

**IT SUPPORT AND MAINTENANCE AGREEMENT**

Customer Details (Name, Registered Office, Company number)	
Commencement Date	
Maintained Equipment	
Location	
Standard Maintenance Fees	
Payment Date	
Additional Services Rate	
Termination compensation	
Maintenance Services	<input type="checkbox"/> Remote Support <input type="checkbox"/> Full Support
<b>IMPORTANT NOTICE FOR ALL CUSTOMERS</b>	
<ul style="list-style-type: none"> <li>• BY SUBMITTING AN ORDER TO THE SUPPLIER, THE CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT WHICH WILL BIND THE CUSTOMER AND ITS EMPLOYEES. THE TERMS OF THIS AGREEMENT INCLUDE, IN PARTICULAR, LIMITATIONS ON LIABILITY IN CLAUSE 9.</li> <li>• IF THE CUSTOMER DOES NOT AGREE TO THE TERMS OF THIS AGREEMENT, THE SUPPLIER WILL NOT SUPPLY THE SERVICES TO THE CUSTOMER AND THE CUSTOMER MUST DISCONTINUE THE ORDERING PROCESS.</li> </ul>	
We hereby agree to the terms annexed to this Order.	
Signed by MARC BANYARD  for and on behalf of DATATECH UK LIMITED	.....  <b>Director</b>
Signed by  for and on behalf of	.....  <b>Director</b>

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## 1. INTERPRETATION

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

**Additional Services:** any Emergency Maintenance and/or any Excluded Maintenance performed by the Supplier pursuant to these terms.

**Additional Services Fees:** the fees payable in consideration of the provision of any Additional Services, which shall be calculated at the Additional Services Rates.

**Additional Services Rates:** the rates set out in the Order, as those rates are amended from time to time in accordance with the terms of these terms.

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

**Charges:** the Maintenance Fees and the Additional Services Fees together.

**Commencement Date:** the date specified in the Order.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Maintenance Services, who need to know the confidential information in question (**Representatives**) to the other party and that party's Representatives in connection with these terms, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Contract:** contract between the Supplier and the Customer for the supply of Maintenance Services in accordance with these terms.

**Corrective Maintenance:** making any adjustments to the Maintained Equipment;

**Customer:** the customer to whom the Maintenance Services are to be supplied whose details are set out in the Order.

**Data Protection Policy:** the Supplier's data protection policy set out at [www.datatechuk.com](http://www.datatechuk.com) as amended by notification to the Customer from time to time.

**Excluded Causes:** means:

- (a) a defect in the manufacturer's design of the Maintained Equipment;
- (b) faulty materials or workmanship in the manufacture of the Maintained Equipment;
- (c) use of the Maintained Equipment with computer equipment or materials not supplied or approved in writing by the Supplier;
- (d) any maintenance, alteration, modification or adjustment performed by persons other than the Supplier or its employees or agents unless approved by the Supplier in accordance with clause 5(g);
- (e) the Customer or a third party moving the Maintained Equipment;

- (f) the use of the Maintained Equipment in breach of any of the provisions of the agreement under which the Maintained Equipment was supplied;
- (g) a failure, interruption or surge in the electrical power or its related infrastructure connected to the Maintained Equipment;
- (h) a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Maintained Equipment, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer;
- (i) the neglect or misuse of the Maintained Equipment; or
- (j) use of the Maintained Equipment in combination with any software installed by the Customer, or any misuse, incorrect use of or fault in any such software.

**Excluded Maintenance:** any maintenance services required to restore any malfunctioning or failed Maintained Equipment to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes.

**Emergency Maintenance:** making any adjustments to the Maintained Equipment; and replacing any parts or components of the Maintained Equipment, required to restore the Maintained Equipment to Good Working Order, outside of Normal Business Hours.

**Full Support:** the supply of Preventative Maintenance and Corrective Maintenance to the Customer either over the telephone, via remote access or at the Location.

**Good Working Order:** the Maintained Equipment operates in accordance with the Operating Manuals.

**Initial Term:** a period of 12 months commencing on the Commencement Date.

**Location:** the location of the Maintained Equipment at the Customer's premises as specified in the Order, or any other location as may be agreed by the parties in writing from time to time.

**Maintained Equipment:** the equipment specified in the Order.

**Maintenance Services:** the services set out in the Order together with Emergency Maintenance of the Maintained Equipment.

**Normal Business Hours:** 9.00 am to 5.00 pm GMT (or British Summer Time as the case may be) on a Business Day.

**Operating Manuals:** all operating manuals, specifications and other manufacturer documentation relating to the Maintained Equipment.

**Preventative Maintenance:** means:

- (a) testing that the Maintained Equipment is functional; and
- (b) making any adjustments as may be required to ensure the Maintained Equipment remains in Good Working Order.

**Order:** the Customer's order for the Maintenance Services as set out overleaf, or in the Customer's purchase order form, or in the Customer's written acceptance of the Supplier's quotation, as the case may be.

**Remote Support:** the supply of Preventative Maintenance, Corrective Maintenance over the telephone or via remote access to the Maintained Equipment.

**Standard Maintenance Fees:** the fees payable by the Customer for the provision of the Maintenance Services, as set out in the Order, as these fees are varied from time to time in accordance with the terms of these terms.

**Supplier:** Datatech UK Limited (Company registered in England and Wales with company number 05696509) whose registered office is situated at Prospect House, Fishing Line Road, Redditch B97 6EW.

**Term:** the term of the Contract as more particularly detailed in clause 11.

**Termination Compensation:** the sums calculated in accordance with the Order in order to compensate the Supplier for the loss of this agreement if the Customer wishes to terminate this agreement for convenience pursuant to clause 11.1(a) before the expiry of the Initial Term.

## 2. APPLICATION OF THESE TERMS

2.1 These terms shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

## 3. BASIS OF CONTRACT

3.1 The Order constitutes an offer by the Customer to purchase the Maintenance Services subject to these terms.

3.2 The Order shall only be deemed accepted when the Supplier issues written acceptance of the Order.

3.3 These terms shall apply to the Contract to the exclusion of any other terms that the Customer shall seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3.4 Any quotation given by the Supplier to provide Maintenance Services is not an offer, and only valid for a period of ten Business Days from the date of issue.

### 3. MAINTENANCE SERVICES

3.1 During the Term, the Supplier shall provide the Customer with the Maintenance Services for the Maintained Equipment.

3.2 **(Remote Support)** On the Customer informing the Supplier that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, the Supplier shall, during Normal Business Hours, use all reasonable endeavours to:

- (a) attempt to resolve the malfunction over the telephone; then
- (b) if the malfunction is then not rectified, to access the Maintained Equipment remotely; and finally
- (c) if the malfunction is still not then rectified, to arrange for the Customer to bring the malfunctioning Maintained Equipment to the Supplier's premises for assessment.

3.3 The Customer accepts that if the Maintained Equipment is not:

- (a) connected to an appropriate power source;
- (b) switched on; and
- (c) connected to the internet,

then the Supplier will be unable to provide Remote Support.

3.4 **(Full Support)** On the Customer informing the Supplier that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, the Supplier shall, during Normal Business Hours, use all reasonable endeavours to:

- (a) attempt to resolve the malfunction over the telephone; then
- (b) if the malfunction is then not rectified, to access the Maintained Equipment remotely; and finally
- (c) if the malfunction is still not then rectified, to arrange to attend the Location during Normal Business Hours.

3.5 Emergency Maintenance shall be charged at the Additional Services Rates for each of the Supplier's personnel reasonably required to provide that Emergency Maintenance whether remotely or at the Location.

**4. REPLACEMENTS AND SPARE PARTS**

- 4.1 In performing the Maintenance Services, the Supplier shall use all reasonable endeavours to source spare parts required to restore the Maintained Equipment to Good Working Order. The Customer will be charged separately to the Standard Maintenance Fees for the spare parts used in connection with the Maintenance Services.
- 4.2 Upon payment in full the Supplier will assign to the Customer, with full title guarantee and free from all third-party rights, title in all spare parts and/or replacements provided by the Supplier. Upon delivery to the Location and until title in the spare parts passes to the Customer, they shall be at the Customer's risk.

**5. CUSTOMER'S OBLIGATIONS**

The Customer shall:

- (a) ensure that the Maintained Equipment is installed and kept in suitable premises and under suitable conditions, as specified in the Operating Manuals, permit only trained and competent personnel to use it and follow any operating instructions as the Supplier may give from time to time;
- (b) notify the Supplier promptly if the Maintained Equipment is discovered to be operating incorrectly;
- (c) at all reasonable times permit full and free remote access to the Maintained Equipment to the Supplier, its employees, contractors and agents as are reasonably required to enable the Supplier to perform the Maintenance Services and the Additional Services.
- (d) (where the Customer has the Full Support package) at all reasonable times permit full and free access to the Location and to the Maintained Equipment to the Supplier, its employees, contractors and agents, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable the Supplier to perform the Maintenance Services and the Additional Services while at the Location;
- (e) provide the Supplier with any information that is reasonably requested in the performance of the Maintenance Services and the Additional Services;
- (f) take any steps reasonably necessary to ensure the safety of the Supplier's personnel when attending the Location;
- (g) not allow any person other than the Supplier to maintain, alter, modify or adjust the Maintained Equipment without the prior written approval of the Supplier;
- (h) not move the Maintained Equipment from the Location without the prior written approval of the Supplier (approval not to be unreasonably withheld

or delayed). For the avoidance of doubt, where Maintained Equipment is to be sent to the Supplier's premises, the Customer shall only do so with the Supplier's written approval, and following the Supplier's written instructions);

- (i) store any reserve equipment only in conditions approved by the Supplier, and make this equipment available for periodic maintenance, as with all other Maintained Equipment;
- (j) only use supplies or materials supplied or approved by the Supplier (approval not to be unreasonably withheld or delayed);
- (k) back up its data regularly (and not less than once per day) using robust and secure back up equipment and software; and
- (l) maintain in force, and comply with at all material times, a robust disaster recovery programme and provide a copy of the programme to the Supplier promptly upon request.

## **6. EXCLUDED MAINTENANCE**

6.1 The Supplier is not obliged to perform any Excluded Maintenance.

6.2 Where the Supplier is performing or has performed the Maintenance Services in circumstances where it is established that the Maintained Equipment was not in Good Working Order due to any of the Excluded Causes, the Supplier may charge, and the Customer shall pay, the Additional Services Fees in respect of that work.

## **7. CHARGES**

7.1 For the performance of Maintenance Services, the Customer shall pay to the Supplier the Standard Maintenance Fees.

7.2 For the performance of any Additional Services, the Customer shall pay to the Supplier the Additional Services Fees.

7.3 The Standard Maintenance Fees and the Additional Services Fees shall be inclusive of all expenses, other than those recoverable in accordance with clause 4.1, and the Supplier shall be responsible for all costs and expenses incurred in providing the Maintenance Services (other than those recoverable in accordance with clause 4.1).

7.4 The Standard Maintenance Fees shall be due and payable in full to the Supplier monthly in advance on the day in each month set out in the Order or such other date as the Supplier shall require from time to time. Any Additional Services Fees shall be due and payable within 7 days of receipt of a valid invoice from the Supplier.



Any charges for spare parts recoverable in accordance with clause 4.1 shall be due within 7 days of receipt of a valid invoice from the Supplier.

- 7.5 If the Customer fails to make any payment due to the Supplier pursuant to these terms by the due date for payment, then, without limiting the Supplier's remedies under clause 11, the Customer shall pay interest on the overdue amount at the rate of 4% 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.
- 7.6 If the Customer fails to make any payment due to the Seller under the Contract by the due date, the Supplier shall have the right to suspend the provision of the Maintenance Services or Additional Services, without notice to the Customer. Thereafter, the Supplier will be under no obligation to lift the suspension until all payments due to it (whether due for payment or not) have been paid in full and, at the discretion of the Supplier, a deposit against future payment has been paid by the Customer to be held by the Supplier for the remainder of the Term.
- 7.7 All Charges are exclusive of VAT or any other applicable sales tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 7.8 The Supplier may, at any time after the Initial Term, increase the Standard Maintenance Fees and the Additional Services Rates by giving to the Customer not less than 5 days written notice.

## **8. SUPPLIER WARRANTIES**

- 8.1 The Supplier warrants to the Customer that the Maintenance Services and the Additional Services shall be performed using all reasonable skill and care and in accordance with all applicable laws and regulations in force from time to time.
- 8.2 Except as expressly stated in these terms, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including satisfactory quality, fitness for purpose and suitability) are hereby excluded to the fullest extent permitted by law.

## **9. LIABILITY**

- 9.1 Neither party excludes or limits liability to the other party for:
- (a) fraud or fraudulent misrepresentation;
  - (b) death or personal injury caused by negligence; or

- (c) a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.

9.2 Subject always to clause 9.1, the Supplier shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

- (a) any loss (whether direct or indirect) of profits, business, revenue, or goodwill; or
- (b) loss or corruption (whether direct or indirect) of data or information; or
- (c) any special, indirect or consequential loss, costs, damages, charges or expenses,

in each case, however arising pursuant to these terms.

9.3 Subject always to clause 9.1, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of these terms shall be limited to 100% of the total Standard Maintenance Fees paid by the Customer to the Supplier during the 12 month period immediately preceding the date on which the cause of action first arose.

9.4 Unless the Customer notifies the Supplier in writing that it intends to make a claim in respect of an event within the notice period, the Supplier shall have no liability for that event. The notice period for an event shall start on the day on which the Customer wishing to make a claim became, or ought reasonably to have become, aware of the event having occurred and shall expire three months from that date. The notice must be in writing and must identify the event and the grounds for the claim in sufficient detail to give the Supplier the opportunity to remedy any breach or default which might otherwise give rise to a claim in respect of such an event.

## **10. CONFIDENTIALITY AND COMPLIANCE WITH POLICIES**

10.1 The term Confidential Information does not include any information that:

- (a) is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- (b) was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- (c) was, is, or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;

- (d) was known to the receiving party before the information was disclosed to it by the disclosing party;
- (e) the parties agree in writing is not confidential or may be disclosed; or
- (f) is developed by or for the receiving party independently of the information disclosed by the disclosing party.

10.2 Each party shall keep the other party's Confidential Information confidential during the Term and for a period of two years thereafter and shall not:

- (a) use any Confidential Information except for the purpose of exercising or performing its rights and obligations pursuant to these terms (**Permitted Purpose**); or
- (b) disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.

10.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Permitted Purpose, provided that:

- (a) it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and
- (b) at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this clause 10.

10.4 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.

10.5 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information, other than those expressly stated in these terms, are granted to the other party, or are to be implied from these terms.

10.6 The above provisions of this clause 10 shall continue to apply after termination of these terms.

10.7 In performing its obligations pursuant to these terms the Customer shall comply with the Data Protection Policy.

## **11. TERM AND TERMINATION**

11.1 These terms shall commence on the Commencement Date. Subject to clause 11.1(a) and 11.1(b), either party may terminate this agreement for convenience at any time,

in whole or in part by providing not less than 30 days written notice to the other party (**Termination Notice**), following which the agreement shall terminate as follows:

- (a) If Termination Notice is given before the first day of the final month of the Initial Term, the Customer shall be obliged to pay the Termination Compensation to the Supplier together with any Standard Maintenance Fees, Additional Services Fees and any charges for spare parts which have been incurred in accordance with clause 4 whether or not these are due for payment as at the date of termination or not.
- (b) If the Customer wishes to terminate this agreement for convenience in accordance with clause 11.1 and such termination takes effect after the first day of the final month of the Initial Term, the Customer shall be obliged to pay to the Supplier any Standard Maintenance Fees, Additional Services Fees and any charges for spare parts which have been incurred in accordance with clause 4 for both the month the Termination Notice was given and the month thereafter.

11.2 Without prejudice to any rights that have accrued pursuant to these terms or any of its rights or remedies, the Supplier may terminate these terms with immediate effect by giving written notice to the Customer if:

- (a) the Customer fails to pay any amount due pursuant to these terms on the due date for payment and remains in default not less than 14 days after being notified to make that payment;
- (b) the Customer commits a material breach of any term of these terms (other than failure to pay any amounts due pursuant to these terms) and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the Customer:
  - (i) suspends, or threatens to suspend, payment of its debts;
  - (ii) is unable to pay its debts as they fall due or admits inability to pay its debts;
  - (iii) (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - (iv) (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
  - (v) (being a partnership) has any partner to whom any of clause 11.2(c)(i) to clause 11.2(c)(iv) apply.
- (d) the Customer 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

(in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

- (e) 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 the Customer (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (f) 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 Customer (being a company);
- (g) the holder of a qualifying floating charge over the assets of the Customer (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of that other party or a receiver is appointed over the assets of the Customer;
- (i) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of the Customer's assets and that attachment or process is not discharged within 10 days;
- (j) any event occurs or proceeding is taken with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 11.2(c) to clause 11.2(i) (inclusive); or
- (k) the Customer suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

11.3 Any provision of these terms that expressly or by implication is intended to come into or continue in force on or after termination of these terms shall remain in full force and effect.

11.4 Termination of these terms, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

11.5 On termination of these terms for any reason, each party shall as soon as reasonably practicable:

- (a) return or destroy (as directed in writing by the other party) any documents, handbooks, CD-ROMs or DVDs or other information provided to it by the other party or data for the purposes of these terms, including

all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information.;

- (b) delete (to the extent possible) any proprietary software belonging to the other party and all the other party's Confidential Information from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party;
- (c) return all of the other party's equipment and materials, failing which the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party remaining in possession shall be solely responsible for their safe-keeping;
- (d) the Supplier shall provide all reasonable assistance to the Customer and/or any third party engaged by the Customer in connection with the maintenance and support of the Maintained Equipment;
- (e) the Customer shall immediately pay any outstanding amounts owed to the Supplier pursuant to these terms.

11.6 Regardless of its obligations in this clause 11, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials which it would otherwise be required to return or destroy under clause 11.5, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain. Clause 10 shall continue to apply to any retained documents and materials, subject to this clause 11.

## **12. FORCE MAJEURE**

12.1 Subject to clause 12.2 neither party shall be in breach of these terms nor liable for delay in performing, or failure to perform, any of its obligations pursuant to these terms if such delay or failure result from events, circumstances or causes beyond its reasonable control (**Force Majeure**). In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues 13 weeks the party not affected may terminate these terms by giving 5 written notice to the affected party.

12.2 The obligation on the Customer to make payments to the Supplier under the Terms shall not be affected by any event of Force Majeure.

## **13. ASSIGNMENT**

13.1 The Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations pursuant to these terms without the prior written consent of the Supplier.

- 13.2 The Supplier shall have the right to assign, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations pursuant to these terms.

**14. WAIVER**

No failure or delay by a party to exercise any right or remedy provided pursuant to these terms 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 any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

**15. NOTICE**

- 15.1 Any Termination Notice given by the Customer under clause 11.1 of this Agreement shall be in writing and shall be delivered by hand or by pre-paid first class post or other next next-working-day delivery service at its registered office or by e-mail.
- 15.2 Any Termination Notice given by the Customer under clause 11.1 of this Agreement shall only be effective when the Supplier acknowledges in writing to the Customer receipt of the Termination Notice and confirms the actual date of termination.
- 15.3 Any other notice required to be given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next-working-day delivery service at its registered office (if a company) or (in any other case) its principal place of business.
- 15.4 Any other notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address at 9.00 am on the next Business Day after transmission, or otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
- 15.5 This clause 15 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of clauses 15.3, 15.4 and 15.5 of this Agreement, writing shall not include e-mail or fax transmission.

**16. ENTIRE AGREEMENT**

- 16.1 These terms constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.2 Each party acknowledges that in entering into these terms it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these terms.

16.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in these terms.

**17. VARIATION**

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

**18. SEVERANCE**

18.1 If any provision or part-provision of these terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these terms.

18.2 If any provision or part-provision of these terms is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

**19. NO PARTNERSHIP OR AGENCY**

19.1 Nothing in these terms 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.

19.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**20. THIRD-PARTY RIGHTS**

No person other than a party to these terms shall have any rights to enforce any term of these terms.



**21. RIGHTS AND REMEDIES**

The rights and remedies provided pursuant to these terms are in addition to, and not exclusive of, any rights or remedies provided by law.

**22. GOVERNING LAW**

These terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**23. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with these terms or its subject matter or formation (including non-contractual disputes or claims).