MAINTENANCE TERMS AND CONDITIONS

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement and the Maintenance Schedule.

Charges	the charges payable for the Services under this agreement, as set out in the Maintenance Schedule.
Confidential Information	has the meaning given in clause 11.
Deliverables	any Documentation, Software, know-how or other works created or supplied by the Supplier (whether alone or jointly) in the course of providing the Services.
Documentation	the documents that may be provided by the Supplier for the Software, in either printed text or machine-readable form, including the technical documentation, program specification and operations manual.
Hardware	the Hardware that is to be maintained as part of the Services and as set out in the Maintenance Schedule.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to preserve the confidentiality of information (including know-how and trade secrets) and any other intellectual property rights, including all applications for (and rights to apply for and be granted), renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world.
Licence	the licence of from the Supplier to the Customer to allow the Customer to use the software.
Maintenance Release	a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version as may be provided as set out in the Maintenance Schedule.
Maintenance Schedule	the schedule signed between the parties and attached to these terms and conditions.
Manager	the person appointed by the Customer from time to time in order to fulfil the role described in clause 8.3.
Modification	any Maintenance Release or New Version which is acquired by the Customer.
New Version	any new version of the Software which from time to time is publicly marketed and offered for purchase by the Supplier in the course of its normal business, being a version which contains such significant differences from the previous versions as to be generally accepted in the marketplace as constituting a new product.
Services	includes (as appropriate) the Standard Support Service, the Updating Service, which are included in the Maintenance Schedule.
Software	the software set out in the Maintenance Schedule.
Support Service	the support service more particularly described in the Maintenance Schedule.
Standard Support Hours	such hours as are included in the Maintenance Schedule.
Support Manager	the person appointed by the Supplier from time to time in order to fulfil the role described in clause 4.
Support Staff	those individuals who perform the Supplier's obligations under this agreement including (where the context permits) the Support Manager.
Supported Software	has the meaning set out in clause 2.1.
Third-Party Licences	any open-source software licences incorporated into the software including the general public license (if applicable), and any proprietary third-party software licences.
Third-Party Software	any open-source software incorporated into the software and any proprietary third-party software.
Updating Service	the service to be supplied by the Supplier to the Customer under clause 3.1 and clause 3.2.

1.2 The headings in this agreement do not affect its interpretation. Except where the context otherwise requires, references to clauses and schedules are to clauses and schedules of this agreement.

1.3 Unless the context otherwise requires:

1.3.1 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.3.2 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.3.3 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.3.4 A reference to any party shall include that party's personal representatives, successors and permitted assigns.

1.3.5 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.

1.3.6 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.

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

1.4 If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

1.5 Words in the singular include the plural and those in the plural include the singular.

1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2. Supported Software

2.1 The Supported Software is:

2.1.1 the Software;

2.1.2 any Modification which is acquired by the Customer (whether under the Licence, this agreement or any other agreement between the Supplier and the Customer) during the course of the Licence and which accordingly becomes part of the software defined as the Software under the Licence; and

2.1.3 any other software which the Supplier and Customer agree should be Supported Software for the purposes of this agreement as set out in the Maintenance Schedule.

2.2 In relation to Maintenance Releases:

2.2.1 as part of the Updating Service, the Supplier shall from time to time make Maintenance Releases available to the Customer without charge; and

2.2.2 if the Customer fails to make arrangements for the installation of a Maintenance Release within one month of the Supplier's notifying the Customer that such Maintenance Release is available for installation, the Supplier may terminate this agreement by giving one month's written notice to the Customer.

2.2.3 Unless otherwise agreed in the Maintenance Schedule, the Customer agrees that it will accept any New Versions offered to the Customer by the Supplier and the Customer shall be deemed to have accepted the New Version within seven days of delivery of the New Version or the Customer commences operational use of the New Version.

3. The Services

3.1 The Supplier shall supply, and the Customer shall take and pay for, the following Services in accordance with the Service Levels:

3.1.1 the Standard Support Service;

3.1.2 the Updating Service; and

3.2 In relation to the Updating Service:

3.2.1 the Supplier shall issue Modifications of the Software as and when required and in whatever form (including, in the case of Non-critical Faults, by way of a local fix or patch of the Software or a temporary by-pass solution) in the absolute discretion of the Supplier;

3.2.2 the Updating Service shall include the supply to the Customer of all revisions to the Documentation which are necessary in order to reflect any Modification acquired by the Customer;

3.2.3 for the avoidance of doubt, the cost of the Updating Service is included in the Charges payable for the Standard Support Service, but excludes any sum payable by the Customer in respect of the licence of a New Version.

3.3 The Supplier may, on prior notice to the Customer, make changes to the Services, provided such changes do not have a material adverse effect on the Customer's business operations.

3.4 The Supplier shall have no obligation to provide the Services where faults arise from:

3.4.1 misuse, incorrect use of or damage to the Software or Hardware and/or Maintenance Schedule from whatever cause (other than any act or omission by the Supplier), including failure or fluctuation of electrical power;

3.4.2 failure to maintain the necessary environmental conditions for use of the Software or Hardware;

3.4.3 use of the Software or Hardware in combination with any equipment or software not provided by the Supplier or not designated by the Supplier for use with any Modification forming part of the Supported Software, or any fault in any such equipment or software;

3.4.4 relocation or installation of the Software or Hardware by any person other than the Supplier or a person acting under the Supplier's instructions;

3.4.5 any breach of the Customer's obligations under this agreement howsoever arising or having the Software maintained by a third party;

3.4.6 any Modification not authorised by the Supplier resulting in a departure from the Specification (as defined in the Licence).

3.4.7 operator error.

4. Support Staff

4.1 The Supplier shall appoint a Support Manager, who shall be responsible for the co-ordination of all matters relating to the Services. All communications, documentation and materials relating to this agreement shall be sent as appropriate by the Support Manager to the Manager. Each party shall notify the other in writing promptly if there is any proposed change to those appointments.

4.2 In addition to its Support Manager, the Supplier shall provide sufficient Support Staff to fulfil its obligations under the terms of this agreement. The Support Staff shall be suitably trained and experienced in the support and maintenance of the Supported Software.

4.3 In the absence of the Support Manager or of any other member of the Support Staff for any reason, the Supplier shall supply a replacement person who:

4.3.1 is appropriately trained and competent to fulfil the role required of him; and

4.3.2 has undergone a sufficient period of familiarisation with the Services to enable him to perform the functions of the person he is replacing.

5. Further terms relating to the Services

5.1 The Supplier shall ensure that, while on the Customer's premises, the Support Manager, the Support Staff and all other persons who enter such premises with the authority of the Supplier for the purpose of, or in connection with, this agreement or the provision of the Services, adhere to the Customer's security procedures and health and safety regulations, as from time to time notified to the Supplier or otherwise brought to the notice of the Supplier or such persons. The Customer may remove or refuse admission to any person who is, or has been, in material breach of such procedures and regulations. However, the Supplier shall incur no liability for any delay in performing or failure to perform its obligations under this agreement as a result of compliance with the terms of this clause 5.1.

6. Charges

6.1 In consideration of the Services, the Customer shall pay the Charges set out in the Maintenance Schedule in accordance with the terms set out in the Maintenance Contract.

6.2 If the Customer fails to make any payment due to the Supplier under this agreement by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 3% per annum above Bank of England's 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.

6.3 All amounts payable under this agreement shall be exclusive of VAT or relevant local sales tax (if any) or any relevant local sales taxes which shall be paid at the rate and in the manner for the time being prescribed by law.

6.4 The Supplier may increase the Charges as from each anniversary of the date of this agreement. Any increase shall be notified to the Customer at least three months before such anniversary.

6.5 All amounts due under this agreement shall be paid by the Customer to the Supplier in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

7. Intellectual Property Rights

7.1 All Intellectual Property Rights in the Deliverables shall belong to the Supplier, and the Customer shall have no rights in respect of any of the Deliverables except as expressly granted under this agreement. The Customer shall do or procure to be done all such further acts and things and sign or procure the signature of all such other documents as the Supplier may from time to time require for the purpose of giving the Supplier the full benefit of the provisions of this clause 7.1.

7.2 The Supplier undertakes at its own expense to defend the Customer or, at its option, settle any claim or action brought against the Customer alleging that the use or possession of any of the Deliverables (or any part of them) infringes the UK Intellectual Property Rights of a third party (Claim) and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by, or awarded against, the Customer as a result of or in connection with any such Claim. For the avoidance of doubt, clause 7.2 shall not apply where the Claim in question is attributable to possession, use, development, modification or maintenance of the Deliverables (or any part thereof) by the Customer other than in accordance with the terms of this agreement, use of the Deliverables in combination with any hardware or software not supplied or specified by the Supplier, if the infringement would have been avoided by the use of the Deliverables not so combined, or use of a non-current release of the Software.

7.3 Clause 7.2 is conditional on the Customer:

7.3.1 as soon as reasonably practicable, giving written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

7.3.2 not making any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);

7.3.3 giving the Supplier and its professional advisers at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and

7.3.4 subject to the Supplier providing security to the Customer to the Customer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, taking such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

7.4 If any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the Customer, the Supplier may at its sole option and expense:

7.4.1 procure for the Customer the right to continue using, developing, modifying or maintaining the Deliverables (or any part of them) in accordance with the terms of this agreement;

7.4.2 modify the Deliverables so that they cease to be infringing and provide comparable functionality;

7.4.3 replace the Deliverables with non-infringing works providing comparable functionality; or

7.4.4 terminate this agreement immediately on notice to the Customer and repay to the Customer all sums which the Customer has paid to the Supplier under this agreement during the year in which the termination occurs, less a charge for the Services performed up to the date of termination.

7.5 Notwithstanding any other provision in this agreement, clause 7.2 shall not apply to the extent that any claim or action referred to in that clause arises directly or indirectly through the possession, use, development, modification or maintenance of any Open-Source Software incorporated into the Software or through the breach of any Third-Party Licence relating to any Open-Source Software so incorporated howsoever arising.

7.6 This clause 7 constitutes the Customer's exclusive remedy and the Supplier's only liability in respect of Claims and, for the avoidance of doubt, is subject to clause 14.1.

8. The Customer's responsibilities

8.1 Without prejudice to clause 5.1, the Customer shall provide the Supplier, the Support Manager, the Support Staff and all other persons duly authorised by the Supplier with full, safe and uninterrupted access including remote access to the Customer's premises, systems, facilities and the Software as may reasonably be required for the purpose of performing the Services, such access, except in the case of emergency or agreed out-of-hours downtime, to be within the Standard Support Hours. Where the Services are to be performed at any of the Customer's premises the Customer shall provide adequate working space and office facilities (including telephone) for use by the Support Staff and take reasonable care to ensure their health and safety.

8.2 The Customer shall ensure that appropriate environmental conditions are maintained for the Supported Software and shall take all reasonable steps to ensure that the Supported Software is operated in a proper manner by the Customer's employees.

8.3 The Customer shall nominate a manager to be available to liaise with, and respond to queries from, the Support Manager.

8.4 The Customer shall:

8.4.1 co-operate with the Supplier in performing the Services and provide any assistance or information as may reasonably be required by the Supplier, including in relation to the diagnosis of any faults;

8.4.2 report faults promptly to the Supplier; and

8.4.3 keep full backup copies of all of its data; and

8.4.4 comply with any other obligations as may be set out in the Maintenance Schedule.

8.5 The Customer shall indemnify the Supplier against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Supplier as a result of the Customer's breach of this agreement howsoever arising or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

9. Meetings

For the duration of this agreement, the Manager, the Support Manager and such Support Staff as may from time to time be considered appropriate shall meet at least once annually to review the agreement at a Customer office location and at a time to be agreed between the Manager and the Support Manager, for the purpose of discussing provision of the Services and any other appropriate matters.

10. Risk and title

Risk in, and title to, any media bearing any Software or Documentation or other information that may from time to time be supplied by the Supplier to the Customer shall pass to the Customer on acceptance by the Customer.

11. Confidentiality and publicity

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

11.2 Each party shall notify the other party if any of its staff connected with the provision or receipt of the Services becomes aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other party, at that other party's reasonable cost, in connection with any enforcement proceedings which that other party may elect to bring against any person.

11.3 The terms of this agreement may not be disclosed by the Customer (other than to its legal advisors) without the prior written consent of the Supplier.

11.4 The Supplier may refer to the Customer as being a client of the Supplier in customer reference lists and sales presentations, but shall not refer to the Customer in any advertising or press release without the prior written consent of the Customer.

11.5 The provisions of this clause 11 shall remain in full force and effect notwithstanding any termination of this agreement.

12. Data protection

12.1 Each party shall at all times comply with the Data Protection Act 1998.

12.2 The Supplier shall promptly and fully notify the Customer in writing of any notices in connection with the processing of any Customer Personal Data, including subject access requests, and provide such information and assistance as the Customer may reasonably require.

12.3 The Customer acknowledges that the Supplier will be acting as a data processor, rather than as a data controller, in respect of all such data processing activities which the Supplier carries out under this agreement.

12.4 Except as expressly provided otherwise, this agreement does not transfer ownership of, or create any licences (implied or otherwise), in any Intellectual Property Rights in any (non-personal) data.

13. The Supplier's warranties

13.1 The Supplier represents and warrants to the Customer that:

13.1.1 the Services will be performed:

(a) in accordance with all applicable laws and regulations; and

(b) with all reasonable skill and care;

13.1.2 to the best of its knowledge and belief, the Deliverables will not infringe the UK Intellectual Property Rights of any third party; and

13.1.3 at the date of this agreement, the Supplier has obtained and will maintain for the duration of this agreement all permissions, licences and consents necessary for the Supplier to perform the Services.

13.2 If, during the term of this agreement, the Supplier receives written notice from the Customer of any breach by the Supplier of the representations and warranties contained in clause 13.1.1, the Supplier shall, at its own option and expense, remedy that breach within a reasonable period following receipt of such notice, or terminate this agreement immediately on written notice to the Customer and repay to the Customer all sums which the Customer has paid to the Supplier under this agreement during the year in which the termination occurs, less a charge for the Services performed up to the date of termination. The Customer shall provide all information reasonably necessary to enable the Supplier to comply with its obligations under this clause 13.2. This clause sets out the Customer's sole remedy and the Supplier's entire liability for breach of clause 13.1.1.

13.3 No representation or warranty is given by the Supplier that all faults will be fixed, or will be fixed within a specified period of time.

13.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

14. Limits of liability

14.1 Except as expressly stated in clause 14.2:

14.1.1 the Supplier shall not in any circumstances have any liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:

(a) special damage, even though the Supplier was aware of the circumstances in which such special damage could arise;

(b) indirect loss of profits;

(c) loss of anticipated savings;

(d) loss of business opportunity;

(e) loss of or goodwill;

(f) loss of, or damage to (including corruption of), data;

provided that this clause 14.1.1 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 14.1.3 or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 14.1.1;

14.1.2 the Customer agrees that, in entering into this agreement, either it did not rely on any representations (whether written or oral) of any kind or of any person other that those expressly set out in this agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this agreement) that it shall have no remedy in respect of such representations and (in either case) the Supplier shall not in any circumstances have any liability otherwise than in accordance with the express terms of this agreement; and

14.1.3 the total liability of the Supplier, whether in contract, tort (including negligence) or otherwise and whether in connection with this agreement or any collateral contract, shall in no circumstances exceed a sum equal to three times the value of the charges payable by the Customer in connection with this agreement.

14.2 The exclusions in clause 13.4 and clause 14.1 shall apply to the fullest extent permissible at law but the Supplier does not exclude liability for:

14.2.1 death or personal injury caused by the negligence of the Supplier, its officers, employees, contractors or agents;

14.2.2 fraud or fraudulent misrepresentation;

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

14.2.4 any other liability which cannot be excluded by law.

14.3 The Customer acknowledges that:

14.3.1 it is exclusively responsible for:

(a) reviewing any new Modifications in accordance with clause 2;

(b) ensuring that the staff of the Customer are trained in the proper use and operation of the Software;

(c) ensuring the security, completeness and accuracy of all inputs and outputs;

(d) making regular backup copies of its data to ensure recovery of its data if the Software malfunctions;

(e) the selection, use of and results obtained from any other programs, equipment, materials or services used in conjunction with the Software; and

(f) any other obligations set out in the Maintenance Schedule.

14.3.2 the level of the Charges reflects the allocation of risk between the parties set out in clause 13 and clause 14; and

14.3.3 it is in a better position than the Supplier to assess and manage its risk in relation to use of the Software.

14.4 All dates supplied by the Supplier for the delivery of the Modifications or the provision of Services shall be treated as approximate only. The Supplier shall not in any circumstances be liable for any loss or damage arising from any delay in delivery beyond such approximate dates.

14.5 All references to the Supplier in this clause 14 shall, for the purposes of this clause only, be treated as including all employees, subcontractors and suppliers of the Supplier and its Associates, all of whom shall have the benefit of the exclusions and limitations of liability set out in this clause, in accordance with clause 23.

14.6 The Supplier warrants and represents that it has full authority to license or sub-license the Third-Party Software to the Customer on the terms of this licence.

14.7 The Customer shall comply with the Third-Party Licences and shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with the Customer's breach of the terms of any such Third-Party Licences.

14.8 The Supplier may treat the Customer's breach of any Third-Party Licence as a breach of this licence.

15. Assignment and subcontracting

15.1 The Customer shall not assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed).

15.2 The Supplier may at any time assign, novate, charge, subcontract or deal in any other manner with any or all of its rights and obligations under this agreement, provided it gives written notice to the Customer.

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

16. Termination

16.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement and/or the Support Services with immediate effect by giving written notice to the other party if:

16.1.1 the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;

16.1.2 the other party commits a material breach of any term of this agreement (other than failure to pay any amounts due under this agreement) and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

16.1.3 the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;

16.1.4 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

16.1.5 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

16.1.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

16.1.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party;

16.1.8 the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;

16.1.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

16.1.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

16.1.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 16.1.4 to clause 16.1.10 (inclusive);

16.1.12 the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or

16.1.13 any warranty given in clause 13 is found to be untrue or misleading.

16.2 Either party may terminate this agreement in accordance with clause 25.

16.3 The Supplier may, without prejudice to its other rights or remedies, terminate this agreement immediately by notice to the Customer if the Customer:

16.3.1 undergoes a change of control;

16.3.2 sells all of its assets or is merged or re-organised in circumstances where it is not the surviving entity; or

16.3.3 disputes the ownership or validity of the Supplier's Intellectual Property Rights.

17. Effect of termination

17.1 Other than as set out in this agreement, neither party shall have any further obligation to the other under this agreement after its termination.

17.2 Any provision of this agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

17.3 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.

17.4 Notwithstanding its obligations in this clause 17, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.

17.5 On termination of this agreement for any reason, the Customer's right to receive the Services shall cease automatically.

17.6 On termination of this agreement for any reason, the Customer shall immediately pay any outstanding unpaid invoices and interest due to the Supplier. The Supplier shall submit invoices for any Services that it has supplied, but for which no invoice has been submitted, and the Customer shall pay these invoices immediately on receipt.

18. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

19. Remedies

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

20. Entire Agreement

20.1 This agreement 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.

20.2 Each party acknowledges that in entering into this agreement 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 this agreement.

20.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

21. Variation

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

22. Severance

22.1 If any provision or part-provision of this agreement 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 this agreement.

22.2 If any provision or part-provision of this agreement 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.

23. Third-party rights

No one other than a party to this agreement shall have any right to enforce any of its terms.

24. No partnership or agency

24.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

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

25. Force majeure

25.1 Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this agreement by giving 30 days' written notice to the affected party.

25.2 If termination occurs under clause 25.1, all sums paid to the Supplier by the Customer under this agreement shall be refunded to the Customer, except that the Supplier shall be entitled to payment on a *quantum meruit* basis for all work done before termination, provided that the Supplier takes all reasonable steps to mitigate the amount due.

26. Notices

26.1 Any notice or other communication given to a party under or in connection with this contract shall be in writing and shall be:

26.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

26.1.2 sent by fax to its main fax number or main email.

26.2 Any notice or communication shall be deemed to have been received:

26.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

26.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service;

26.2.3 if sent by fax, at 9.00 am on the next Business Day after transmission;

26.2.4 if sent by email, at the applicable time immediately after transmission.

26.3 This clause 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 this clause, "writing" shall not include e-mail.

27. Governing law

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

28. Jurisdiction

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