

**1. INTRODUCTION**

- 1.1 This page sets out the general terms and conditions (**General Terms**) which apply to the licensing of Services (as defined below) in relation to the App (as defined below) from the Supplier (as defined below) to the Customer (as defined below).
- 1.2 The parties' agreement is made up of (i) these General Terms; (ii) the Quotation (if any); and (iii) any other written document either issued by the Supplier (and expressly referring to and incorporating itself into the agreement) or any amendments or supplements to the agreement signed and agreed in writing between the parties. Together the above documents shall constitute and be known as the "**agreement**", and apply to the contract between the parties to the exclusion of any other terms that the Customer may seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 1.3 When construing the meaning of the Agreement, the documents listed in clause 1.2 shall be interpreted in a reverse order of priority in the event of any inconsistency or conflict, with documents appearing later in the list taking priority over documents appearing earlier in the list.
- 1.4 These General Terms are published on the Supplier's website. The Customer should print or save a copy of these General Terms for its records.
- 1.5 The Licensor may amend these General Terms from time to time as set out in clause 14.12. Every time the Licensee agrees a new Quotation with the Licensor it should check these General Terms to ensure that it understands the terms which will apply to the agreement at that time. These General Terms were most recently updated on 29 March 2018.

**2. INTERPRETATION**

- 2.1 In this agreement:
  - App** means the Supplier's mobile based software application, "TruMonitor"®.
  - Authorised Users** means those employees and agents of the Customer only, who are authorised by the Customer to use the App and its ancillary documentation who have agreed to the terms of the EULA.
  - Business Day** means any day which is not a Saturday, Sunday, bank or public holiday in Northern Ireland.
  - Commencement Date** means the date that the Customer first pays Subscription Fees in respect of any Authorised User(s).
  - Confidential Information** means in relation to either party, any or all information of a confidential nature (whether in oral, written or electronic form) including trade secrets and information of commercial value known and belonging to that party and concerning its business, suppliers, customers, products or services (including without limitation the App and its ancillary documentation) and any other information which the recipient knows or is notified or has reason to believe is confidential to the disclosing party.
  - Customer** means the organisation which has purchased User Subscriptions from the Supplier from time to time, who is either the holder of the online account used to subscribe or is named on the Quotation (if applicable).
  - Customer Data** means the data, content and images inputted by the Customer, the Authorised Users, or (if applicable) the Supplier (or its sub-contractors) on the Customer's behalf for the purpose of facilitating the Customer's or the Authorised Users' use of the App.
  - Customer Equipment** means a modern mobile (Apple or Android, once the App is supported on that platform) device capable of running the App and internet access.
  - EULA** means the end-user licence agreement and privacy policy which all Authorised Users are required to sign up to before beginning to use the Services.
  - Licence Restrictions** means the licence restrictions specified in this agreement.
  - Purpose** means accessing and using the Services for their functionally contemplated training and simulation purposes only.
  - Quotation** means the written quotation form provided by the Supplier to the Customer and agreed by the Customer or signed by the Customer in respect of the subject matter of the agreement, or if none is signed or agreed, then the email correspondence or other online web page in or on which the relevant commercial terms are set out.
  - Service Charges** means the service charges that the Supplier confirms to the Customer from time to time in respect of any bespoke services requested by the Customer.
  - Subscription Fees** means the total amounts specified online to the Customer or in the Quotation when purchasing User Subscriptions from time to time or otherwise payable in accordance with the terms of this agreement, to be paid in accordance with the timeframes and other stipulations set out in this agreement.
  - Subscription Term** means the term beginning on the Commencement Date, and continuing for the period specified either in the Quotation or online when the Customer signs up to purchase the App, unless and until this agreement is terminated in accordance with its terms. If a perpetual term is specified online or in any Quotation, this shall be interpreted as meaning a term which endures so long as the App is generally updated and maintained by the Supplier.
  - Supplier** means Trucorp Limited (company number NI042894) whose registered office is at Marlborough House, 30 Victoria Street, Belfast, County Antrim, BT1 3GG.
  - Support** means the support services to be provided by the Supplier in relation to each Authorised User, and made available, unless otherwise specified, during the Supplier's standard business hours (9am to 5.00pm

UK time on Business Days) via email contact to [info@trucorp.com](mailto:info@trucorp.com) or phone to [+4428 9073 7281](tel:+442890737281). Remote access must be provided by the Customer to allow the Supplier access to the Customer Equipment for emergency fixes. The Supplier may also provide online support resources for Authorised Users.

**Term** means the term of this agreement as defined in clause 13.1. **Services** means hosting of the App and making it available for access to Authorised Users using the Customer Equipment.

**User Subscriptions** means the subscriptions purchased by the Customer which entitle Authorised Users to access and use the Services and its ancillary documentation in accordance with this agreement.

- 2.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement. References to clauses and schedules are to the clauses and schedules of this agreement.
- 2.3 Words in the singular shall include the plural and vice versa.
- 2.4 A reference to a statute or statutory provision 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.

**3. USER SUBSCRIPTIONS**

- 3.1 Subject to payment and the other restrictions set out in this agreement, the Supplier hereby grants to the Customer, subject to the Licence Restrictions, subject to the EULA applicable to each Authorised User, a non-exclusive, non-transferable right to permit the Authorised Users to use the Services during the Subscription Term of the User Subscriptions for such Authorised Users solely for the Purpose.
- 3.2 In relation to the Authorised Users, the Customer undertakes that: (a) it shall be responsible for compliance by Authorised Users with the terms of this agreement and the EULA, and that the restrictions on the Customer set out within this agreement shall, unless the context requires otherwise, equally apply to any such persons; (b) the number of Authorised Users shall not exceed the number of User Subscriptions the Customer has purchased from time to time; (c) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or its documentation; (d) each Authorised User shall keep a secure password for his use of the Services and its documentation, and that each Authorised User shall keep his password confidential; (e) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times; (f) it shall permit the Supplier to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, and with reasonable prior notice; (g) if any of the audits referred to in clause 3.1(f) reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to any other right to which it may be entitled, the Customer shall pay to the Supplier an amount equal to such underpayment (as calculated by reference to the Subscription Fees for additional Authorised Users) within 5 Business Days of the date of the relevant audit; and (h) if any of the audits referred to in clause 3.1(f) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual.
- 3.3 The Customer shall not access, store, distribute or transmit any viruses, or any material during the course of their use of the Services that: (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) facilitates illegal activity; (c) depicts sexually explicit images; (d) promotes unlawful violence; (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or (f) causes damage or injury to any person or property; and the Supplier reserves the right, without liability to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 3.4 The Customer shall not: (a) other than as permitted by law, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the App and/or its documentation (as applicable) in any form or media or by any means; nor attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the App; or (b) access all or any part of the Services in order to build a product or service which competes with the Services; or (c) use the Services to provide services to third parties; or (d) subject to clause 14.6, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Authorised Users; or (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as provided under this clause 3; or (f) interfere with or disrupt the integrity or performance of the Services or third party data contained therein; or (g) attempt to gain unauthorised access to the Services or their related systems or networks.
- 3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or its documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

- 3.6 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 3.7 The Customer must ensure that its use of the Services and all Customer Data is at all times compliant with the terms of this agreements, all applicable laws and regulations (nationally and internationally) and the Customer represents and warrants that: (i) it has obtained all necessary rights, releases and permissions to provide all the Customer Data to the Supplier and to grant the rights granted to the Supplier in this agreement and (ii) the Customer Data and its transfer to and use by the Supplier as authorized by the Customer under this agreement do not violate any laws (including without limitation those relating to export control and electronic communications) or rights of any third party, including without limitation any intellectual property rights, rights of privacy, or rights of publicity, and any use, collection and disclosure authorized herein is not inconsistent with the terms of any applicable privacy policies. Other than its security obligations under clause 9.3, the Supplier assumes no responsibility or liability for Customer Data, and the Customer shall be solely responsible for Customer Data and the consequences of using, disclosing, storing, or transmitting it.

#### 4. ADDITIONAL USER SUBSCRIPTIONS

- 4.1 Subject to clause 4.2, the Customer may, from time to time during the Subscription Term, purchase additional User Subscriptions.
- 4.2 The Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions.

#### 5. SERVICES

- 5.1 The Supplier shall, during the Subscription Term the Support and the Services to the Customer on and subject to the terms of this agreement.
- 5.2 The Supplier shall procure hosting of the App from its hosting sub-contractor and make the Services available to the Customer in accordance with the terms imposed upon it by its hosting sub-contractor from time to time, a copy of which will be provided to the Customer upon request. The Supplier shall use reasonable endeavours to inform the Customer in advance of any planned service interruption.
- 5.3 Where the Customer has purchased a "lifetime support and upgrades policy" for the App the Supplier will, as part of the Services and at no additional cost to the Customer other than the Subscription Fees, provide the Customer with the Support for the lifetime of the App (i.e. the period over which it is generally maintained and upgraded by the Supplier) in accordance with the Supplier's support services policy in effect at the time that the Services are provided, subject to fair usage of the Support by the Customer. Where such a policy is purchased, the Customer shall also be entitled, at no additional charge, to any upgrades or improvements to the App which the Supplier may release over the lifetime of the App (i.e. the period over which it is generally maintained and upgraded by the Supplier). For the avoidance of doubt, if no such policy has been purchased, no Support or upgrades shall be offered by the Supplier.
- 5.4 Clause 5.3 notwithstanding, the Supplier may, from time to time at its discretion, generally upgrade and improve the App as it sees fit and the Customer acknowledges that if the Supplier chooses to generally release such upgrades and improvements they may affect the Customer's use of the Services. Any specific upgrades requested by the Customer are chargeable by the Supplier.
- 5.5 There may be storage limits associated with particular Services, which are generally subject to fair usage limits. The Supplier reserves the right to charge for additional storage or overage fees at the rates specified by the Supplier to the Customer from time to time, either on the Supplier's website or otherwise. The Supplier may impose new, or may modify existing, storage limits for the hosted Services at any time in the Supplier's discretion, giving notice to the Customer, either on the Supplier's website or otherwise.

#### 6. SUPPLIER'S OBLIGATIONS

- 6.1 The Supplier undertakes that the Services will be performed with reasonable skill and care for the lifetime of the App (i.e. the period over which it is generally maintained and upgraded by the Supplier).
- 6.2 The undertaking at clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 6.1. Notwithstanding the foregoing, the Supplier does not warrant that the Customer's use of the Services will be uninterrupted or error-free, nor that the Services and/or documentation will meet the Customer's requirements.
- 6.3 The Customer acknowledges that it has assessed the suitability of the Services for its requirements. The Supplier does not warrant that the App, the Services and/or its documentation will be suitable for such requirements or that any use will be uninterrupted or error free. The undertaking in this clause 6 shall not apply if the Customer makes or causes to be made any modifications to the App or Services without the Supplier's consent or the App is used in combination with any software, hardware or materials not supplied by the Supplier or approved in writing

by the Supplier or the App or Services are used in an application for which they were not intended or the App or Services are used otherwise than as permitted by this agreement.

- 6.4 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.
- 6.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

#### 7. CUSTOMER'S OBLIGATIONS

The Customer shall: (a) at its cost, provide the Supplier with all necessary co-operation in relation to this agreement, and all necessary data and access to information as may be required by the Supplier, its agents or contractors, in order to render the Services, including but not limited to applicable specifications, data management decisions, approvals, security access information and configuration services; (b) comply with all applicable laws and regulations with respect to its activities under this agreement; (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary; (d) ensure that the Authorised Users use the Services in accordance with the terms and conditions of this agreement and shall be responsible for any breach of this agreement by either; (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services; (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; (g) be solely responsible for procuring and maintaining its network connections and telecommunications links, and maintaining appropriate Customer Equipment; (h) provide a single main point of contact who can address questions or issues relating to the Services, provide timely feedback and review any changes to the Services; and (i) be solely responsible at its own cost for generating Customer Data, content and data required to utilise the services and uploading all such content and data to the site provided to the Customer using the Services. In the event that the Customer requires any assistance from the Supplier in this regard, the Supplier may provide such assistance as it deems appropriate at its then prevailing charges.

#### 8. CHARGES AND PAYMENT

- 8.1 The Customer shall pay the Subscription Fees in full in advance. The Customer shall pay any Service Charges, or other charges specified or agreed under the agreement, as and when they are invoiced by the Supplier. Such invoices are payable within 30 days, unless otherwise agreed in writing by the Supplier. All charges shall be paid by bank transfer to the bank account nominated in writing by the Supplier from time to time.
- 8.2 If the Supplier has not received payment for any Subscription Fees in advance, and/or any Services Charges or other charges within 10 days after the due date, without prejudice to any other rights and remedies of the Supplier: (a) the Supplier may, without liability to the Customer, disable the Customer's and any Authorised Users' passwords, accounts and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and (b) interest shall accrue on such due amounts at a monthly rate equal to 1.5% over the then current base lending rate of HSBC plc at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.3 All amounts and fees stated or referred to in this agreement: (a) shall be payable in pounds sterling; (b) are non-cancellable and non-refundable; (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 8.4 If, at any time whilst using the Services, the Customer exceeds the Licence Restrictions, the Supplier shall charge the Customer, and the Customer shall pay, the Supplier's then prevailing charges for such excessive use.
- 8.5 Backup of all Customer Data is the sole responsibility of the Customer. Bespoke upgrades may be undertaken on request, subject to confirmation by Supplier, and are charged for by the Supplier at its then prevailing standard daily rate. Any on-site support required by the Customer and agreed by the Supplier will be chargeable at the Supplier's then prevailing standard daily rates.

#### 9. PROPRIETARY RIGHTS

- 9.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services, App and its documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services, App and its documentation.
- 9.2 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data and the means by which it acquired such Customer Data.
- 9.3 The Supplier shall use reasonable endeavours to maintain appropriate administrative, physical and technical safeguards for protection of the

security, confidentiality and integrity of Customer Data. However, the Customer understands and acknowledges that use of the hosted Services necessarily involves transmission of the Customer Data over networks that are not owned, operated or controlled by the Supplier, and that the Supplier cannot be held responsible for any Customer Data lost, altered, intercepted or stored across such networks. The Supplier does not guarantee that its security procedures will be error-free, that transmissions of the Customer Data will always be secure or that unauthorized third parties will never be able to defeat the Supplier's security measures or those of the Supplier's third party service providers.

**9.4** The Supplier shall not modify Customer Data, disclose Customer Data or access Customer Data except: (a) as required by law; (b) as expressly permitted by the Customer; (c) to provide the Services; (d) to address technical problems or issues with the Services; or (e) at the Customer's request when providing Support.

**9.5** The Supplier shall use its reasonable commercial endeavours to back-up all Customer Data on a daily basis. In relation to images comprised in the Customer Data, the Supplier shall use its reasonable commercial endeavours to procure from its hosting provider back-up of such images in accordance with its hosting provider's terms for provision of back-up services from time to time. In the event of any loss of or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use its reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier (or its hosting provider, as appropriate according to the nature of the Customer Data which has been lost or damaged).

**9.6** If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case: (a) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf; (b) the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation; (c) the Supplier shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and (d) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## **10. CONFIDENTIALITY**

Each party shall maintain the confidentiality of the other party's Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information (or permit any third party to do so) other than as strictly necessary for the performance of its rights and obligations under this agreement. The provisions of this clause shall not apply to any information which: (a) is or comes into the public domain without breach of this agreement; or (b) was in the possession of the receiving party prior to receipt from the disclosing party without an obligation of confidence; or (c) was obtained from a third party free to divulge such information; or (d) is required to be disclosed by law or by any legal, regulatory or administrative body.

## **11. INDEMNITY**

**11.1** The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with its and/or the Authorised Users' use of the Services including, without limitation, for any liability, damages, costs or claims incurred by the Supplier due to the Customer's use of the Services for any purpose outside of the Purpose or any claim relating to Customer Data, including, without limitation, any claim brought by a third party alleging that Customer Data, or the Customer's use of the Services in breach of this agreement infringes or misappropriates the intellectual property rights of a third party or violates applicable law.

**11.2** The Supplier shall, subject to clause 11.5 and the limitations in this clause 12, defend the Customer against any claim that the Services infringe any United Kingdom patent effective as of the Commencement Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that: (a) the Supplier is given prompt notice of any such claim; (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and (c) the Supplier is given sole authority to defend or settle the claim.

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

**11.4** In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: (a) a modification of the Services by anyone other than the Supplier; or (b) the Customer's use of the Services in a manner contrary to the instructions given to the Customer by the Supplier; or (c) the

Customer's use of the Services after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

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

## **12. LIMITATION OF LIABILITY**

**12.1** This clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of: (a) any breach of this agreement (including without limitation, any claim under clause 11.2); (b) any use made by the Customer of the App, Support or any part of them; and (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

**12.2** Except as expressly and specifically provided in this agreement: (a) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; (b) the Services and all other services provided, procured and/or sub-contracted by the Supplier under this agreement, are provided to the Customer on an "as is" basis; and (c) the Customer assumes sole responsibility for results obtained from the use of the Services and its associated documentation by the Customer and Authorised Users, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or data provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction.

**12.3** Nothing in this agreement excludes the liability of the Supplier: (a) for death or personal injury caused by the Supplier's negligence; or (b) for fraud or fraudulent clause 12.2. and clause 12.3: (a) the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and (b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

## **13. TERM AND TERMINATION**

**13.1** This agreement shall commence on the Commencement Date and shall (unless terminated earlier in accordance with these terms) continue in full force and effect until the end of the Subscription Term.

**13.2** Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other if: (a) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or (b) an order is made or a resolution is passed for the winding up of the other party or if an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or if such an administrator is appointed or if documents are filed with the court for the appointment of an administrator or if notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying charge holder, or if a receiver is appointed of any of the other party's assets or undertaking or if circumstances arise which entitle the court or a creditor to appoint a receiver or manager or which entitle the court to make a winding-up order or if the other party takes or suffers any similar or analogous action in consequence of debt; or (c) the other party ceases, or threatens to cease, to trade.

**13.3** On expiry or termination of this agreement for any reason: (a) all licences granted under this agreement shall immediately terminate, even if the Subscription Term is defined as "perpetual" in, or if no expiration date is specified in, the Quotation; (b) each party shall return and make no further use of any Confidential Information belonging to the other party; and (c) the accrued rights of the parties as at expiry or termination, or the continuation after expiry or termination of any provision expressly stated to survive (including, without limitation, clauses 1, 9, 10, 11.1, 12, 13.3 and 14) or implicitly surviving termination, shall not be affected or prejudiced; and (d) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than 10 days after the effective date of termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of receipt of such a request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data.

## **14. GENERAL**

**14.1** The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation,

strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

- 14.2** A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 14.3** Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.
- 14.4** If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 14.5** This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 14.6** Neither party shall, without the prior written consent of the other party (such consent not to be unreasonably withheld, delayed or conditioned), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement."
- 14.7** Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 14.8** Notwithstanding any other provisions of this Agreement, nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.
- 14.9** Any notice required or permitted to be given under this agreement shall be in writing and shall be delivered or transmitted to the intended recipient's address as specified in this agreement or such other address as either party may notify in writing to the other from time to time for this purpose. Any notice shall be treated as having been served on delivery if delivered by hand, 4 Business Days after posting if sent by pre-paid first class post, and on completion of transmission if sent by facsimile (subject to receipt of acknowledgement of successful transmission).
- 14.10** The construction, validity and performance of this agreement shall be governed by the laws of Northern Ireland, and the parties submit to the exclusive jurisdiction of the courts of Northern Ireland.
- 14.11** This agreement may be executed in any number of counterparts, each of which will be considered an original, but all of which together will constitute the same agreement. The exchange of a fully executed agreement (in counterparts or otherwise) by facsimile or electronic transmission shall be sufficient to bind the parties to the terms and conditions of this agreement.
- 14.12** No variation of this agreement shall be effective unless it is in writing and signed by authorised representatives of each of the parties. Notwithstanding this, the Supplier may generally update these General Terms from time to time. It is the responsibility of the Customer to check these General Terms to ensure that it is aware of any changes to same.