

PART A - GENERAL TERMS

1. SCOPE

- 1.1 Prior to execution of these Terms and Conditions the parties have discussed your initial outline requirements together with our initial estimate of the proposed Products, Services and the associated Charges all of which are set out in the appropriate Specific Schedule of Services arrived at by your reliance upon our Proposal document attached (“the Proposal”)
- 1.2 In respect of the Products and/or Services that we supply to you under these Terms and Conditions, we shall supply such Products and/or Services in accordance with these Terms and Conditions and any applicable Parts.
- 1.3 You shall be bound by all Customer Agreements signed on your behalf; we will not be bound to supply any Products or Services until we accept the Customer Agreement and subject to the payment of any Charges in accordance with the relevant Part. Your use of the Products and/or Services shall be deemed as acceptance of the Customer Agreement.
- 1.4 Unless stated to the contrary in the event only of any conflict or inconsistency between any provision of Part A and to any other Part the provisions of the appropriate Part shall prevail.

2. QUOTATION AND ACCEPTANCE

- 2.1 A quotation by us does not constitute an offer. Any quotation will be valid for 30 days. Thereafter, we reserve the right to withdraw or revise a quotation at any time prior to our acceptance of your order.
- 2.2 Our acceptance of your order shall be effective only where your order is confirmed in writing on our Customer Agreement, Quotation or Order Confirmation and signed by an authorised representative of the Customer.
- 2.3 Our catalogues, brochures, leaflets or correspondence are not binding and unless specifically provided to the contrary in writing, all specifications, descriptions, photographs, measurements or capacities are approximates only and shall not form part of this contract or be treated as constituting any warranty, representation, or condition in relation to any Service or Product; notwithstanding the foregoing the Proposal shall form part of this Customer Agreement.

3. RESPONSIBILITIES

- 3.1 We will supply the Products and/or Services as set out in the Customer Agreement in accordance with these Terms and Conditions and any applicable Part.
- 3.2 You will adopt all reasonably appropriate technical and organisational measures to:-
- 3.2.1 keep all passwords secret. (If a third party uses any of your passwords with or without your consent, then you will be responsible for any result in losses or subsequent charges incurred as a result); and
- 3.2.2 to prevent any unauthorised or unlawful access to your equipment;
- 3.3 You acknowledge that any failure by you to perform your responsibilities under these Terms and Conditions (including any responsibilities set out or referred to in any relevant Part) in the manner and in accordance with the dates agreed by the parties is likely to have an adverse impact on the timely delivery of Products and/or Services by us under these Terms and Conditions.
- 3.4 If we have reasonable grounds for believing that there has been a breach of these provisions by you or any third party under your direct or indirect control or contractual control, we reserve the right to monitor any and all communications

passing through our systems in connection with the Service by lawful means, but subject to our duties of confidentiality under clause 12 below.

- 3.5 You shall indemnify us against any costs claims damages and losses incurred by us as a direct result of a material breach by you of Clause 3 above.

4. TITLE AND LICENCE

- 4.1 We (or where applicable the third party owner) shall own and shall retain title to all Intellectual Property Rights to all Products and Services (if any) supplied pursuant to or created as a result of any Customer Agreement and any copies thereof. Title in the media on which the Software and Documentation are recorded shall only pass to you on payment in full of the applicable charges, provided always that all intellectual property and all bespoke software written on your behalf (whether by us or others) to enable connection by your systems to the Internet (other than software previously written by the Company and used in its business providing services to you or to other customers shall be retained to the Company) shall belong to you and be retained by you and be subject to our duties of confidentiality under clause 12 below.

- 4.2 At our request and expense, you shall do all such things and sign all documents or instruments reasonably necessary to enable us to obtain, defend and enforce our rights in the Software and Products.

5. CHANGES TO CUSTOMER AGREEMENT

- 5.1 If either party submits written requests for changes to the Customer Agreement, we will advise you of the likely impact of any such change, including but not limited to, any effect on the Charges and delivery.
- 5.2 Until such time as any change is agreed in writing or until the expiry of due notice both parties shall continue to provide their respective obligations set out in these Terms and Conditions as if such change had not been requested.

6. CHARGES AND PAYMENT TERMS

- 6.1 The Charges for Products and Services will be stated in the relevant Customer Agreement or attached Schedule of Charges and be payable at the times (and/or completion of the stages) identified therein. All Charges for continuing Services provided to you may (to the extent not already paid in advance) be varied by us on thirty days' prior written notice to you, and we reserve the right to remove restrictions or reduce prices without notice. No variation will occur within the Minimum Period.
- 6.2 We reserve the right to require payment of a deposit before supply of any Products or Services. We may also charge for additional Services requested by you.
- 6.3 Payment of all charges under any Customer Agreement shall be made in full and free from any deductions, rights of set-off, counterclaims or liens
- 6.4 In the event that as a result of completion of the Customer Agreement received from you, we order any third party equipment or services on your behalf you will be responsible for and shall indemnify us against all costs we may incur on your behalf to any third party including, without limitation, any costs incurred due to a cancellation on your part or any costs incurred due to you failing to provide such assistance as we may reasonably request including, without limitation, access to your premises at the agreed time.
- 6.5 The Charges and any Expenses quoted are exclusive of VAT, and VAT at the prevailing rate will be added to any invoice

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payable under the Customer Agreement and will be payable by you.

- 6.6 Without prejudice to any of our rights hereunder we shall be entitled to claim interest on a daily basis, before and after judgment of any court, from the due date of payment until the date of actual payment in full of any overdue Charges payable by you at a rate of 3% above The Royal Bank of Scotland's then prevailing base rate.
- 6.7 Without prejudice to any other rights or remedies we may upon seven (7) days prior written notice, withhold the supply of the Products and/or Services in the event that you are overdue with any payment due or are in material breach of these Terms and Conditions, until such time as the payment is made or the breach remedied.
- 6.8 We reserve the right to remove, withdraw or modify without prior notification any service which does not comprise the Service and which you do not pay for and we shall not be liable as a result of such actions where reasonably taken.

7. INFRINGEMENT

- 7.1 We will indemnify and hold you harmless against any damages (including reasonable costs) that may be awarded to any third party in respect of any claim or action that your normal operation possession or use of the Products or Services provided by us within the European Union infringes the Intellectual Property Rights of such third party (an "Infringement") provided that you:
- 7.1.1 give written notice to us of any Infringement forthwith upon becoming aware of the same;
- 7.1.2 give us the sole conduct of the defence to any claim or action in respect of an Infringement and do not at any time admit liability or otherwise settle or compromise or attempt to compromise or settle the said claim or action except with our written consent;
- 7.1.3 act in accordance with our reasonable instructions and give us such assistance as we shall reasonably require in respect of the conduct of the said defence. We will reimburse reasonable out-of-pocket expenses incurred by you in providing such assistance.
- 7.2 The indemnity set out in Clause 7.1 above shall not apply where the Infringement arises from, or is incurred by, reason of:
- 7.2.1 the combination, or use, of the Product with any equipment or software not supplied or reasonably approved in writing by us; or
- 7.2.2 your use of the Product and/or Services other than as authorised under these Terms and Conditions.
- 7.3 In the event of an Infringement and as your sole remedy apart from the benefit of the indemnity set out in clause 7.1 above, we shall be entitled at our own expense and option and in a timely manner either to:
- 7.3.1 procure the right for you to continue to use the Product; or
- 7.3.2 modify the Product (without materially detracting from its functionality) so as to avoid the Infringement; or
- 7.3.3 replace the Product with non-infringing substitutes provided that such substitutes do not entail a material reduction in functionality.
- 7.4 If we in our reasonable judgement are not able to exercise any of the options set out in Clause 7.3 above then you shall

return the Product that is the subject of the Infringement and we shall refund the Charges paid.

- 7.5 This Clause 7 states our entire liability and your sole remedy with regard to an Infringement.

8. WARRANTIES

- 8.1 We warrant that:
- 8.1.1 we have full capacity and authority and all necessary consents, skill and resources to enter into and to perform these Terms and Conditions;
- 8.1.2 we have the authority to licence the Products and to provide the Services upon these Terms and Conditions;
- 8.1.3 if we are acting as Reseller in respect of any Products or Services we shall to the extent we are reasonably able in all of the circumstances assign or make available to you the benefit of any warranties given by the manufacturer of such Products or supplier of such Services and we will, where requested by you in writing, provide you in writing with full details of Products and/or Services provided by such third party manufacturers and suppliers;
- 8.1.4 we will abide by any specific warranty given in any Part.
- 8.1.5 we will use reasonable skill and care in selecting or supplying Products and/or Services.
- 8.2 We shall as soon as we are reasonably able investigate any alleged breach of warranty and in the case of a breach of warranty falling within Clause 8.1.3 above our sole liability shall be to assist you in obtaining the benefit of any warranties given by the manufacturer.
- 8.3 Except as expressly set forth in these Terms and Conditions and any Part, all warranties, terms and conditions, whether oral or written, express or implied by statute, common law, or otherwise (including but not limited to any warranties, terms and conditions of fitness for purpose, description or quality) are hereby excluded.
- 8.4 Please note in particular, that without limiting the generality of clause 8.3, we do not warrant, represent or guarantee in any way whatsoever that our Products or Services will be virus-free (subject to those provisions contained in Parts D and H). We advise that you take legal advice as to your liability in relation to the transmission of viruses and to refer to your insurers in relation to such matters.
- ### 9. LIMITATION OF LIABILITY AND NON-AVAILABILITY
- 9.1 Neither party excludes or limits its liability to the other for:
- 9.1.1 death or personal injury caused by its negligent act or omission; or
- 9.1.2 any 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 We shall not be liable in respect of:
- 9.2.1 any adverse effect on the Services resulting from the application of any process, operation or treatment by you unless specifically recommended or agreed to by us in writing; or
- 9.2.2 any expenditure incurred by you in respect of Services alleged to be defective unless

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- authorised by us prior to that expenditure being incurred.
- 9.3 Except as specified in Clauses 7 & 9.1 above and subject to Clauses 9.2, 9.4 and 9.5, our maximum aggregate liability for all claims made by you in relation to any Products and/or Services under an applicable Customer Agreement shall not exceed one hundred and fifty percent (150%) of the Charges paid under the applicable Customer Agreement in the last 12 months, in respect of such Products and/or Services in respect of which such claim is made, however that claim arises including (without limitation) negligent error or omission, breach of contract, tort, misrepresentation (excluding fraudulent misrepresentation) or breach of statutory duty.
- 9.4 We shall accept no liability for failure to deliver the Products or perform the Services which is beyond our control and which arises from the acts or omissions of any third party including but not limited to our suppliers or telecom providers or for any failures or faults of their equipment.
- 9.5 You acknowledge that we are not the manufacturer of any Products supplied hereunder. Save as expressly provided for in these Conditions, we give no warranties in relation to the Products and shall not be liable to you whether in damages or otherwise for any damage to or defect in the Products. You must rely solely on any warranties given to you by the manufacturer of the Products. To this effect, we will pass on to you such unexpired warranties we receive from the manufacturer of the Products as are capable of transfer. You accept that all documentation relating to the Products shall be provided only in English.
- 9.6 Subject to Clause 9.1, we do not accept liability under or in relation to any Customer Agreement nor its subject matter (whether such liability arises due to negligence, breach of contract, misrepresentation, or for any other reason excluding fraudulent misrepresentation) for any loss of profits, loss of business, loss of anticipated savings, loss of sales or turnover, loss of, or damage to reputation, loss of contract, loss of customers, nor loss of use of any software or data, loss of use of any computer or other equipment or plant, wasted management or other staff time, losses or liabilities under or in relation to any other contract, nor any indirect, consequential loss or damage. For the purposes of this clause, the term "loss" includes a partial loss or reduction in value as well as a complete or total loss.
- 9.7 Both parties expressly agree that should any limitation of liability clause or provision contained in these Terms and Conditions be held to be invalid under any applicable legislation (primary or otherwise) or rule of law by reason of some part of that clause or provision it shall, to that extent, be deemed omitted, but if we thereby become liable for loss or damage which would otherwise have been excluded or limited, as the case may be, such liability shall be subject to the other applicable limitations and provisions set out herein.
- 9.8 Unless we agree otherwise under a separate contract we are not responsible for the security of your networks and/or systems and shall not be liable for unauthorised access thereto.
- 9.9 Notwithstanding any provisions of this Clause 9 in the event of Critical (as defined in the relevant Part) non-availability of connection or use of all of the Services or Products supplied by us which results in non-availability below the guaranteed level in any Part, you may be entitled to a refund in respect of any Charges. Such refund is dealt with in the applicable Part. For the avoidance of doubt, non-availability of one or more Services or Products shall not give rise to more than one claim for compensation and shall be treated as one claim only.
- 9.10 If we are hindered or prevented from performing this Customer Agreement owing to any cause wholly beyond our reasonable control then we may delay, suspend or cancel, in whole or in part, performance of such of the Services under this Customer Agreement as we are unable to perform from such cause of Force Majeure and we shall not in those circumstances be responsible for our inability to deliver the Services provided always that we shall be obliged without delay to seek alternative means of supply of the Services to you by third parties if these are available on normal commercial terms for so long as the Force Majeure event precludes us from supplying the Services.
- 9.11 Please note that we shall not be liable for any failure of the Products or Service which results from any interference (including maintenance, development or adaptation) with the Products by you or any third party which is not in accordance with standard use of the Products or our specific instructions; neither shall we be liable for any failure of the products resulting from an event of Force Majeure aforesaid.
- ## 10. TERM AND TERMINATION
- 10.1 These Terms and Conditions shall be deemed to have taken effect on signature by both parties and continue for the Minimum Period. Thereafter these Terms and Conditions shall automatically continue until terminated by either party giving the other not less than one month's notice in writing (including by fax or by email) of its intention to terminate, such notice to expire on the anniversary of the provision of each service or until terminated, in accordance with this Clause 10 or unless stated otherwise in any relevant Part. The charges for any continuation period after the Minimum Period shall be governed by Clause 6.1.
- 10.2 Notwithstanding any specific termination provisions contained within any Part of these Terms and Conditions may be terminated immediately on written notice:
- 10.2.1 by either party if the other party has committed a material breach of its obligations hereunder which is capable of remedy and fails to remedy such material breach within thirty (30) days of receipt of a written notice specifying details of such alleged breach; or
- 10.2.2 by either party if the other has a receiver, administrator or administrative receiver appointed or becomes the subject of a resolution, petition or order for winding up (save for the purposes of amalgamation or reconstruction where the amalgamated or reconstructed company agrees to adhere to these Terms and Conditions) or bankruptcy, or makes an assignment or arrangement for the benefit of its creditors or suffers similar circumstances in any jurisdiction in which it carries on business.
- 10.3 Termination of these Terms and Conditions shall be without prejudice to any rights of either party arising on or before termination, which includes without limitation, your obligation to make any payment due to us for Products and Services supplied (including for the avoidance of doubt any Charges incurred in respect of work in progress) prior to the date of termination. For the avoidance of doubt, Charges shall become due and payable during any period of notice of termination and in the event that termination occurs during any minimum period, you shall pay any and all Charges due until the expiry of any such minimum period.
- 10.4 The provisions of Clauses 4, 9, 10.3, 12 and 13 shall survive the termination of these Terms and Conditions and shall remain in full force and effect.
- 10.5 Without detracting from the foregoing provisions of Clause 10, in the event that we cease to be able to provide the

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Services comprised in any Part you shall be entitled (at your option) to cancel such Part forthwith provided always that the contract is fully paid up and that in the event of a cessation of Website Hosting under Part F, then we shall forthwith permit you or your agents to download such information from our servers as relates to, or contains the data or code to your Website (which we acknowledge is fully your property) and we shall co-operate with you/your agents to facilitate the hosting of your Website by such other person or organisation as you shall require; in the event of our ceasing to provide Secure Internet Mail Hosting Services under Part D then we shall likewise co-operate with you/your agents in facilitating alternative arrangements without delay and will take all reasonable steps to authorise or release Domain Names or pointers, and to safeguard emails and other data received by us for you and to forward this to you/your agents efficiently and in a timely manner; all Domain Names referred to in the Schedule of Services are acknowledged to be your entire property and any transfers of such Names or other data or software held upon our servers shall be transferred as required in order to comply with our foregoing obligations, and we shall take such steps to "point" the Domain Names owned by you to such servers as you may in writing require for the purposes aforesaid. During an event of Force Majeure we will (at your cost) take such similar steps, if required by you to provide alternative service for your systems whilst the Force Majeure Event shall subsist.

11. PERSONNEL

- 11.1 Each party will be responsible for the supervision, direction and control of its own personnel.
- 11.2 Our staff are entitled to carry out the Services without being subjected to either verbal or physical abuse. You undertake to treat our staff in a courteous manner. Any breach of this Clause will entitle us to suspend provision of the Services or delay delivery of any Products without penalty.
- 11.3 We both accept that either of us will suffer loss if a member of staff accepts employment with the other party during the continuance of this contract and 6 months thereafter. If a member of staff of one part accepts an offer of employment with the other party other than as a result of a relevant bona fide recruitment advertisement in the national or trade press the employing party will pay to the other party a sum equivalent to 6 months salary for that member of staff. This clause will apply to subsidiaries, associates and parent companies of either party.

12. CONFIDENTIALITY

- 12.1 By virtue of the Products and Services supplied under these Terms and Conditions, each party may have access to and/or otherwise become aware of the other party's Confidential Information. The parties agree that any Confidential Information obtained from or relating to the other, its servants or agents is the property of such other party. The parties shall treat as confidential and neither party (and its staff, agents or sub-contractors) shall disclose or use the Confidential Information of the other except to the extent necessary for the performance of these Terms and Conditions.
- 12.2 The provisions of Clause 12.1 shall not apply to Confidential Information which:-
- 12.2.1 is in or becomes part of the public domain (otherwise than by breach of these Terms and Conditions); or
- 12.2.2 was in the lawful possession of the receiving party prior to disclosure under these Terms and Conditions and was not unlawfully obtained, either directly or indirectly; or

12.2.3 is lawfully disclosed to the receiving party by a third party to these Terms and Conditions without restriction on disclosure; or which is independently developed by the receiving party without dependence on the Confidential Information; or

12.2.4 is required to be disclosed by law.

12.3 Each party shall only divulge Confidential Information of the other to those of its employees, agents or sub-contractors who are directly involved in the Project and shall take all reasonable precautions to ensure that such employees, agents or sub-contractors are aware of and comply with these obligations as to confidentiality.

12.4 Nothing in these Terms and Conditions shall prevent us from freely using data processing techniques, ideas, concepts and know-how gained during the performance of these Terms and Conditions in the furtherance of our business (and these may be retained by our employees in tangible form), to the extent that this does not relate to a disclosure or use of your Confidential Information, or an infringement of your Intellectual Property Rights or constitute a breach of these Terms and Conditions.

13. GENERAL

- 13.1 Neither party shall assign novate, sub-licence or otherwise transfer these Terms and Conditions and/or any Customer Agreement or any part thereof to any third party without the prior written consent of the other party, such consent is not to be unreasonably withheld.
- 13.2 All notices required under these Terms and Conditions shall be in writing and delivered by hand or sent by first class post for the attention of the other party's authorised representative at the address shown on the Customer Agreement and shall be deemed received on the earlier of actual receipt or three (3) days after posting.
- 13.3 If any provision of these Terms and Conditions is invalid or unenforceable at law, then such provision shall be severed and the remainder of these Terms and Conditions shall continue in full force and effect provided the same is capable of having commercial effect.
- 13.5 The waiver by either party of any breach of these Terms and Conditions by the other party in a particular instance shall not operate as a waiver of subsequent or other earlier breaches of the same or a different kind. No failure by either party in exercising or enforcing any of its rights under these Terms and Conditions and/or any Customer Agreement shall be deemed to be a waiver of such rights.
- 13.6 These Terms and Conditions (including any relevant Parts Schedules and Customer Agreement) constitute the entire understanding between the parties and save as expressly referred to or referenced herein supersede all prior representations, writings, negotiations or understandings oral or written relating to the Project, except in respect of any fraudulent misrepresentation made by either party.
- 13.7 All disputes between the parties arising out of or relating to these Terms and Conditions or any Customer Agreement or the breach, termination or validity thereof shall be referred by either party in writing, first to each party's authorised representative. The authorised representatives shall meet and attempt to resolve the dispute within a period of thirty (30) Business Days of the date of the referral of the dispute to them.
- 13.8 We may at any time, other than during the Minimum Period, vary the terms of these Terms and Conditions or any Part, by giving not less than 30 days notice in writing.
- 13.9 For operational and/or regulatory reasons we may vary the technical specifications of Products or Services from time to time but not so as to cause material deterioration in the

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- performance and such variance shall not invalidate these Terms and Conditions or any Part.
- 13.10 These Terms and Conditions are made within England and any dispute or difference arising out of or in connection with these Terms and Conditions and any Customer Agreement shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.
14. **HEALTH AND SAFETY AT WORK**
- 14.1 You undertake to take any steps reasonably specified by us or the relevant manufacturer to ensure that, as far as reasonably practicable, the Products will be safe and without risks to health at all times when they are being set, used, cleaned or maintained.
15. **DEFINITIONS**
- 15.1 "Charges" means our charges in respect of Products and Services as detailed in each individual Customer Agreement, or as otherwise from time to time in force.
- 15.2 "Confidential Information" means all information designated as such by either party in writing together with all such other information which relates to the business affairs, finance, products, data, software programs, specifications, documentation, software listings, source or object code, developments, pricing terms, trade secrets, know how, personnel, customers and suppliers of either party, together with all information which may reasonably be regarded as the confidential information of the disclosing party.
- 15.3 "Customer Agreement" means the Customer Agreement attached hereto together the Schedules and with these Terms and Conditions and any applicable Part.
- 15.4 "Documentation" means all operating manuals, user manuals and user documentation and any other documentation supplied by us or our suppliers which is associated with the use or provision of the Products and/or Services together with all reports, proposals and other documents all as specified in the Customer Agreement, as may be modified from time to time.
- 15.5 "Expenses" means any additional costs reasonably incurred by us on your behalf or as a result of your acts or omissions or non-compliance with these Terms and Conditions.
- 15.6 "Force Majeure" means an event beyond our reasonable control including, without limitation, strike, lock-out, labour dispute, act of God, war, riot, civil commotion, malicious damage (including virus/hacking attacks or other intentional malicious acts of third parties, but subject to the terms of Part D), compliance with a law or governmental order, rule, regulation or direction, accident, third party interference, actions or omissions of telecommunication providers, fire, flood and storm.
- 15.7 "Hardware" means any item of computer hardware, equipment and/or peripherals as specified in the relevant Customer Agreement.
- 15.8 "Intellectual Property Rights" means any patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registerable or not, in any country (including, but not limited to, the UK).
- 15.9 "Minimum Period" means twelve months from the date on which our first invoice is sent to you.
- 15.10 "Part" means any of those parts A onward forming part of these Terms and Conditions as incorporated.
- 15.11 "Products" means any item of Hardware or Software as specified in the relevant Customer Agreement.
- 15.12 "Project" means the supply and delivery of Products and/or performance of Services specified in the Customer Agreement.
- 15.13 "Services" means any services supplied by us to you from time to time as specified in the relevant Customer Agreement.
- 15.14 "Site" means your site address within the United Kingdom specified in the Customer Agreement at which the Products are to be delivered or the Services are to be performed.
- 15.15 "Software" means any item described as such in the relevant Customer Agreement (including were applicable pursuant to the relevant Parts of these Terms and Conditions).
16. **SCHEDULES**
- 16.1 A Schedule of Services may be attached to, and form part of, this Customer Agreement.