer including the Software Description and any other documents attached thereto which set out the description of the Software and provide information about the Services to be provided.

Request for Information: means a request for information made under the FOIA or the EIRs.

Services: the Support and Maintenance Services and the Supplemental Services or either or both of them as relevant under the Agreement.

Supplemental Services: means those services, other than the Support and Maintenance Services, and which may be supplied from time to time as agreed between the parties and which may include, as agreed, Training and/or Consultancy Services and any other services and in each case, to which the provisions of PART C of these Terms and Conditions of Business shall additionally apply as specified therein.

Support and Maintenance Services: the support and maintenance services for the Software as more particularly described in PART B of these Terms and Conditions of Business.

Supplemental Service Charge(s): the annual (unless specified other than annual in the Quotation) fees for the performance of Supplemental Services, based on the Unit Price basis as detailed in the Quotation and charged in accordance with the provisions of clause 29.

Site: the premises from which the Customer carries out its business as notified to NDL at the Commencement Date or as otherwise varied by the parties by agreement in writing from time to time.

Software: the software licensed by NDL to the Customer under this Agreement, together with any documentation and any Maintenance

Release which is licensed to the Customer during the subsistence of this Licence, as further detailed in the Software Description and Software shall also include any copies of the Software.

Software Description: the document detailing the description of the Software which forms part of this Agreement and which is attached to the Quotation.

Third Party Content: any software, materials and other content which is proprietary to a third party to this Agreement and which is incorporated into the Software or on which the use or performance of the Software otherwise relies.

Training: the training to be provided by NDL in connection with the Software as more particularly set out in PART C of these Terms and Conditions of Business.

Unit Price: the price per unit for each of the different Supplemental Services, based on a price per half day, day or other unit as the case may be and as more particularly described in the Quotation.

Year: the period of 12 months from the Commencement Date and each subsequent period of 12 months thereafter.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.

1.3 Unless the context otherwise requires:

1.3.1 words in the singular shall include the plural, and in the plural shall include the singular;

1.3.2 a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it;

1.3.3 a reference to one gender shall include a reference to the other genders;

1.3.4 any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms; and

1.3.5 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's representatives, successors and permitted assigns.

1.4 References to clauses are to the clauses in these Terms and Conditions of Business and references to PARTS are references to the relevant PART, A, B or C of these Terms and Conditions of Business.

1.5 In the case of conflict or ambiguity between any provision contained in the Terms and Conditions of Business, the Quotation or the Software Description (being the documents which together form the Agreement), the following order of precedence shall apply: (a) the Terms and Conditions of Business; (b) the Quotation; (c) the Software Description.

2 Agreement formation and quotations

2.1 NDL may provide the Customer with a Quotation detailing NDL's quotation for the provision of relevant Services and licence of the Software (or either or both of them). The Quotation specifies the relevant Services to be provided and Software to be licensed under the Agreement and NDL shall not be obliged to perform any other Services or licence any other Software except as specified in the Quotation, unless it otherwise agrees to do so in writing.

2.2 The Quotation and any quoted Licence and Support Fee and any Supplemental Service Charges set out therein, shall only be valid for a period of 30 days from the date of issue to the Customer (after which time, quotes may be subject to change where no Agreement has yet been formed), and shall not constitute an offer.

2.3 Any Purchase Order shall constitute an offer to NDL only for the purchase of the Software and relevant Services. The Customer is responsible for ensuring that the terms of any Purchase Order are complete and accurate.

2.4 The Purchase Order shall only be deemed to be accepted when NDL issues an order acknowledgement to the Customer, at which point the

Agreement shall come into existence (being the Commencement Date).

2.5 The Customer agrees to purchase and NDL agrees to sell, the relevant Services and grant the Licence of the Software subject to the terms and conditions set out in this Agreement.

3 Charges, invoicing and payment

3.1 In consideration of the grant of the Licence and the performance of the Support and Maintenance Services, the Customer shall pay to NDL, the Licence and Support Fee.

3.2 Where the Customer pays Supplemental Service Charges, NDL shall perform the Supplemental Services as called off by the Customer from time to time as more particularly described in clause 29.1.

3.3 Except as otherwise expressly stated in the Quotation, each of the Licence and Support Fee, and the Supplemental Service Charges, are payable in each Year of this Agreement such that the Licence and Support Fee and the Supplemental Service Charges for the first Year of the Agreement shall be paid by the Customer in accordance with clause 3.4.1, and for each subsequent Year in accordance with clause 3.4.2.

3.4 Except as otherwise expressly stated in the Quotation, NDL shall invoice the Customer for the Licence and Support Fee and the Supplemental Service Charges:

3.4.1 for the first Year of this Agreement (or for such shorter period as specified in the Quotation where the Agreement is for a period of less than a Year), on or before the issue of the access licence key, and the invoice shall be paid by the Customer in full and cleared funds within 30 days of the date of invoice; and

3.4.2 except as otherwise expressly stated in the Quotation, for each Year thereafter, in advance of each anniversary of the Commencement Date and the invoice shall be paid by the Customer in full and cleared funds within 30 days of the date of invoice and in any event by no later than the anniversary of the Commencement Date or such other date as may be stated in the Quotation.

3.5 All sums payable under this Agreement are exclusive of VAT and any relevant local sales taxes, for which the Customer shall be responsible in addition at the rate and in the manner prescribed by law from time to time.

3.6 If the Customer fails to make any payment due to NDL under this Agreement by the due date for payment, then, without limiting NDL's remedies under clause 8, the Customer shall pay interest on the overdue amount at the rate of 3% (three per cent) per annum above Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

3.7 Any sums paid by the Customer to NDL but not allocated expressly by a Customer shall be allocated by NDL as it shall determine.

4 Confidentiality and Publicity

4.1 Each party shall, during the term of this Agreement and thereafter, keep confidential all, and shall not use for its own purposes (other than implementation of this Agreement) nor without the prior written consent of the other, disclose to any third party (except its professional advisors or as may be required by any law or any legal or regulatory authority) any information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party or any of its Affiliates, unless that information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of this Agreement, or subsequently comes lawfully into the possession of such party from a third party. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information.

4.2 NDL may refer to the Customer in its marketing materials, on its website and otherwise for promotional purposes which in each case, shall include a right to use the Customer name and logo. Accordingly,

and for such purposes, the Customer grants to NDL a right to use the Customer's name and logo for such purposes without limit in point of time. In the event that NDL wishes to refer to the Customer in any press release then it shall not do so without the Customer's agreement as to the content of the same.

5 Export

5.1 Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data), in breach of any applicable laws or regulations (**Export Control Laws**) to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

5.2 Each party undertakes:

- 5.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and
- 5.2.2 if requested, to provide the other party with any reasonable assistance, at the reasonable cost of the other party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

6 Limitation of Liability

6.1 Except as expressly stated in clause 6.3, NDL shall not in any circumstances have any liability for any costs, claims, damages, liabilities, losses or expenses which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same arise in contract, tort (including negligence), for breach of statutory duty, under any indemnity or otherwise howsoever, which fall within any of the following categories:

- 6.1.1 direct loss of profits;
- 6.1.2 indirect loss of profit;
- 6.1.3 direct loss of anticipated savings;
- 6.1.4 indirect loss of anticipated savings;
- 6.1.5 any loss of business opportunity;
- 6.1.6 any loss of revenue;
- 6.1.7 any loss of investment or of public funds;
- 6.1.8 any loss of goodwill or damage to reputation;
- 6.1.9 any loss of or corruption of data;
- 6.1.10 any wasted management or other time costs;
- 6.1.11 any indirect or consequential loss or damage howsoever caused;

in each case whether NDL was aware of the possibility of the same or not and the parties hereto agree that the sub-clauses of this clause 6.1 shall be distinct and severable.

6.2 Subject to clauses 6.1 and 6.3 the total liability of NDL, whether in contract, indemnity, tort (including negligence), breach of duty or otherwise howsoever arising under or in connection with this Agreement, shall in no circumstances exceed:

- 6.2.1 £5,000,000 (five million pounds) per event or series of related events in respect of any damage to or loss of, physical property;
- 6.2.2 for all other matters other than as set out in clause 6.2.1, a sum equal to 125% (one hundred and twenty five percent) of the total Licence and Support Fees and Supplemental Services Charges paid to NDL in the Year in which the event giving rise to the liability occurred.

6.3 The exclusions in clauses 6.1 (inclusive), 6.4 and 6.6 shall apply to the fullest extent permissible by law, but NDL does not exclude liability for:

- 6.3.1 death or personal injury caused by the negligence of NDL, its officers, employees, contractors or agents;
- 6.3.2 fraud or fraudulent misrepresentation;

6.3.3 breach of the obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or

6.3.4 any other liability which may not be excluded by law.

6.4 All dates supplied by NDL for the delivery of the Software or the provision of Services shall be treated as approximate only. NDL shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates and time shall not be of the essence.

6.5 All references to "NDL" in this clause 6 shall, for the purposes of this clause 6 and clause 14.2 only, be treated as including all employees, subcontractors and contractors of NDL and its Affiliates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 14.2. Further, NDL shall have no liability to any customer of the Customer and the Customer shall procure that no customer nor any of its employees, contractors or agents makes any claim against NDL.

6.6 The Customer shall be entitled to those warranties expressly set out in this Agreement only. All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this Agreement or any collateral contract, whether by statute, common law, course of dealing or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose or the use of reasonable skill and care.

7 IPR

7.1 The Customer acknowledges that all IPR in the Software (including any copies of the same), together with all IPR arising in the performance of or otherwise in connection with the Services, belong to and shall continue to belong to NDL (or any relevant third party licensors as the case may be), and the Customer shall have no rights in or to the same or the Software or the Services other than the right to use and benefit from the same in accordance with the terms of this Agreement. The Customer shall do or procure to be done all such further acts and things and sign or procure the signature of all such other documents as NDL may from time to time require for the purpose of giving NDL the full benefit of the provisions of this clause 7.1.

7.2 NDL undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the possession or use of the Software (or any part thereof) in accordance with the terms of the Licence infringes the UK IPR of a third party under English Law (**Claim**), and shall be responsible for any reasonable costs and professional expenses (including legal fees) incurred by or awarded against the Customer as a result of or in connection with any such Claim. This clause 7.2 shall not apply where the Claim in question is attributable to:

- 7.2.1 possession or use of the Software (or any part thereof) by the Customer other than in accordance with the terms of this Agreement;
- 7.2.2 use of the Software in combination with any hardware or software not supplied or specified by NDL if the infringement would have been avoided by the use of the Software not so combined;
- 7.2.3 or unauthorised use of a non-current release of the Software.

7.3 If any third party makes a Claim, or notifies an intention to make a Claim against the Customer, NDL's obligations under clause 7.2 are conditional on the Customer:

- 7.3.1 as soon as reasonably practicable, giving written notice of the Claim to NDL, specifying the nature of the Claim in full detail; and
- 7.3.2 not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of NDL (such consent not to be unreasonably conditioned, withheld or delayed); and
- 7.3.3 giving NDL and its professional advisers, access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives and advisers, and to any relevant assets, accounts, documents

- and records within the power or control of the Customer, so as to enable NDL and its professional advisers to examine them and to take copies (at NDL's expense) for the purpose of assessing the Claim; and
- 7.3.4 subject to NDL providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as NDL may reasonably request to avoid, dispute, compromise or defend the Claim; and
- 7.3.5 the terms of any settlement being previously approved by NDL in writing.
- 7.4 If any Claim is made, or in NDL's reasonable opinion is likely to be made, or if any similar Claim is made against NDL, NDL may at its sole option and expense:
- 7.4.1 procure for the Customer the right to continue to use the Software (or any part thereof) in accordance with the terms of this Agreement;
- 7.4.2 modify the Software so that it ceases to be infringing;
- 7.4.3 replace the Software with non-infringing software; or
- 7.4.4 terminate this Agreement immediately by notice in writing to the Customer and refund any of the Licence and Support Fee paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof,
- provided that if NDL modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in clause 25.1 and the Customer shall have the same rights in respect thereof as it would have had under that clause had the references to the Licence Commencement Date been references to the date on which such modification or replacement was made.
- 7.5 Notwithstanding any other provision in this Agreement, clause 7.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession or use of any software which is proprietary to a third party or through the breach of any terms applicable to the use of any third party software.
- 7.6 This clause 7 constitutes the Customer's exclusive remedy and NDL's only liability in respect of Claims and, for the avoidance of doubt, the indemnity in this clause 7 shall be subject to the exclusions and limitation in clause 6.
- 8 Duration and Termination**
- 8.1 This Agreement shall come into force on the Commencement Date and subject to earlier termination in accordance with its terms, shall continue in full force and effect, for the period specified in the Quotation, after which time, this Agreement shall automatically terminate.
- 8.2 Without affecting any other right or remedy available to it, NDL may:
- 8.2.1 terminate this Agreement at any time with immediate effect whether in whole or in part; and/or
- 8.2.2 cancel any credit arrangement which NDL may have agreed with the Customer and require payment in full of any sums on demand in respect of any Software or Services already supplied to the Customer;
- 8.2.3 suspend the grant of the Licence to use the Software at any time with immediate effect (including disabling access to the Software); and/or
- 8.2.4 suspend performance of the Services or any part thereof; and/or
- 8.2.5 exercise any of the rights referred to in this clause 8.1 in any combination as it shall determine;
- if the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 (thirty) days after being notified in writing to make such payment.
- 8.3 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 8.3.1 the other party commits a material breach of a term of this Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 90 days after being notified in writing to do so;
- 8.3.2 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 8.3.3 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 8.3.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 8.3.5 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- 8.3.6 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- 8.3.7 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 8.3.8 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 8.3.9 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.3.2 to clause 8.3.8 (inclusive);
- 8.3.10 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 8.4 Without affecting any other right or remedy available to it, NDL may exercise any or all of the rights and remedies afforded to it in clause 8.1, if there is a material breach or repeated breaches by any Affiliate of the Customer of any contract in place between NDL (or any of its Affiliates from time to time) and any Affiliate of the Customer.
- 8.5 Without affecting any other right or remedy available to it, NDL may terminate this Agreement with immediate effect by giving written notice to the other party if there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010) or where there is any merger, amalgamation, consolidation or similar in respect of a public body.
- 8.6 The Customer may terminate this Agreement by giving not less than 30 days written notice to NDL in the event that NDL fails to provide one of the remedies referred to in clause 7.4, within 30 days of NDL becoming aware of a Claim that the use of the Software by the Customer infringes the IPRs of a third party.
- 8.7 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect including without limitation clauses 3.6, 4, 6, 7.1, 8.7, 8.8, 8.9, 10, 12, 14 and 20.
- 8.8 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up

to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

- 8.9 On expiry of the termination of this Agreement for any reason:
 - 8.9.1 all rights granted to the Customer under this Agreement shall cease;
 - 8.9.2 the Customer shall cease all activities authorised by this Agreement;
 - 8.9.3 the Customer shall immediately pay to NDL any sums due to NDL under this Agreement;
 - 8.9.4 the Customer shall immediately destroy or return to NDL (at NDL's option) all copies of the Software and related documentation and other materials relating to the Software and any other confidential or proprietary information of NDL then in its possession, custody or control and, in the case of destruction, certify to NDL that it has done so; and
 - 8.9.5 where the Customer has itself granted to a third-party customer, a sub-licence to use the Software, any such sub-licence shall terminate and the details of the relevant sub-licence shall be notified to NDL.

9 Entire Agreement

- 9.1 The terms and conditions in PARTS A, B and C of these Terms and Conditions of Business together with the Quotation and the Software Description contain the whole Agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter and this Agreement applies to the exclusion of any terms or conditions which the Customer may seek to impose or which are implied by any trade, custom, practice or course of dealing. Any other documents issued by NDL shall not form part of the Agreement except if expressly stated as so forming part of the Agreement.
- 9.2 Each party acknowledges that, in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) (**Representation**) other than as expressly set out in this Agreement.
- 9.3 Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract as expressly provided in this Agreement.
- 9.4 Nothing in this clause shall limit or exclude any liability for fraud.

10 Remedies

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

11 Variations and Assignments

- 11.1 No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.2 NDL may at any time assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 11.3 The Customer shall not sub-licence, assign or novate the benefit or burden of this Agreement in whole or in part or in any other manner deal with any or all of its rights and obligations under this Agreement, without the prior written consent of NDL.

12 Non waiver

- 12.1 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.2 Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

13 Enforceability

- 13.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 13.2 If any provision or part-provision of this Agreement is deemed deleted under clause 13.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

14 Third Party Rights

- 14.1 Except as expressly set out herein, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 14.2 Without prejudice to any other rights afforded to them as set out herein, this Agreement shall confer a benefit on NDL's Affiliates (as exist from time to time) by affording the benefit of the exclusions and limitations of liability as set out in this Agreement to such NDL Affiliates. NDL will owe no duty to any Affiliate to enforce such rights and it may conduct or compromise any relevant proceedings as it sees fit.
- 14.3 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any person that is not a party to this Agreement.

15 No agency

- 15.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 15.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

16 Force Majeure

- 16.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement (except with respect to payment obligations) if such delay or failure results from events, circumstances or causes beyond its reasonable control (including without limitation, strike, employee disputes, failure of contractors and suppliers, failure of a communications network or failure of a utility supply, act of God, flood, fire, theft, war, riot, terrorism or government action) (**Force Majeure Event**).
- 16.2 In the case of a Force Majeure Event, the time period for performance shall be extended by a period which is equivalent to the period of the relevant Force Majeure Event.

17 Data Protection

- 17.1 Both parties will comply with applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 17.2 The parties acknowledge that:
 - 17.2.1 if NDL processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Customer is the controller and NDL is the processor for the purposes of the Data Protection Legislation;
 - 17.2.2 the personal data may be transferred or stored outside the EEA in order to perform the Services and NDL's other obligations under this Agreement.
- 17.3 Without prejudice to the generality of clause 17.1, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the personal data to NDL for the duration and purposes of this Agreement so that NDL may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf.

- 17.4 Without prejudice to the generality of clause 17.1, NDL shall, in relation to any personal data processed in connection with the performance by NDL of its obligations under this Agreement:
- 17.4.1 process that personal data only on the documented written instructions of the Customer unless NDL is required by the laws of any member of the European Union or by the laws of the European Union applicable to NDL and/or Domestic UK Law (where **Domestic UK Law** means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (**Applicable Laws**). Where NDL is relying on Applicable Laws as the basis for processing personal data, NDL shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit NDL from so notifying the Customer;
- 17.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by NDL, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 17.4.3 not transfer any personal data outside of the EU unless the following conditions are fulfilled:
- 17.4.3.1 the Customer or NDL has provided appropriate safeguards in relation to the transfer;
- 17.4.3.2 the data subject has enforceable rights and effective legal remedies;
- 17.4.3.3 NDL complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- 17.4.3.4 NDL complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 17.4.4 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 17.4.5 notify the Customer without undue delay on becoming aware of a personal data breach;
- 17.4.6 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Agreement unless required by Applicable Law to store the personal data; and
- 17.4.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 17 and allow for data protection audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of NDL, an instruction infringes the Data Protection Legislation.
- 17.5 The Customer consents to NDL appointing relevant third-party processors of personal data under this Agreement. NDL confirms that it has entered or (as the case may be) will enter with the third-party processor into, a written agreement incorporating terms which are substantially similar to those set out in this clause 17. As between the Customer and NDL, NDL shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 17.
- 17.6 Either party may, at any time on not less than 30 days' notice, revise this clause 17 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by an attachment to this Agreement).
- 18 Freedom of Information**
- 18.1 NDL acknowledges that the Customer is subject to the requirements of the FOIA and the EIRs.
- 18.2 In respect of Requests for Information, NDL shall:
- 18.2.1 provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;
- 18.2.2 transfer to the Customer, any Requests for Information that it receives relating to this Agreement as soon as practicable after receipt of such a Request for Information;
- 18.2.3 without undue delay, provide the Customer with a copy of all Information belonging to the Customer, requested in a Request for Information which is in NDL's possession; and
- 18.2.4 not respond directly to a Request for Information unless authorised in writing to do so by the Customer.
- 18.3 NDL acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information which is commercially sensitive but the Customer agrees that it shall not do so without first consulting with and obtaining consent from NDL. In such circumstances, the Customer shall notify NDL of a Request For Information which may require the disclosure of any such confidential or commercially sensitive information of NDL to the extent that such notification is permitted by law (notwithstanding any other provision in this Agreement) but the Customer shall remain responsible for determining, whether any such information is exempt from disclosure in accordance with the FOIA and/or the EIRs.
- 19 Notices**
- 19.1 Any notice given by a party under this Agreement shall be in writing, be signed by, or on behalf of, the party giving it, and be sent to the relevant party at its registered office address or its principal place of business or such other address as is otherwise notified to the other party from time to time.
- 19.2 Notices may be given, and are deemed received:
- 19.2.1 by hand: on receipt of a signature at the time of delivery;
- 19.2.2 by recorded post: at 9.00 am on the second Business Day after posting.
- 19.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 20 Governing Law and Jurisdiction**
- This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and the parties irrevocably agree to submit to the exclusive jurisdiction of the English Courts except with regard to enforcement in which case the jurisdiction of the English Courts shall be non-exclusive.
- 21 Anti-Bribery and Anti-Facilitation of Tax Evasion**
- 21.1 Each party shall:
- 21.1.1 comply with all applicable laws, regulations and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 (**the Act**);
- 21.1.2 not engage in activity, practice or conduct which would be an offence under sections 1, 2 or 6 of the Act if such activity, practice or conduct had been carried out in the UK;
- 21.1.3 certify compliance with this clause 21 upon request from the other party, including any supporting evidence requested; and

- 21.1.4 promptly report to the other, any request or demand for any undue financial or other advantage of any kind it receives in connection with the performance of this Agreement.
- 21.2 NDL shall:
- 21.2.1 not engage in any activity, practice or conduct which would constitute (a) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or (b) a foreign tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017;
- 21.2.2 comply with such anti-facilitation of tax evasion policy as the Customer may make available from time to time;
- 21.2.3 promptly report to the Customer any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017.

PART B - LICENCE OF SOFTWARE

The terms and conditions in this PART B shall apply to any Software licensed by NDL to the Customer and apply in addition to the General Terms and Conditions in PART A and as relevant, the Service terms and conditions in PART C below.

22 Delivery and Installation of the Software

- 22.1 NDL shall deliver one copy of the Software electronically by way of download, by providing to the Customer, the relevant licence access key, serial number and any other relevant login and access details.
- 22.2 Except where it is expressly agreed that installation services are to be performed as part of the Services, the Customer shall be responsible for installation of the Software on the Equipment in accordance with any installation instructions as NDL may specify from time to time.

23 Licence and use of Software

- 23.1 The Customer's right to use the Software in accordance with the Licence shall commence on the Licence Commencement Date and subject to any earlier termination and subject at all times to payment of the Licence and Support Fee, shall continue until the expiry of this Agreement.
- 23.2 Subject to and in consideration of, the payment of the Licence and Support Fee by the Customer to NDL, NDL grants to the Customer a non-exclusive, non-transferable licence (without any right to grant any sub-licence except where expressly permitted by NDL in writing) to use the Software.
- 23.3 For the purposes of clause 23.2, use of the Software shall be restricted to use of the Software in object code form only and (subject to clause 23.13) for the Customer's normal day to day internal business and operational functions only which shall not include allowing the use of the Software by, or for the benefit of, any other person or any commercial exploitation of the same whatsoever. NDL may specify the number of devices on which or in connection with which the Software may be used as set out in the Quotation.
- 23.4 The Customer may not use the Software other than as specified in clauses 23.2 and 23.3 without the prior written consent of NDL, and the Customer acknowledges that additional Licence and Support Fees:
- 23.4.1 may be payable in respect of any change of use approved by NDL;
- 23.4.2 shall be payable retrospectively in respect of any unauthorised use notwithstanding the restrictions set out in this Agreement, for broadening the scope of the licence granted under this Agreement to cover the unauthorised use, in an amount equal to 100% of the Licence and Support Fees which NDL would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced;
- in each case without prejudice to any other rights and remedies available to NDL under or in connection with this Agreement.
- 23.5 The Customer may make up to two copies of the Software as may be necessary for lawful backup purposes. The Customer shall record the number and location of all copies of the Software and take steps to prevent unauthorised copying including by ensuring that the copy

includes the name and version number of the Software as well as all proprietary notices of NDL contained on the Software. Back-up copies are for the purposes of back up only and must not be used in the live environment.

- 23.6 Except where expressly permitted by NDL, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, alter, adapt or make error corrections to the Software in whole or in part except to the extent that any reduction of the Software to human readable form (whether by reverse engineering, de-compilation or disassembly) is necessary for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Customer.
- 23.7 The Customer shall not:
- 23.7.1 sub-license, assign or novate the benefit or burden of the Licence or this Agreement in whole or in part;
- 23.7.2 allow the Software to become the subject of any charge, mortgage, lien or encumbrance; nor
- 23.7.3 deal in any other manner with the Software or any or all of its rights and obligations under the Licence or this Agreement; without the prior written consent of NDL.
- 23.8 NDL may at any time sub-license, assign, novate, charge or deal in any other manner with any or all of its rights and obligations under the Licence.
- 23.9 The Customer shall:
- 23.9.1 ensure that the Software is installed on Equipment only in accordance with NDL's recommendations;
- 23.9.2 keep a complete and accurate record of the Customer's copying, location and disclosure of the Software and its users, and produce such record to NDL on request from time to time;
- 23.9.3 use best endeavours to ensure that there is no unauthorised removal of the Software from the Site;
- 23.9.4 not remove, alter, obscure or omit any proprietary notices or similar included on the Software;
- 23.9.5 ensure that only authorised employees and contractors of the Customer have access to the Software as required for the Customer's proper use of the same in accordance with this Agreement and make those persons aware of the relevant terms of this Agreement with regard to the proper protection of the Software including without limitation those in this clause 23.9 and procure compliance with such terms by those persons as if they party to the same;
- 23.9.6 notify NDL as soon as it becomes aware of any unauthorised use of the Software by any person;
- 23.9.7 ensure that the Software Description and the Software satisfy its requirements and that the Software is suitable for the intended uses to which the Software will be put by the Customer;
- 23.9.8 only use the Software as permitted by this Agreement and not for any other purpose not expressly permitted by NDL whatsoever.
- 23.10 The Customer shall permit NDL to inspect and have access to the Site and where relevant any other premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with the Licence hereunder, for the purposes of ensuring that the Customer is complying with the terms of this Agreement, provided that NDL provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times. In addition to the audit right as set out herein, NDL shall also have right of remote access to Customer's usage of the Software.
- 23.11 The Customer shall keep, and will procure that its permitted employees and contractors shall keep, the Software, all copies thereof and all information relating thereto supplied by NDL, strictly confidential and in its possession and the same shall form part of the confidential information of NDL and shall accordingly be treated in accordance with clause 4.

- 23.12 The Customer shall indemnify and keep indemnified, NDL against any and all costs, claims, damages, liabilities, demands and expenses directly suffered or incurred by NDL:
 - 23.12.1 as a result of any breach by the Customer of any of the provisions of this clause 23; and/or
 - 23.12.2 in the event that a third party makes any unauthorised use of any Software and such use results from any breach by the Customer of its obligations in this Agreement; and/or
 - 23.12.3 as a result of a breach by the Customer of any of the provisions of this Agreement relating to the Software;

and without prejudice to the foregoing and any other rights or remedies of NDL, the Customer shall pay to NDL an amount equal to the fees and other sums which would have been payable to NDL if NDL had granted to such unauthorised user, a licence to use the same from the date on which such unauthorised use commenced, based on 100% of NDL's current rates as at the time of the discovery of the unauthorised use.

- 23.13 In the event that the Customer is permitted by NDL to grant any sub-licence, any such permission to a sub-licence grant may be subject to such restrictions as NDL may specify. Further, in the event that such consent to sub-licence is permitted, the Customer shall ensure that it includes a provision in its own contract with such sub- licensee to ensure that the Software may only be used by the permitted sub- licensee for the purpose of the proper day to day business operation of sub- licensee in servicing the Customer only and not for any wider commercial exploitation or any other purposes whatsoever and subject to terms which are no less onerous than those set out in this Agreement.

24 Licence and Support Fee

- 24.1 Without in any way affecting the provisions of clause 8.1, relevant Licence and Support Fees shall be payable in each Year of this Agreement as more particularly set out in clause 3.4 and the Quotation or as otherwise specified in the Quotation.
- 24.2 The Customer's right to use the Software in accordance with the Licence shall commence on the Licence Commencement Date and the Licence and Support Fees shall be payable in accordance with clause 3.4 notwithstanding that delivery of the Software shall be in accordance with clause 22.1.
- 24.3 Under no circumstances shall the Customer have any right to use or continued right to use, the Software without the payment of the Licence and Support Fees in full and cleared funds. In the event that in any Year of this Agreement (or in any other period as applicable), the Customer fails to pay or delays in paying, the appropriate Licence and Support Fees then without prejudice to any other right or remedy of NDL under or in connection with this Agreement, NDL reserves the right to suspend for any period or permanently, and whether in whole or in part as it shall determine, access rights to the Software (whether by the removal or withholding of any access licence key or other access details or otherwise as it shall determine). In the event that any such withholding or removal causes a delay in the Customer's use of the Software, under no circumstances shall the duration of any Licence grant be extended and the duration of the Licence shall apply from the date on which access would have been granted or otherwise continued, but for the Customer's failure to pay or delay in payment of, the Licence and Support Fees.

25 Warranties

- 25.1 NDL warrants that the Software will conform in all material respects to the Software Description for a period of 90 (ninety) days from the Licence Commencement Date (**Warranty Period**).

If, within the Warranty Period, the Customer notifies NDL in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the Software Description, and such defect or fault does not result from the Customer, or anyone acting with the authority of the Customer:

- 25.1.1 having amended or modified the Software without the prior written consent of NDL; and/or
- 25.1.2 having used the Software for an application for which it is not intended to be used; and/or

- 25.1.3 having failed to operate the Software properly in the manner specified in any documentation which is made available with the Software; and/or
- 25.1.4 having used the Software outside the terms of this Agreement; and/or
- 25.1.5 having used the Software for a purpose or in a context other than the purpose or context for which it was designed; and/or
- 25.1.6 having used the Software in combination with any other software not provided by NDL; and/or
- 25.1.7 not having loaded the Software onto NDL specified or suitably configured Equipment;

NDL shall, at NDL's option, do one of the following:

- 25.1.8 repair the Software;
- 25.1.9 replace the Software; or
- 25.1.10 terminate this Agreement immediately by notice in writing to the Customer and refund any of the Licence and Support Fees paid by the Customer as at the date of termination (less a reasonable sum in respect of the Customer's use of the Software to the date of termination) on return of the Software and all copies thereof;

provided the Customer provides to NDL during the Warranty Period, all the information that may be necessary to assist NDL in resolving the defect or fault, including a documented example of any defect or fault, or sufficient information to enable NDL to re-create the defect or fault.

- 25.2 NDL does not warrant that the use of the Software will be uninterrupted or error-free or that it will meet any Heightened Cybersecurity Requirements.
- 25.3 The Customer accepts responsibility for the selection of the Software to achieve its intended results and acknowledges that the Software has not been developed to meet the individual requirements of the Customer. NDL does not warrant that the Software will be suitable for any particular requirements nor that any use of the Software will be uninterrupted or error free.
- 25.4 The Customer acknowledges that any Open Source Software provided by NDL from time to time, is provided "as is" and expressly subject to the disclaimer in clause 6.6.
- 25.5 The Customer acknowledges that any Third Party Content is subject to the terms and conditions from time to time as may be specified by the relevant third party or parties in relation to the same and the use thereof. Accordingly, NDL does not provide any warranty in respect of any Third Party Content which is incorporated into the Software or on which the Software otherwise relies and any such Third Party Content is only licensed to the Customer to the extent of and in accordance with, any related terms and conditions of the relevant third party. In the event that a Third Party Content owner may require the Customer to adhere to any terms and conditions for the use of the same, the Customer shall adhere to such terms and conditions as the Third Party Content owner may from time to time require and in the event that that Customer fails to do so, NDL makes no assurance as to the continued availability or permitted use of the Third Party Content or the Software and shall not be liable in the event that the same is not available to the Customer as a result of the Customer's failure to adhere to such terms and conditions or the provisions of this clause 25.5.
- 25.6 In the event that NDL incurs any costs as a result of handling a warranty claim where such warranty claim is proven not to be a valid warranty claim, NDL reserves the right to charge the Customer for, and the Customer shall pay to NDL, such costs. Where such costs are as a result of time having been spent by NDL in dealing with an invalid warranty claim, the Customer shall pay such costs on a time and materials basis at NDL's standard rates applicable from time to time.

PART C - SERVICES (SOFTWARE SUPPORT AND MAINTENANCE AND SUPPLEMENTAL SERVICES)

The terms and conditions in this PART C shall apply to Services made available by NDL to the Customer and apply in addition to the General Terms and Conditions in PART A and the Software terms and conditions in PART B as relevant.

26 Customer’s obligations in respect of the Services

26.1 The Customer shall (in each case, taking account of the nature of the Services):

- 26.1.1 co-operate with NDL in any manner reasonably required by NDL in order for NDL to carry out the Services, including provision of information and data, making available suitably qualified employees, agents and contractors of the Customer and providing to NDL, the name of a nominated technical or other relevant contact together with his/her telephone and email details; and
- 26.1.2 subject to NDL’s compliance with the Customer’s normal security requirements, provide access to the Customer’s systems and Site as is necessary to carry out NDL’s obligations under this Agreement and obtain for NDL all permissions necessary to obtain such access, taking account of the nature of the Services to be performed;
- 26.1.3 at its own expense, provide NDL and its employees, agents and contractors with suitable office, administration and other facilities such as telephone and network access and full access rights to the Customer’s computer system as may be required for proper performance of the Services;
- 26.1.4 provide to NDL all such information and data as necessary for NDL to perform the Services which the Customer warrants to NDL, is complete and accurate in all material respects;
- 26.1.5 ensure that all its staff and other representatives co-operate with NDL in all matters relating to the Services;
- 26.1.6 prepare its premises for the Services (where relevant);
- 26.1.7 obtain all necessary licences, permissions and consents before the Commencement Date and maintain the same throughout the duration of this Agreement;
- 26.1.8 keep and maintain all materials, equipment, documents and other property of NDL at the Customer’s premises, in safe custody, at its own risk, in good condition until returned and not dispose of or use them except in accordance with NDL’s written consent;
- 26.1.9 ensure that all permissions, consents and licences and all infrastructure and the IT environment comply with any requirements and specifications relevant to, and are otherwise appropriate for, the Services to be performed and that full access be granted to NDL for the purpose of performance of the same;
- 26.1.10 make staff, facilities and other resource available on any agreed appointment dates and at the agreed times and the Customer shall ensure that appointments are not cancelled without good reason and further, shall ensure that NDL staff are not kept waiting unduly;

and access to the Services shall be conditional on compliance by the Customer with all of the foregoing requirements. In the event that the Customer fails to adhere to any or all of the foregoing, NDL reserves the right to suspend access to the Services.

27 Warranty in respect of Services

27.1 NDL warrants that during the term of this Agreement, the Services shall be performed with reasonable skill, care and diligence by appropriately experienced, qualified and trained personnel but NDL shall have no liability for breach of warranty where such breach arises as a result of a Customer failing to comply with:

- 27.1.1 any of the conditions referred to in Clause 26.1 in respect of any of the Services; and/or

27.1.2 any of the conditions referred to in Clause 28.12 in respect of the Support and Maintenance Services.

27.2 The Customer’s sole remedy for breach of the warranties in Clause 27.1 is to require NDL to re-perform the relevant part of the Service which is the subject of the warranty breach within a reasonable time at no charge to the Customer provided that any such breach is notified to NDL promptly and in any event within 10 (ten) days of the breach.

27.3 NDL shall be entitled to charge the Customer at its standard rates applicable at the time for any costs incurred or work done pursuant to a claim under this clause 27 which is not a valid warranty claim.

27.4 The Customer acknowledges that (except where otherwise stated expressly in writing) the Services have not been developed to meet the individual requirements of the Customer. NDL does not warrant that the Services will be suitable for any particular requirements nor that any use of the Services will be uninterrupted or error free.

28 Support and Maintenance Services

28.1 Support and Maintenance Services shall be performed by NDL, in consideration of the payment by the Customer to NDL, of the Licence and Support Fee and where referred to in the Quotation.

28.2 NDL shall:

- 28.2.1 provide the Support and Maintenance Services only in relation to the Software;
- 28.2.2 provide the Customer with Maintenance Releases and New Versions generally made available to its customers as and when the same become available without additional charge (but there shall be no obligation on NDL to develop or offer any New Version) and the Customer shall install all Maintenance Releases as soon as reasonably practicable after receipt;
- 28.2.3 provide telephone support to the Customer between the hours of 9:00am and 5:30pm on Business Days (**Support Hours**) for assistance with technical questions related to the Software; and
- 28.2.4 at other times outside of Support Hours, allow for the Customer to send support requests by electronic means.

28.3 In providing the Support and Maintenance Services, NDL shall use its reasonable efforts to diagnose and correct reproducible problems but does not provide any guarantee that a solution will be available. No representation or warranty is given by NDL that all faults will be fixed or will be fixed within a specified period of time.

28.4 NDL may provide the Support and Maintenance Services by such means as it shall determine whether by telephone or email.

28.5 The Support and Maintenance Services do not include any maintenance of the system environment or Equipment on which the Software is installed or in connection with which it operates (**System**) and the Customer will remain responsible for the server platform and Equipment on which any of the Software runs, including the provision of anti-virus software and implementation of backup and restore procedures.

28.6 NDL does not guarantee any levels of System performance due to the potential dependence of the Software on the performance of any relevant back-office third-party applications, general System environments and other matters for which NDL is not responsible.

28.7 Software documentation may be made available from time to time by NDL as part of the Support and Maintenance Services, as it shall determine.

28.8 NDL shall maintain service logs pertaining to the Software licensed to the Customer under this Agreement. Such logs shall remain the property of NDL. NDL may make copies of these logs available to the Customer if requested from time to time.

28.9 To be eligible to use and benefit from Support and Maintenance Services under this Agreement:

- 28.9.1 the Customer must have a valid and fully paid up Licence to use the Software in accordance with this Agreement; and
- 28.9.2 the Software must be installed by NDL or its designated representative, or otherwise must be properly and correctly

- installed by the Customer according to instructions for installation provided by NDL; and
- 28.9.3** the Software must be unmodified, properly maintained and operated according to NDL's instructions throughout the duration of this Agreement.
- 28.10** In the event that the Customer fails to pay the Licence and Support Fees in full and cleared funds in accordance with the terms of this Agreement, then without prejudice to its other rights and remedies as set out herein, NDL reserves the right to suspend performance of or terminate the Support and Maintenance Services in whole or in part as it shall determine.
- 28.11** NDL shall not provide any Support and Maintenance Services in respect of faults which arise as a result of:
- 28.11.1** any modification of the Software by anyone other than NDL; and/or
- 28.11.2** misuse, incorrect use of or damage to the Software from whatever cause (other than act or omission of NDL) including any failure or fluctuation of electrical power; and/or
- 28.11.3** failure to maintain the necessary environmental conditions for use of the Software; and/or
- 28.11.4** use of the Software in combination with any equipment or software not approved by NDL for use in connection with the Software or any fault in such equipment or software; and/or
- 28.11.5** incorrect installation of the Software by any person other than NDL or any person authorised by NDL in writing to undertake installation or any relocation of the Software following initial installation; and/or
- 28.11.6** operation or use of the Software which is not in accordance with the recommendations in NDL's documentation; and/or
- 28.11.7** any breach by the Customer of its obligations under this Agreement howsoever arising; and/or
- 28.11.8** having the Software maintained by a third party; and/or
- 28.11.9** operator error.
- 28.12** The Customer shall:
- 28.12.1** ensure that it upgrades to the most recent version of Software released by NDL, by no later than two years from the date of such release in order to continue to benefit from the Support and Maintenance Service in relation to the same. Accordingly, the Support and Maintenance Service shall only be performed in respect of the current version of the Software and the immediately preceding version of the Software. provided that such immediately preceding version is not more than two years older than the current version;
- 28.12.2** provide remote access (where relevant) into the Customer's system including to allow NDL to carry out diagnostic testing;
- 28.12.3** ensure that appropriate environmental conditions are maintained for the Software and shall take all reasonable steps to ensure that the Software is operated in a proper manner by the Customer's personnel;
- 28.12.4** maintain a current backup copy of all Software and customer data to prevent inadvertent data loss during service;
- 28.12.5** ensure that any person contacting NDL to make use of the Support and Maintenance Services on behalf of the Customer shall have available to it, all NDL's release and update materials and Maintenance Releases and the Customer shall make the same available to NDL's personnel if requested;
- 28.12.6** perform System tests upon the request of NDL;
- 28.12.7** provide all information and report faults to NDL promptly;
- 28.12.8** provide written descriptions of problems reported to NDL at NDL's request in sufficient detail to allow NDL to properly assess the same; and
- 28.12.9** provide and maintain in full force and effect any virtual machine licence requirements and any third-party application or third-party software licences.
- 29 Supplemental Services**
- 29.1 Supplemental Service Charges and call off process**
- 29.1.1** Supplemental Services shall be performed by NDL in consideration of the payment of Supplemental Service Charges by the Customer to NDL and where called off by the Customer in accordance with the procedure in this clause 29.
- 29.1.2** Subject to payment of the Supplemental Service Charges by the Customer, the Customer may call off the Supplemental Services as it may from time to time require in accordance with the following process:
- 29.1.2.1** the Customer shall pay the Supplemental Service Charge which shall be the amount specified in the Quotation, in accordance with the provisions of clause 29.1.3;
- 29.1.2.2** the Supplemental Services shall comprise different Supplemental Service elements which are more particularly described in the Quotation, each such Supplemental Service element being assigned a Unit Price also as described in the Quotation;
- 29.1.2.3** subject at all times to agreement of NDL as to timing and availability, the Customer may call off such of the Supplemental Services as it requires on a per Unit Price basis, up to the value of the Supplemental Services Charges as the Customer has paid to NDL for the relevant Year of this Agreement (or other period as NDL may agree to in writing);
- 29.1.2.4** the Customer may not call off and NDL shall not be obliged to perform, any Supplemental Services beyond the value of the Supplemental Services Charges paid by and remaining credited to the Customer (taking account of any reduction in the remaining Supplemental Service Charges as a result of any previous call offs) and no credit shall be granted by NDL;
- 29.1.2.5** the Customer shall provide to NDL, not less than ten working days' written notice of its requirement for a call off of Supplemental Services which NDL shall consider. NDL shall as soon as reasonably practicable thereafter, notify the Customer as to whether the relevant Supplemental Services are available. In the event that NDL is able to provide such Supplemental Services such that it has available resource at the time suggested by the Customer, the parties shall arrange, at all times acting reasonably for the performance of the relevant Supplemental Services to take place at times and a location to be agreed.
- 29.1.3** The Supplemental Service Charges are payable within 30 days of the date of invoice such invoices to be raised by NDL on or before the Commencement Date and subsequently, before each anniversary of the Commencement Date (or otherwise as agreed in writing by the parties from time to time), for the duration of this Agreement.
- 29.1.4** In the event that from time to time, the Customer may wish to purchase Supplemental Services to a total Unit Price value which exceeds the Supplemental Service Charges paid (or remainder thereof, taking account of any amount so used under any previous call offs), the Customer may increase the Supplemental Services which it may call off, subject to the payment of additional Supplemental Services Charges in an amount to be not less than the total Unit Price of the additional Supplemental Services as the Customer may require. The same shall be invoiced separately by NDL and are payable by the Customer within 30 days of the invoice date. Nothing shall oblige NDL to allow the call off of any Supplemental Services unless and until payment in full and cleared funds of such invoice.
- 29.1.5** NDL reserves the right to withdraw without compensation, refund or other payment, any Supplemental Services paid for by the Customer but which are not used by the Customer within the relevant Year (or other Agreement duration where

shorter, as specified in the Quotation) to which the payment of the Supplemental Service Charge relates, unless the delay or failure in making use of those Services is the fault of NDL.

- 29.1.6 The Supplemental Service Charges are a non-refundable amount. The value of the Supplemental Service Charge shall remain live for a period only for the relevant Year in which it is paid and must be used within that Year (or within such other period where the Agreement duration period is shorter than a Year as specified in the Quotation). Accordingly, the Customer must ensure that Supplemental Services are called off to the value of the paid-up Supplemental Service Charges by reference to the Unit Prices during the relevant Year, otherwise the value of the Supplemental Service Charges (or remainder thereof) shall be lost and may not be carried over into any subsequent Year (or other period as the case may be).
- 29.1.7 NDL reserves the right to charge reasonable accommodation, travel and subsistence expenses incurred in connection with the performance of Supplemental Services and the same shall be charged in addition to the Supplemental Service Charge. The same shall be invoiced separately by NDL and payable by the Customer within 30 days of the date of invoice. NDL shall not require the prior authorisation of a Customer before incurring such expenses.
- 29.1.8 Travel time which is spent by NDL representatives travelling to and from the Site (or any other premises at the request of the Customer) for the purpose of the performance of any Supplemental Services shall also be charged on a time basis and shall be taken into account in calculating the Unit Price in respect of a particular call off.
- 29.1.9 Unless otherwise agreed, NDL shall make travel arrangements where required in the performance of Supplemental Services.
- 29.1.10 If NDL is restricted from performing any Supplemental Services due to any act or omission of the Customer, NDL may charge the Supplemental Service Charges on the basis of the Unit Price for the relevant call off to which the restriction applies.

29.2 Supplemental Services - Training

- 29.2.1 The provisions of this clause 29.2 shall apply to any Training which is performed by NDL.
- 29.2.2 Training shall constitute an element of the Supplemental Services except as otherwise agreed by NDL.
- 29.2.3 Any Training to be provided to the Customer shall be in accordance with the relevant training course description made available by NDL.
- 29.2.4 Training shall be carried out at NDL premises or as may otherwise be agreed by the parties.
- 29.2.5 In the event that training is provided at the Site or any other Customer premises, the customer warrants that it will provide all facilities, resources and access and ensure that the environment in which the training is to be provided is, in each case as reasonably required by NDL. In complying with its obligations in this clause 29.2.5, the Customer shall take account of the nature of the Training and the reasonable requirements of NDL in determining what facilities (such as presentation screens, writing materials and similar) may be required.
- 29.2.6 NDL may require the Customer to ensure that those attendees of the Training meet specified course pre-requisite standards and, in the event that such persons do not meet such standards, NDL reserves the right to exclude such attendees from any Training. Further, NDL reserves the right to exclude any attendee from the Training at its sole discretion in the event that it determines that an attendee is not appropriate for inclusion in the Training.
- 29.2.7 NDL reserves the right to prescribe a maximum or minimum number of attendees at the Training as it may determine.

Nothing shall oblige NDL to run Training if a minimum number so prescribed is not met.

- 29.2.8 Where any personnel or other representatives of NDL attend any Site or other premises of the Customer, the Customer shall ensure that the same complies with all relevant health and safety legislation in order to provide an appropriate, safe and secure environment in which NDL can provide the Training and any other relevant Services. The Customer shall also perform a relevant health and safety briefing and provide all relevant information in relation to such matters and be responsible for oversight of the provision of the Training and any other related Services taking place at its premises. In addition, the Customer shall also provide to the NDL personnel and representatives all relevant policies and procedures which relate to the attendance on the Site or other premises.
- 29.2.9 NDL may determine which staff shall perform Training and may substitute staff at any time (including for reasons of illness or injury) but shall use reasonable efforts to minimise substitutions if reasonably possible to do so.
- 29.2.10 If the Customer wishes to cancel any arranged Training, it shall give at least 5 (five) business days' written notice to allow NDL to reassign resource. Provided the Customer informs NDL within such time, the Customer shall only be responsible for expenses incurred by NDL up to the notification date and subject to the provisions of clause 29.1.6, may re-use the value of the relevant Unit Price which would otherwise have been expended if the relevant Training had not been cancelled. Failure to give notice in accordance with this clause 29.2.10, will result in the Customer being charged the relevant Unit Price in full as if the Training had taken place.

29.3 Supplemental Services – Consultancy Services

- 29.3.1 The provisions of this clause 29.3 shall apply to any Consultancy Service which is performed by NDL.
- 29.3.2 Where it is agreed that Consultancy Services shall be performed, the same shall constitute an element of the Supplemental Services for the purpose of these Terms and Conditions of Business, except as otherwise agreed by NDL.
- 29.3.3 NDL warrants that the personnel which it makes available as part of the Consultancy Service will be suitably qualified, taking account of the nature of the Consultancy Service to be performed.
- 29.3.4 The Customer acknowledges that the use of the Consultancy Services may involve NDL making a member of its personnel available to the Customer to undertake tasks as the Customer may determine. In such circumstances, NDL gives no guarantee as to the outcome of or results to be achieved as a result of any Consultancy Service performance, specific tasks shall be undertaken under the direction and control of the Customer and the obligation of NDL is limited to the provision of personnel.
- 29.3.5 The Customer acknowledges that time for performance of Consultancy Services depends on factors outside NDL's control, including Customer co-operation and promptness in agreeing and implementing recommendations. Any forecast or estimate of the time required for performance is given in good faith having regard to information made available by the Customer and represents NDL's interpretation of Customer instruction but time for performance of the Consultancy Service shall not be of the essence. If any timetable indicated by NDL needs varying after the commencement of any particular Consultancy Service, NDL shall inform the Customer and provide an indication of any effect on the Supplemental Services Charges and any additional Unit Prices which may apply.
- 29.3.6 NDL may determine which staff shall perform Consultancy Services and may substitute staff at any time (including for reasons of illness or injury) but shall use reasonable efforts to minimise substitutions if reasonably possible to do so.

- 29.3.7 NDL may also appoint sub-contractors for the performance of the Consultancy Service as it shall from time to time determine.
- 29.3.8 The performance of Consultancy Services shall be limited to the time allocation called off by the Customer and agreed to be performed by NDL, based on the Unit Price. If for any reason, the Customer requires additional Consultancy Services, the same shall be charged at the rates stated in the Quotation. In such circumstances, the provisions of clause 29.1 shall apply in relation to the procedure for the call off of such additional Supplemental Services.
- 29.3.9 If the Customer wishes to cancel an arranged Consultancy Service, it shall give at least 5 (five) business days' written notice to allow NDL to reassign resource. Provided the Customer informs NDL within such time, the Customer shall only be responsible for expenses incurred by NDL up to the notification date and subject to the provisions of clause 29.1.6, may re-use the value of the relevant Unit Price which would otherwise have been expended if the relevant Consultancy Service had not been cancelled. Failure to give notice in accordance with this clause 29.3.9, will result in the Customer being charged the relevant Unit Price in full as if the Consultancy Service had taken place.
- 29.3.10 Unless otherwise stated, Unit Prices are based on Consultancy Services being performed Monday to Friday on the basis of a 7.5 – hour day. NDL may increase the Unit Prices payable for any Consultancy Services performed outside those times.
- 29.3.11 Where any personnel or other representatives of NDL attend any Site or other premises of the Customer, the Customer shall ensure that the same complies with all relevant health and safety legislation in order to provide an appropriate, safe and secure environment in which NDL can provide the Consultancy Service. The Customer shall also perform a relevant health and safety briefing and provide all relevant information in relation to such matters and be responsible for oversight of the provision of the Consultancy Service and any other related Services taking place at its premises. In addition, the Customer shall also provide to the NDL personnel and representatives all relevant policies and procedures which relate to the attendance on the Site or other premises.