

APPENDIX 2

IF YOU PROVIDE SOFTWARE SERVICES TO THE COMPANY THE FOLLOWING TERMS SHALL APPLY

These terms are supplementary to the Main Terms. All capitalised terms shall have the definitions set out in the Main Terms.

1. SERVICES AND LICENCE

- 1.1 The Supplier shall provide the Software Services specified in the Particulars. The Software Services will be governed by the Terms more generally and the special terms in this Appendix 2.
- 1.2 Supplier hereby grants the Company a worldwide, non-exclusive, non-transferrable (except in respect of any Group Company), sublicensable right to permit the Authorised Users to access the Software, the Services and the Documentation, during the applicable Subscription Term as specified in each Purchase Order entered into from time to time by the Company.
- 1.3 the Company shall ensure that:
 - 1.3.1 only Authorised Users shall have access to the Software;
 - 1.3.2 each Authorised User keeps a secure password for his use of the Software and that each Authorised User keeps his password confidential; and
 - 1.3.3 it shall not store, distribute or transmit any Virus, or any material through the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.
- 1.4 Supplier shall facilitate upon request of the Company, the transfer of User Subscriptions between Authorised Users provided that it does not exceed the number of User Subscriptions granted pursuant to the applicable Purchase Order.
- 1.5 Where the number of Authorised Users exceeds the number of User Subscriptions purchased by the Company under these Terms, the Supplier's sole and exclusive remedy will be the applicable Fees for the period of such excess usage.
- 1.6 The Supplier shall perform the Services exclusively at the Supplier Permitted Locations.
- 1.7 The Supplier shall on a monthly basis provide the Company with reports and information to enable the Company to effectively monitor the Supplier's performance against the Service Levels. Without prejudice to the foregoing, the Supplier promptly upon request provide the Company with such reports and information as the Company may reasonably require in relation to the provision of the Services.
- 1.8 The Supplier agrees that the provision of the Services shall be subject to continuous improvement and shall provide to the Company upon reasonable request a detailed report setting out how it will improve the provision of the Services to the Company. The Supplier shall notify and make available to the Company any upgrades, updates and releases it makes generally available to its clients and customers.
- 1.9 The Supplier shall procure the attendance of sufficiently senior members of the Supplier Personnel to attend meetings with the Company from time to time upon the Company's reasonable request.
- 1.10 The Supplier and the Company shall agree in writing a member of the Supplier Personnel to be the Supplier Account Manager. The Supplier shall arrange that the Supplier Account Manager is responsible for the day to day activities relating to the Services and is the Company's first point of contact regarding the Services. The Supplier shall use all reasonable endeavours retain the Supplier Account Manager's engagement on the Services.
- 1.11 The Supplier shall:
 - 1.11.1 promptly provide to the Company all information, materials, ancillary services reasonably required in relation to the Services; and
 - 1.11.2 ensure that the Supplier Personnel, who are required to enter any the Company premises, comply with the security and health and safety regulations and other policies in force at such premises from time to time, obey the reasonable instructions of the Company while on such premises and otherwise not cause any disruption, spoilage, disturbance or damage to such premises.

2. ACCESS TO THE SERVICES

- 2.1 Supplier grants the Company a right to receive the Services under a Purchase Order during the applicable Subscription Term.
- 2.2 Supplier recognises that the Company may have legitimate business reasons for not upgrading to a new version of the Software as soon as the version becomes available. In the event of cessation of support of old versions which have reached their end-of-life, Supplier shall serve the Company a minimum of twelve (12) month's written notice of its intention to cease support such product version, Supplier may remove the Company's access to that version and upgrade the Company to a new version at no extra cost to the Company.
- 2.3 The Supplier shall ensure that any upgrade, update or release of the Software shall conform to the requirements of these Terms and shall not result in a material degradation or change in functionality of the Services.

3. SUPPLIER'S WARRANTIES

- 3.1 Supplier warrants, represents and undertakes that the Services will be delivered in accordance with:
- 3.1.1 the Services Description set out in the Purchase Order;
 - 3.1.2 the Service Levels;
 - 3.1.3 the Documentation;
 - 3.1.4 Good Industry Practice;
 - 3.1.5 Applicable Law; and
 - 3.1.6 the Appendices 1 to 5, 7 and 8 and any other of the Company's policies.
- 3.2 Supplier warrants, represents and undertakes that it:
- 3.2.1 shall not introduce any software into the Company System other than the Software without the Company's prior written consent;
 - 3.2.2 has and shall maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these Terms (including but not limited to its provision of the Software, Services and Documentation) and that the performance of its obligations shall not infringe the rights of any third party;
 - 3.2.3 has full authority to enter into these Terms to provide the Services and that doing so will not amount to a breach by the Supplier of any contract or binding agreement (whether written or oral) to which it is a party;
 - 3.2.4 all information which the Supplier or any of its representatives has furnished to the Company or any of its representatives prior to the Effective Date of these Terms and, in respect of each Order, Service Commencement Date, in connection with or for the purposes of the transaction evidenced by these Terms or Purchase Order is true, complete and correct in all material respects (except to the extent based on incorrect information provided by the Company to the Supplier); and
 - 3.2.5 the Supplier has carried out due diligence in accordance with Good Industry Practice with the objective of satisfying itself as to all risks, contingencies and circumstances to do with the performance of these Terms and any Purchase Order.
- 3.3 Supplier warrants, represents and undertakes that Supplier's hosting environment meets the following requirements:
- 3.3.1 preservation of the confidentiality of all of the Company's Confidential Information, which includes any back up media produced which incorporates in any way the Company Data;
 - 3.3.2 provision of adequate security measures is in place at all times and are fully documented and made available to the Company upon request including but not limited to the provision of firewalls, virus detection and intrusion monitoring;
 - 3.3.3 Supplier shall maintain daily backups of the Company Data for disaster recovery purposes in accordance with Clause 11 of the Main Terms and Appendix 6;
 - 3.3.4 all the Company Data is encrypted for any transmission; and
 - 3.3.5 Supplier shall ensure that it fully supports and maintains the hosting environment including putting in place, disaster recover planning and performance and capacity monitoring in accordance with Clause 11 of the Main Terms.
- 3.4 The Supplier warrants that:
- 3.4.1 the Software is free from any Virus; and
 - 3.4.2 the Software is free from Open Source Software
- and the Supplier undertakes to use Software tools in accordance with Good Industry Practice to detect the presence of any Virus and/or Open Source Software.
- 3.5 Without prejudice to Clause 23 of the Main Terms and/or paragraphs 3.1, 6.1 and 6.2 of this Appendix 2, in the event that the Supplier is non-compliant with any warranty in these Terms relating to the provision of Software, the Supplier shall, at the Supplier's option, promptly repair, replace or remedy (as appropriate) the non-compliant Software.
- 3.6 If none of the options in Clause 23 of the Main Terms are reasonably practicable, the Company may (but is not obligated to) terminate these Terms, in which case Supplier shall refund to the Company all Fees pre-paid to Supplier for unused Services (without prejudice to any other remedy available to the Company).
- 3.7 In the event that the Supplier becomes aware of its non-compliance with any of the warranties in paragraphs 3.1 to 3.4 of this Appendix 2, it will notify the Company immediately and will provide full co-operation to the Company in its investigation of any such non-compliance.
- 3.8 The warranties, representations and undertakings in paragraph 3.1 to 3.4 of this Appendix 2 shall be repeated by the Supplier as at the date of providing any new Software or Software Services.

4. SERVICE LEVELS

- 4.1 The Supplier shall use make the Services available 24 hours a day, seven days a week, except for:
- 4.1.1 planned maintenance carried out during the Maintenance Window; and

- 4.1.2 unscheduled maintenance performed outside Maintenance Window but during Business Hours, provided that the Supplier has used reasonable endeavours to give the Company at least 6 Business Hours' notice in advance.
- 4.2 If there is a Service Failure, (without limiting any other obligations the Supplier may have and without limiting any other rights or remedies of the Company) the Supplier shall:
- 4.2.1 notify the Company immediately of the Service Failure; and
- 4.2.2 carry out promptly in accordance with Good Industry Practice and at its own cost resolution of the Service Failure; and
- 4.2.3 shall provide an incident report relating to the Service Failure which shall identify the cause of the Service Failure and will propose measures that the Supplier shall take in order to minimise the recurrence of such Service Failure.
- 4.3 The Supplier shall provide the Company with a monthly report detailing its performance in respect of each of the Service Levels in such format as is acceptable to the Company (acting reasonably).
- 4.4 The Supplier shall calculate any applicable Service Credits in accordance with the provisions set out in the Purchase Order Details and shall make payment of the Services Credits to the Company in accordance with the provisions of Clause 4.9 of the Main Terms.
- 4.5 The Parties agree that the Service Credits are not a penalty and are a genuine pre-estimate of the loss likely to be suffered by the Company in respect of a failure by the Supplier to comply with the relevant Service Level.
- 4.6 The Supplier acknowledges that Service Credits are in addition to (and not a substitute for) any other rights or actions the Company may have against Supplier arising from the Supplier's failure to provide the Services in accordance with these Terms.

5. THE COMPANY OBLIGATIONS AND RELATED PROVISIONS

- 5.1 the Company shall provide to the Supplier and shall procure the provision of its personnel to the Supplier, information and cooperation that is reasonably required by the Supplier to provide the Software Services, including the provision of access and functioning of the Company System to effectively interface with the Software. The Supplier shall be relieved of any failure to provide the Software Services as a direct result of the Company's failure to perform such obligations provided that the Supplier has notified to the Company in writing of such failure of the Company as soon as reasonably practicable.

6. PROPRIETARY RIGHTS

- 6.1 the Company acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Software or the Documentation and these Terms do not grant the Company any rights to, or in, the Intellectual Property Rights, or any other rights or licences in respect of the Software or any Documentation subject to paragraphs 6.2 and 6.3 of this Appendix 2.
- 6.2 Where any Intellectual Property in the Work Products is created under these Terms, such Intellectual Property belongs to and shall irrevocably belong to the Company and the Supplier hereby assigns to the Company all such Intellectual Property and hereby agrees that any Intellectual Property therein that come into existence after the date hereof shall vest absolutely in the Company immediately upon such rights coming into existence and to that end the Supplier hereby assigns with full title guarantee for all purposes, applications and fields of use (including by way of present assignment of future rights in relation to rights not yet created) and free from all third party rights, all right, title and interest in and to the foregoing to the Company absolutely. The Supplier agrees to do all acts and execute all documents necessary to give effect to the provisions of this section 6 of Appendix 2. The Supplier hereby unconditionally and irrevocably waives all moral rights in relation to such Intellectual Property. For the avoidance of doubt, all Intellectual Property Rights in the Company Data shall remain the property of the Company and the Supplier is not granted any rights under these Terms in the Company Data except to the extent strictly necessary for the purposes of providing the Services.
- 6.3 Supplier hereby grants the Company a worldwide, non-exclusive, perpetual, non-transferrable (except in respect of the Company Companies which shall be transferrable), sublicensable right to use any Intellectual Property Rights incorporated into the Work Products (including, for the avoidance of doubt, any Intellectual Property Rights prior to their assignment to the Company pursuant to this section 6 of Appendix 2 and any Supplier Software incorporated in the Software).
- 6.4 The Supplier will execute, and procure the execution of, all necessary contractual documentation with Supplier Personnel to give effect to its obligations under this section 6 of Appendix 2.