

# GridSmart

## SECURE SYSTEM SOLUTIONS

### Terms and Conditions

Description: GridSmart Terms and Conditions

## **1 INTRODUCTION**

- 1.1 These Terms and Conditions only apply to sales of items made directly between us (Supplier) and the Customer. By placing an order with us you are bound by these terms unless agreed otherwise in writing.
- 1.2 These Terms and Conditions are in place of and exclude all other representations, warranties, and conditions except as implied by statute and in particular the purchaser acknowledges that the purchaser has relied solely upon their own inspection and skill and judgment and not by reason of any representation by Supplier. In the absence of a written order from the purchaser, Supplier's internal order will constitute the basis of the agreement. Unless expressly accepted in writing by Supplier any variations of or additions to these conditions in a purchaser's order or order form will be deemed to be inapplicable. We may, from time to time, change some or all the terms of this Agreement. Any changes to these Terms shall apply only to orders placed after the updated terms are published.
- 1.3 The terms which will apply to you are those which appear on our website on the date which you order from us (your 'order'). You should print out and retain a copy of those terms at the time at which you send us your order.

## **2 DEFINITIONS AND INTERPRETATION**

- 2.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:
  - 2.1.1 "Business Day" means any day other than a Saturday, Sunday or bank holiday;
  - 2.1.2 "Commencement Date" means the commencement date for the Contract;
  - 2.1.3 "Confidential Information" means, in relation to either Party, all information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement;
  - 2.1.4 "Contract" means the contract for the purchase and sale of the Goods and supply of the Services under these Terms and Conditions;
  - 2.1.5 "Contract Price" means the price stated in the Contract payable for the Goods or Services;
  - 2.1.6 "Customer", "purchaser", "you" and "your" means the person or organisation who accepts a quotation or offer of the Supplier for the sale of the Goods and supply of the Services, or whose order for the Goods and Services is accepted by the Supplier;
  - 2.1.7 "Delivery Date" means the date on which the Goods are to be delivered as stipulated in the Customer's order and accepted by the Supplier;
  - 2.1.8 "Goods" means the goods which the Supplier is to supply in accordance with these Terms and Conditions;
  - 2.1.9 "Order" means your order for the Goods or Services;
  - 2.1.10 "Month" means a calendar month;
  - 2.1.11 "Calendar day" means any day of the year;
  - 2.1.12 "Services" means the Services to be provided to the Customer;

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- 2.1.13 "Supplier" means Gridsmart Limited and includes all employees and agents of the Supplier;
- 2.2 Unless the context otherwise requires, each reference in this Agreement to:
- 2.2.1 "Writing" means any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means.
- 2.2.2 A statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time.
- 2.2.3 "These Terms and Conditions" is a reference to these Terms and Conditions as amended or supplemented at the relevant time.
- 2.2.4 A "Clause" or "paragraph" is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and
- 2.2.5 A "Party" or the "Parties" refer to the parties to the Agreement.
- 2.2.6 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 2.2.7 Words imparting the singular number shall include the plural and vice versa.
- 2.2.8 References to any gender shall include the other gender.
- 2.2.9 References to persons shall include corporations.

### **3 PROVISION OF THE SERVICES**

- 3.1 With effect from the Commencement Date, the Supplier shall, throughout the Term of the Agreement, provide the Services to the Customer.
- 3.2 The Supplier shall provide the Services with reasonable skill and care, commensurate with prevailing standards in the Defence Sector in the United Kingdom.
- 3.3 The Supplier shall act in accordance with all reasonable instructions given to it by the Customer provided such instructions are compatible with the specification of Services provided in the Agreement.
- 3.4 The Supplier shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.
- 3.5 The Supplier may, in relation to certain specified matters related to the Services, act on the Customer's behalf. Such matters shall not be set out in the Agreement but shall be agreed between the Parties as they arise from time to time.
- 3.6 The Supplier shall use all reasonable endeavours to accommodate any reasonable changes in the Services that may be requested by the Customer, subject to the Customer's acceptance of any related reasonable changes to the Fees that may be due because of such changes.

### **4 UPDATES TO THE SERVICES OR SOFTWARE AND CHANGES TO THESE TERMS**

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- 4.1 We'll inform you if we intend to change these Terms. We may change these Terms if it is necessary due to (i) applicable law, including, but not limited to, a change of such law; (ii) an advice and/or order based on applicable law; (iii) the evolution of the Services; (iv) technical reasons; (v) operational requirements or (vi) an advantageous change of terms for the customer. We'll inform you of the intended change before it takes effect, either through the user interface, in an email message or through other reasonable means. We'll provide you the opportunity to cancel the Services at least 30 days before the change becomes effective. Using the Services after the changes become effective means you agree to the new terms. If you do not agree to the new terms, you must stop using the Services.

## **5 CUSTOMER'S OBLIGATIONS**

- 5.1 The Customer shall use all reasonable endeavours to provide all pertinent information to the Supplier that is necessary for the Supplier's provision of the Services.
- 5.2 The Customer may, from time to time, issue reasonable instructions to the Supplier in relation to the Supplier's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.
- 5.3 If the Supplier requires the decision, approval, consent, or any other communication from the Customer to continue with the provision of the Services or any part thereof at any time, the Customer shall provide the same in a reasonable and timely manner.
- 5.4 If any consents, licences, or other permissions are needed from any third parties, it shall be the Customer's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).
- 5.5 If the nature of the Services requires that the Supplier has access to the Customer's offices or the offices, Customer Infrastructures, of a third-party supplier to the Customer, access to which is lawfully controlled by the Customer, the Customer shall ensure that the Supplier has access to the same at the times to be agreed between the Supplier and the Customer as required.
- 5.6 Any delay in the provision of the Services resulting from the Customer's failure or delay in complying with any of the provisions of the Agreement shall not be the responsibility or fault of the Supplier.

## **6 FEES, PAYMENT AND RECORDS**

- 6.1 The Customer shall pay the Fees to the Supplier in accordance with the provisions of the Agreement.
- 6.2 The Supplier shall invoice the Customer for Fees due in accordance with the provisions of the Agreement.
- 6.3 Unless otherwise agreed in writing, all payments required to be made pursuant to the Agreement shall be made prior to dispatch of goods; or where credit terms are expressly granted, payment shall be made within the credit terms stated on the Supplier invoice.
- 6.3.1 All payments required to be made pursuant to the Agreement by either Party shall be made in UK Pounds Sterling in cleared funds to the Supplier's bank account as nominated by the Supplier, without any set-off, withholding or deduction except such amount (if any) of tax as that Party is required to deduct or withhold by law.

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- 6.4 Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 6.5 Without prejudice to the Agreement, any sums which remain unpaid following the expiry of the period set out in the Agreement shall incur interest daily at 2 % above the Bank of England base rate or (at the Supplier's option) interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.6 Each Party shall:
- 6.6.1 Keep, or procure that there are kept, such records and books of account as are necessary to enable the amount of any sums payable pursuant to the Agreement to be accurately calculated.
- 6.6.2 At the reasonable request of the other Party, allow that Party or its agent to inspect those records and books of account and, to the extent that they relate to the calculation of those sums, to take copies of them.

## **7 PRODUCT, PRICES & QUOTATIONS**

- 7.1 All prices quoted exclude carriage costs, which will be added to your quotation. VAT, where applicable, will be added to the price of the products at the appropriate rate.
- 7.2 Unless explicitly requested, method of carriage will be at our discretion. Any costs omitted or corrections on your invoice will be invoiced / credited later. Please notify us promptly if you are not billed the correct amount and we will correct the error. All advertised/advised/published pricing is subject to change at any time without notice due to market/currency fluctuations and other factors.
- 7.3 If a price has risen, we will advise before proceeding with an order if you have specified a different price on your order. All quotations are subject to withdrawal or reasonable variation by Supplier at any time prior to firm acceptance of an order. No order given to Supplier based upon a quotation shall be binding upon Supplier until accepted by Supplier in writing. Supplier reserves the right to correct any error or omission or quotation or invoice without prior notice.

## **8 PAYMENTS**

- 8.1 We accept payment by **CHAPS, BACS, SWIFT and Faster Payments**. We reserve the right not to dispatch goods until your funds have cleared. You shall pay all costs, charges and expenses incurred by us in recovering any debt. If a payment is made by cheque, which is returned unpaid, you shall be liable for all reasonable costs incurred as a result.

## **9 CREDIT CHECKING & VALIDITY**

- 9.1 We reserve the right to liaise with credit reference and other agencies with regard to your status and submit information accordingly and in line with relevant legislation.

## **10 PRODUCT ORDERS**

- 10.1 Descriptive and clerical errors are subject to correction.

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- 10.2 Orders must be placed by the issue of a valid purchase order or other written communication. We reserve the right not to accept any customer order.
- 10.3 We will treat your order as an offer to buy we will send you an email to confirm receipt of your offer. This e-mail does not mean that your offer has been accepted. Certain products and offers may only be available to qualifying customers, for example in particular geographical areas.

## **11 RETENTION OF TITLE**

- 11.1 All goods remain our property until such a time as they have been paid in full. You may not resell goods supplied until they have been paid for in full, unless the new purchaser is made aware that title remains with us until we have been paid in full.

## **12 RESELLING**

- 12.1 If goods are resold without our written permission such sale will invalidate any non-statutory returns policy that may be in force.

## **13 EQUIPMENT DELIVERY & ACCEPTANCE**

- 13.1 In most cases, unless agreed otherwise, we dispatch using our preferred carrier. Standard UK Delivery is normally made within 5 working days but no absolute guarantee can be given of this or any other delivery times. Where a premium service is requested (e.g., next day, AM delivery or Saturday) our liability extends only to a refund of the premium should the delivery not be attempted on time. Same-day dispatch is subject to the order being received earlier than that working day's 'cut off' time but this may vary with workload or around holiday periods, which you will be notified at the time of order. "Working day" is Monday to Friday, excluding holidays or any other day on which our offices are closed. Deliveries may be made any time between 9am and 6pm. Our standard delivery service covers most parts of mainland UK. It is essential that someone will be at the delivery address to receive and sign for the goods. You must inspect goods supplied as soon as practicable after delivery and notify us within a reasonable period of delivery any alleged defect or failure to comply with the description of the goods.
- 13.2 The goods are at your risk from the time of delivery and no liability will be accepted by us for damage or loss to the products after the time that the delivery document stating that the goods were received has been signed. Failing such notice, you will be deemed to have accepted the products and it shall be conclusively presumed that the products are in accordance with the contract and free from any defect or damage, which would be apparent on examination.

## **14 TRANSIT DAMAGE**

- 14.1 Goods obviously damaged in transit must be notified to us within 48 hours of receipt. You are advised to keep all packaging, as that may be required in the event of a claim.

## **15 RETURNS**

- 15.1 This policy does not affect your statutory rights.

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- 15.2 The returns policy in this Clause 15 does not apply to Bespoke Goods, which are governed exclusively by Clause 16.
- 15.3 14 Day Returns Guarantee. We will give you 14 days to assess our products and if it isn't to your liking, return it in good saleable condition and we will give you your money back for the product. Before goods can be returned, we must issue a returns authorisation number in order that we can track it accurately. Please ensure that your returns authorisation number is included with your returned item so that you can be credited appropriately. Items being returned should use a suitably packed, insured, and traceable carriage method. Items need to be returned within ten (10) days after the return's authorisation number has been provided. Where the original purchase had the delivery charge waived ('Free Delivery'), you may be charged the delivery cost originally waived. We reserve the right to charge a restocking fee on unused, unopened items returned and accepted by us after the 14 days return period. For items that are returned open or with missing or damaged parts other than if faulty, we reserve the right to charge a restocking fee or an amount to cover the cost of the damaged / missing item. Carriage costs will only be refunded in instances where the full product pack has been returned and we determine the products are faulty. Please keep all the warranty information that accompanies your item as this may be needed should there be a fault. In the event of us sending you a replacement for a damaged, defective, or wrong item, you must return the damaged, defective or wrong item to us within 28 days of receipt of the replacement. We reserve the right to charge the price of the replacement item to the payment card used for the original order if you do not return the original item as aforesaid.

## **16 NON-CANCELLATION OF BESPOKE GOODS**

- 16.1 Where Goods are manufactured, adapted, or otherwise produced to the Customer's specific requirements ("Bespoke Goods"), the Customer acknowledges that such Goods cannot readily be resold or repurposed by the Supplier. Accordingly, orders for Bespoke Goods are firm and non-cancellable once accepted. If the Customer seeks to cancel or vary an order for Bespoke Goods after acceptance, the Supplier shall be entitled to:
- 16.1.1 Refuse the cancellation or variation.
- 16.1.2 Recover all costs reasonably incurred up to the date of cancellation, including (without limitation):
- 16.1.2.1 design, development, and engineering costs;
- 16.1.2.2 materials ordered or committed;
- 16.1.2.3 labour costs;
- 16.1.2.4 third-party supplier charges;
- 16.1.2.5 a reasonable allocation of overheads and anticipated margin.
- 16.2 Any deposit paid in respect of Bespoke Goods shall be non-refundable and shall be applied toward the Supplier's losses.
- 16.3 Nothing in this clause shall affect the Supplier's right to recover the full Contract Price where the Goods are substantially complete or where loss exceeds the sums already paid.

## **17 HARDWARE WARRANTY**

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- 17.1 We warrant to the original purchaser that this product shall be free from significant defects in material and workmanship for 1 year beginning on the date of purchase as shown on your receipt. Should the product need to be returned it must be sent directly back to the original place of purchase to be processed. Proof of purchase must accompany the returned product. If purchased direct from us a return authorisation number is required prior to the product being returned to us. Product must be returned by signed delivery in suitable protective packaging.
- 17.2 This warranty does not apply to product that has been subject to abuse, misuse, negligence, tampering or has been modified in any way. Without prejudice to your rights, we may replace a defective product or issue a credit note against future purchases. No other warranties, express or implied are made. We shall not be liable for any special, incidental, or consequential damages whether the purpose for which you purchased the product was made known to us, the retailer or otherwise. Your statutory rights are not affected in any way.

## **18 GOODS SUITABILITY**

- 18.1 It is your responsibility to ensure that the correct goods and correct model are ordered for your purposes. In some circumstances, the capability we specify and advertise of the product may not match that of our published specifications elsewhere, often due to international variations. Please, therefore, refer to our site for the specification. This may also apply to specifications listed within any packaging and user guide/manuals supplied which may not apply to your product, either due to product development, varying models, specification change or local variations.

## **19 LIABILITY, INDEMNITY, AND INSURANCE**

- 19.1 The Supplier shall ensure that it always has in place suitable and valid insurance that shall include public liability insurance.
- 19.2 If the Supplier fails to perform the Services with reasonable care and skill it shall carry out all necessary remedial action at no additional cost to the Customer.
- 19.3 The Supplier's total liability for any loss or damage caused because of its negligence or breach of the Agreement shall be limited to the contract sum.
- 19.4 The Supplier shall not be liable for any loss or damage suffered by the Customer that results from the Customer's failure to follow any instructions given by the Supplier.
- 19.5 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude the Supplier's liability for death or personal injury.
- 19.6 Subject to the Agreement the Supplier shall indemnify the Customer against any costs, liability, damages, loss, claims, or proceedings arising out of the Supplier's breach of the Agreement.
- 19.7 The Customer shall indemnify the Supplier against any costs, liability, damages, loss, claims, or proceedings arising from loss or damage to any equipment (including that belonging to any third parties appointed by the Supplier) caused by the Customer or its agents or employees.
- 19.8 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

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19.9 Subject always to clauses 19.3 and 19.5. To the fullest extent permissible by law, we will not be liable for damages arising out of or in connection with the provision of products and/or services or the use of our site. Whilst this is a comprehensive limitation of liability applying to all losses, damages or costs of any kind including (without limitation) direct, indirect or consequential damages, loss of data, income or profit, loss of or damage to property and claims of third parties, we do not limit our liability if death or personal injury results from our negligence.

## **20 GUARANTEE**

20.1 The Supplier shall guarantee that the product of all Services provided will be free from all defects for a period that shall be defined in the Agreement.

20.2 If any defects in the product of the Services appear during the guarantee period set out in the Agreement the Supplier shall rectify all such defects at no cost to the Customer.

## **21 CONFIDENTIALITY**

21.1 Each Party undertakes that, it shall, always during the continuance of the Agreement and for 5 years after its termination:

21.1.1 Keep confidential all Confidential Information.

21.1.2 Not disclose any Confidential Information to any other party.

21.1.3 Not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement.

21.1.4 Not make any copies of record in any way or part with possession of any Confidential Information; and

21.1.5 Ensure that none of its directors, officers, employees, agents, sub-contractors, or advisers does any act which, if done by that Party, would be a breach of the provisions of the Agreement.

21.2 The Customer:

21.2.1 Agree that all Information is confidential to keep all Information confidential.

21.2.2 Agree that "Confidential Information" means, in relation to either Party, all information which is disclosed to that Party by the other Party pursuant to or in connection with this Agreement.

21.2.3 Agree that the GridSmart Software and Products was developed at considerable time and expense by GridSmart and is confidential to and a trade secret of GridSmart and/or third parties.

21.2.4 Agree to maintain the GridSmart Software and products, and services in strict confidence and not to disclose any data or information, or provide access thereto to any person, organisation, or other third-party unless specifically authorised by GridSmart in writing.

21.3 The provisions of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.

## **22 INTELLECTUAL PROPERTY RIGHTS**

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- 22.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services (including, without limitation, designs, drawings, software, firmware, source code, specifications, know-how, inventions, data, documentation, and materials) shall remain vested in, or shall vest in, the Supplier or its licensors.
- 22.2 Nothing in the Contract shall operate to assign or transfer any Intellectual Property Rights from the Supplier to the Customer, except as expressly stated in writing.
- 22.3 The Supplier grants to the Customer a non-exclusive, non-transferable, non-sublicensable licence to use the Intellectual Property Rights solely to the extent necessary for the Customer's internal use of the Goods and/or Services for their intended purpose.
- 22.4 The Customer shall not:
- 22.4.1 copy, modify, adapt, translate, reverse engineer, decompile, or disassemble the Goods or any software supplied with them (except to the extent permitted by law);
- 22.4.2 remove or obscure any proprietary notices; or
- 22.4.3 permit any third party to access or use the Intellectual Property Rights without the Supplier's prior written consent.
- 22.5 Any Customer Materials provided to the Supplier remain the property of the Customer. The Customer grants the Supplier a royalty-free licence to use such materials solely for the purposes of performing the Contract.
- 22.6 The Customer warrants that its use of any Customer Materials does not infringe third-party Intellectual Property Rights and shall indemnify the Supplier against any claims arising from such materials.
- 22.7 This clause shall survive termination or expiry of the Contract.

## **23 FORCE MAJEURE**

- 23.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to power failure, internet Supplier failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 23.2 If a Party to the Agreement cannot perform their obligations hereunder because of force majeure for a continuous period, the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Services provided up to the date of termination. Such payment shall consider any prior contractual commitments entered into in reliance on the performance of the Agreement.

## **24 SERVICE TERM AND TERMINATION**

- 24.1 The Agreement shall come into force on the agreed Commencement Date and shall continue for a defined Term from that date, subject to the provisions of the Agreement.

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- 24.2 Either Party shall have the right, subject to the agreement and consent of the other Party and exercisable by giving not less than thirty (30) days written notice to the other at any time prior to the expiry of the Term specified in the Agreement to extend the Agreement for a further period of thirty (30) days.
- 24.3 Either Party may terminate the Agreement by giving to the other not less than thirty (30) days written notice, to expire on or at any time after the minimum term of the Agreement (which shall be defined in the Agreement).
- 24.4 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
- 24.5 Any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within thirty (30) Business Days of the due date for payment.
- 24.6 The other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within thirty (30) Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied.
- 24.7 An encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party.
- 24.8 The other Party makes any voluntary arrangement with its creditors or being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- 24.9 The other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that Supplier resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
- 24.10 Anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party.
- 24.11 The other Party ceases, or threatens to cease, to carry on business; or
- 24.12 Control of the other Party is acquired by any person or connected persons not having control of that other Party on the date of the Agreement. For the purpose, "control" and "connected persons" shall have the meanings ascribed thereto by Sections 1124 and 1122 respectively of the Corporation Tax Act 2010.
- 24.13 For the purposes of the Agreement, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 24.14 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

## **25 EFFECTS OF TERMINATION**

- 25.1 Upon the termination of the Agreement for any reason:
- 25.1.1 Any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable.
- 25.1.2 All Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect.

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- 25.1.3 Termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination.
- 25.1.4 Subject to the Term and Termination of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 25.1.5 Each Party shall immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

## **26 NO WAIVER**

- 26.1 No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

## **27 FURTHER ASSURANCE**

- 27.1 Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.

## **28 COSTS**

- 28.1 Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

## **29 SET-OFF**

- 29.1 Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.

## **30 ASSIGNMENT AND SUB-CONTRACTING**

- 30.1 The Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.
- 30.2 The Supplier shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of the Supplier.

## **31 RELATIONSHIP OF THE PARTIES**

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- 31.1 Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency, or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

## **32 NON-SOLICITATION**

- 32.1 Neither Party shall, for the Term of the Agreement and for a defined period (which shall be defined in the Agreement) after its termination or expiry, employ or contract the services of any person who is or was employed or otherwise engaged by the other Party at any time in relation to the Agreement without the express written consent of that Party.
- 32.2 Neither Party shall, for the Term of the Agreement and for a defined period (which shall be defined in the Agreement) after its termination or expiry, solicit or entice away from the other Party any customer or Customer where any such solicitation or enticement would cause damage to the business of that Party without the express written consent of that Party.

## **33 THIRD PARTY RIGHTS**

- 33.1 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.
- 33.2 Subject to Clause SERVICE Term and Termination of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.

## **34 NOTICES**

- 34.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 34.2 Notices shall be deemed to have been duly given:
- 34.2.1 When delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
- 34.2.2 When sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
- 34.2.3 On the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
- 34.2.4 On the tenth business day following mailing, if mailed by airmail, postage prepaid.
- 34.2.5 In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

## **35 ENTIRE AGREEMENT**

- 35.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

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- 35.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## **36 COUNTERPARTS**

- 36.1 The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

## **37 SEVERANCE**

- 37.1 In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

## **38 DISPUTE RESOLUTION**

- 38.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 38.2 If negotiations of the Agreement do not resolve the matter within thirty (30) days of receipt of a written invitation to negotiate, the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution ("ADR") procedure.
- 38.3 If the ADR procedure of the Agreement does not resolve the matter within thirty (30) days of the initiation of that procedure, or if either Party will not participate in the ADR procedure, the dispute may be referred to arbitration by either Party.
- 38.4 The seat of the arbitration of the Agreement shall be England and Wales. The arbitration shall be governed by the Arbitration Act 1996 and Rules for Arbitration as agreed between the Parties. In the event that the Parties are unable to agree on the arbitrator(s) or the Rules for Arbitration, either Party may, upon giving written notice to the other Party, apply to the President or Deputy President for the time being of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be required.
- 38.5 Nothing in the Agreement shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief.
- 38.6 The decision and outcome of the final method of dispute resolution of the Agreement shall be final and binding on both Parties.

## **39 HOW WE USE YOUR PERSONAL INFORMATION (DATA PROTECTION)**

- 39.1 We will only use your personal information as set out in our privacy notice, available from our website.

## **40 LAW AND JURISDICTION**

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- 40.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 40.2 Subject to the provisions of Clause Dispute Resolution of the Agreement, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.