G Cloud 10 Telephony & Data Services Agreement

THIS AGREEMENT is dated _____

*By agreeing to the Business Systems (UK) Limited Terms & Conditions you are also agreeing to the software license and original service provider conditions. For a copy of these Terms & Conditions, email contact@businesssystemsuk.com.

PARTIES

(1)   Business Systems (UK) Limited incorporated and registered in England and Wales with company number [] whose registered office is at 462 London Road, Isleworth, Middlesex, TW7 4EP ("**the Supplier**")

(2)   [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**the Customer**")

collectively referred to as the "**Parties**" and each individually as a "**Party**".

WHEREAS:

   (a) The Supplier is willing to provide and/or deliver to Customer various services.
   (b) The Customer wishes to purchase such services.

AGREED TERMS

1.   INTERPRETATION

1.1   The definitions and rules of interpretation in this Clause apply in this Agreement.

Agreement: this contract between the Supplier and the Customer for the provision of Services (including Documentation) and/or the supply of Services as purchased pursuant to the Order Form and subject to the terms and conditions set out in this document.

Authorised Users: those employees, agents, independent contractors of the Customer being natural persons who are authorised by the Customer to use the Services.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Call Charges: The Customer's charges for inbound/outbound telephone calls and data transfer incurred in the use of certain Services as applicable and at the Supplier's then-current rates as may be set out or referred-to in the Order Form or else as available on the Supplier's website from time to time.

Confidential Information: information that is proprietary or confidential and is clearly labelled as such, or which the receiving party ought reasonably to regard as confidential, including the information identified as Confidential Information in Clause 11.5.

Customer Data: shall include all recorded files and data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Customer Default: has the meaning given in Clause 7.6.

Documentation: the documents (if any) in electronic or hardcopy form made available to the Customer by the Supplier which set out a description of the Services, Software, Application, or the user instructions for such Services, Software or Application.

Effective Date: the date upon which this Agreement becomes effective as described in Clause 3.2.

Fees: the fees and charges (including Call Charges) payable by the Customer to the Supplier for the any of the following Services, Software, Application or Equipment, whether fixed rate or usage-based charges and whether one-off or reoccurring charges, as either set out in the Order Form or else as available on the Supplier's website from time to time.

Force Majeure Event: has the meaning given to it in Clause 15.

Initial Term: the initial term of this Agreement as set out in the Order Form.

Intellectual Property Rights: means patents, inventions, know-how, trade secrets and other confidential information, registered designs, copyrights, database rights and design rights, semiconductor topography rights, trade marks, service marks, logos, domain names, business names, trade names, moral rights, and all registrations or applications to register any of the aforesaid items, rights in the nature of unfair competition rights and rights to sue for passing-off and any other equivalent rights in any jurisdiction worldwide;

Normal Business Hours: 9.00 am to 5.30 pm local UK time, each Business Day.

Order Form: means the order document signed by the Customer and accepted by the Supplier in accordance with Clause 3.2 that is used by the Customer to order Services (including related Applications and/or Software) pursuant to this Agreement of the specified type and amount and (where applicable) subject to the specified Fees as set out in that order document.

Renewal Period: the period described in Clause 14.1 and as set out in the Order Form.

Requested Services Start Date: the date stated on the Order Form which the Customer has requested commencement of the Services by.

Rules: means the rules of any governing or regulatory body for example but not limited to : FCOM, the Digital Marketing Association, the FCA etc.

Services: the Services provided by the Supplier to the Customer under this Agreement, as more particularly described in the applicable Service Schedule and Documentation.

Service Schedule: A Schedule to this Agreement which sets out the description and details of a particular Service and any additional terms and conditions.

Software Services: the online software as a service (SAAS) applications provided by the Supplier as part of the Services.

Support Services Policy: the Supplier's then-current standard policy for providing support in relation to the Services as available on request.

Term: has the meaning given in Clause 14.1

User Subscriptions: where applicable, the user subscriptions purchased by the Customer pursuant to the Order Form which entitles a maximum number of Authorised Users to access the Software Services in accordance with this Agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

1.2   Clause, Schedule and Paragraph headings shall not affect the interpretation of this Agreement.

1.3   A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

2.   STRUCTURE OF AGREEMENT

2.1   This Agreement is structured so that each individual Order Form, once signed or acknowledged in writing by both parties, constitutes a separate contract, for delivery of Services governed by and subject to this Agreement.

2.2   This Agreement does not commit the Customer to purchase Services and, likewise does not commit the Supplier to provide any Services until an Order Form in respect of such Services is signed by both Parties.

3   ORDER FORMS

3.1   Each Order Form shall specify (as applicable) the Services being provided to the Customer by the Supplier and the Fees relevant to each Order Form.

3.2   Each Order Form shall only be deemed to be accepted when the Supplier issues written acceptance of that Order Form by post or email at which point and on which date this Agreement shall become effective and binding (the "**Effective Date**").

3.3   In the event of inconsistency or conflict between this Agreement and any Order Form, the terms of the Order Form shall take precedence to the extent of that conflict or inconsistency.

4.   SERVICES

4.1   The Supplier shall, during the Term, provide the Services to the Customer in accordance with the relevant Service Schedule and Documentation on and subject to the terms of this Agreement.

4.2 The Supplier shall use commercially reasonable endeavours to commence provision of the Services to the Customer by the Requested Services Start Date.

4.3 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:

(a) planned maintenance which the Supplier may carry out during the maintenance window of 9.00 pm to 6.00 am UK time;

(b) unscheduled maintenance performed at any time, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance; and

(c) where the Customer requests a change to the configuration of the Services during Normal Business Hours which requires the Services or part of the Services to be taken offline.

4.4 The Supplier will, as part of the Services, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time.

4.5 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event. Software Services

4.6 The Supplier is providing the Customer with online access to Software Services, and hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Software Services during the Term solely for the Customer's internal business operations.

4.7 In relation to the Authorised Users accessing Software Services that are subject to restricted numbers of Authorised Users, the Customer undertakes that:

(a) the maximum number of Authorised Users that it authorises to access and use the Software Services shall not exceed the number of User Subscriptions it has purchased in the Order Form;

(b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Software Services;

(c) each Authorised User shall keep a secure password for his use of the Software Services and that each Authorised User shall keep his password confidential;

(d) upon request of the Supplier, it shall produce a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;

5. THIRD PARTY PROVIDERS

5.1 The Customer acknowledges that the Services may enable, assist or complement the Customer's access to third party products and services but that any such involvement with third party products and services is solely at the Customer's own risk. The Supplier makes no representation or commitment and shall have no liability or obligation in relation to the use of the Services with any such third-party products and services. Any contract entered into in relation to such third party products and services is between the Customer and the relevant third party, and not the Supplier.

6. SUPPLIER'S OBLIGATIONS

6.1 The Supplier undertakes that the Services will be performed substantially in accordance with the applicable Service Schedule, the Documentation and with reasonable skill and care.

6.2 The undertaking at Clause 6.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Documentation or Supplier's express instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in Clause 6.1. Notwithstanding the foregoing, the Supplier:

(a) does not warrant that the Customer's use of the Services, will be uninterrupted or error-free; nor that the information obtained by the Customer through the Services will meet the Customer's requirements; and

(b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

6.3 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.

6.4 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

(a) ensure that the information it provides on the Order Form is complete and accurate;

(b) co-operate with the Supplier in all matters relating to the provision of the Services;

(c) where necessary provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation, telecommunications/data network infrastructure and such other facilities as reasonably required by the Supplier to provide the Services;

(d) where the Supplier attends the Customer's premises to install the Services on a pre-arranged date, ensure that appropriately skilled personnel are available to provide such assistance as may be required to assist with the integration of the Services with the Customer's pre-existing systems;

(e) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services (including related Applications and/or Software), and ensure that such information is accurate in all material respects;

(f) ensure that its network and systems comply with the requirements of the relevant Service Schedule and/or Documentation provided by the Supplier and as updated by the Supplier from time to time;

(g) comply with all applicable laws, regulations and Rules with respect to its activities under this Agreement obtain and maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services, before such date the Services are due to start;

(h) ensure that its Authorised Users use the Services (including related Applications and/or Software)in accordance with the terms and conditions of this Agreement and the Documentation and be responsible for any Authorised User's breach of this Agreement

(i) keep and maintain all materials, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation; and

(j) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

7.2 The Customer shall not use the Services to access, store, distribute or transmit any Viruses, or any material that:

(a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;

(b) facilitates illegal activity;

(c) promotes unlawful violence;

(d) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or

(e)   causes damage or injury to any person or property;

and the Supplier reserves the right, without liability to the Customer, to disable the Customer's access to the Services where the Customer is in breach of the provisions of this Clause.

7.3   The Customer shall not:

(a)   except as may be allowed by any applicable law which is incapable of exclusion by Agreement between the Parties:

(i)   and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Application, Software, Software Services and/or Documentation in any form or media or by any means; or

(ii)   attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Application, Software or Software Services; or

(b)   access all or any part of the Application, Software, Services and/or Documentation in order to build a product or service which competes with the Services; or

(c)   use the Application, Software, Services and/or Documentation to provide services to third parties; or

(d)   subject to Clause 19.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Application, Software, Software Services, Services and/or Documentation available to any third party except the Authorised Users.

7.4   The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Application, Software, Software Services, Services and Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

7.5   The rights provided under this Clause 7 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

7.6   If the Supplier's performance of any of its obligations in respect of this Agreement is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (each a "**Customer Default**"):

(a)   the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

(b)   the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Clause 7; and

(c)   the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8.   CUSTOMER DATA

8.1   The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

8.2   Where a Customer has ordered recording services from the Supplier the subsequent file produced will become Customer Data and the Supplier shall follow the recording and archiving procedures for Customer Data as set out in the Order Form (where applicable). In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by the Supplier in accordance with the archiving procedure described in the Order Form. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up). For the avoidance of doubt, where the Order Form provides that the Customer is responsible for backing-up Customer Data, the Supplier shall not be responsible for any loss or damage suffered by the Customer resulting from the Customer's failure to back-up/archive or failure to ensure sufficient frequency or length of retention of such back-ups/archives.

8.3   The Supplier shall, in providing the Services use reasonable endeavours to keep the Customer Data confidential in accordance with Clause 11.

8.4   If the Supplier processes any personal data on the Customer's behalf when performing its obligations under this Agreement, the Parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:

(a)   the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and the Authorised Users are located in order to carry out the Services and the Supplier's other obligations under this Agreement;

(b)   the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with this Agreement on the Customer's behalf;

(c)   the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;

(d)   the Supplier shall process the personal data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time; and

(e) each Party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

8.5 The Customer shall pay all reasonable expenses incurred by the Supplier where the Customer requests the Supplier's assistance in complying with the Customer's statutory obligations in relation to any Customer Data being held by the Supplier which is outside the scope of the Services.

9. CHARGES AND PAYMENT

9.1 The Customer shall pay the Fees to the Supplier as set out in the Order Form and as particularised in the relevant invoice by the due date. Unless otherwise stated in this Clause 9 or in the Order Form, all Fees are payable monthly in pounds sterling in advance (except in the case of Call Charges and any other usage-based charges, which are payable in arrears).

9.2 The Supplier reserves the right to:

(a) increase the Fees for the Services, provided that such Fees cannot be increased more than once in any 6 month period. The Supplier will give the Customer written notice of any such increase 1 month before the proposed date of the increase. If such increase is not acceptable to the Customer, the Customer may terminate this Agreement in accordance with Clause 14.

9.3 Unless otherwise stated on the Order Form, the Customer shall pay each invoice submitted by the Supplier:

(a) within 30 days of the date of the invoice; and

(b) in full and in cleared funds to a bank account nominated in the invoice by the Supplier, and

time for payment shall be of the essence in this Agreement.

9.4 All amounts payable by the Customer under this Agreement are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under this Agreement by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

9.5 If the Supplier has not received payment of an undisputed invoice by the due date then without prejudice to any other rights and remedies of the Supplier:

(a) the Supplier may, without liability to the Customer, disable the Customer's access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

(b) interest shall accrue on such due amounts at an annual rate equal to 4% over the then current base lending rate of Barclays Bank Plc at the date the relevant invoice

was issued, commencing on the due date and continuing until fully paid, whether before or after judgment, and compounding quarterly.

9.6 The Customer shall pay all amounts due under this Agreement in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10. **PROPRIETARY RIGHTS**

10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Application, Software, Software Services, Services (excluding Customer Data) and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licenses' in respect of the, Application, Software, Software Services, Services or the Documentation.

10.2 The Supplier confirms that it has all the rights in relation to the, Application, Software, Software Services, Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

11. **CONFIDENTIALITY**

11.1 Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Agreement. A Party's Confidential Information shall not be deemed to include information that:

   (a) is or becomes publicly known other than through any act or omission of the receiving Party;

   (b) was in the other Party's lawful possession before the disclosure;

   (c) is lawfully disclosed to the receiving Party by a third party without restriction on disclosure;

   (d) is independently developed by the receiving Party, which independent development can be shown by written evidence; or

   (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

11.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement.

11.3   Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

11.4   Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

11.5   The Customer acknowledges that details of the Services and the Documentation, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.

11.6   The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.

11.7   Both Parties agree not to release any press statement or make any announcement or public statement regarding the existence of the Agreement without the prior written consent of the other Party.

11.8   This Clause 11 shall survive termination of this Agreement, however arising.

12.   INDEMNITY

12.1   The Supplier shall defend, indemnify and hold harmless the Customer against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with any allegation that the Customer's use of the Application, Software, Services, the Documentation infringes the Intellectual Property Rights of a third party, provided that:

(a)   the Supplier is given prompt notice of any such claim;

(b)   the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Customer's expense;

(c)   the Supplier is given sole authority to defend or settle the claim; and

(d)   any liability incurred by the Supplier pursuant to this Clause 12.1 is subject to the limitations set out in Clause 13.4.

12.2   In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Application, Software, Services, Documentation, replace or modify the Application, Software, Services, Documentation so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 5 Business Days' notice to the Customer without any additional liability, obligation or other additional costs to the Customer.

12.3   In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:

(a)   a modification of the Application, Software, Services, Documentation by anyone other than the Supplier; or

(b)   the Customer's use of the Application, Software, Services, Documentation in a manner contrary to this Agreement, the Documentation or other instructions given to the Customer by the Supplier; or

(c)   the Customer's use of the Application, Software, Services, Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.

12.4   The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any Intellectual Property Rights.

13.   LIMITATION OF LIABILITY

13.1   This Clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

(a)   any breach of this Agreement;

(b)   any liability arising pursuant to Clause 12.1;

(c)   any use made by the Customer of the Application, Software, Services, Documentation or any part of them; and

(d)   any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.

13.2   Except as expressly and specifically provided in this Agreement:

(a)   the Customer assumes sole responsibility for results obtained from the use of the Application, Software, Services, Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Application, Software, Services, Documentation, or any actions taken by the Supplier at the Customer's direction; and

(b)   all warranties, representations, conditions and all other terms of any kind whatsoever and whether implied by statute, common law or otherwise are, to the fullest extent permitted by applicable law, excluded from this Agreement.

13.3   Nothing in this Agreement excludes the liability of the Supplier:

(a)   for death or personal injury caused by the Supplier's negligence;

(b)   for fraud or fraudulent misrepresentation; or

(c)   breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 and section 12 of the Sales of Goods Act 1979.

13.4   Subject to Clause 13.2 and Clause 13.3, the Customer's sole remedy in relation to an alleged breach of the warranties in Clause **Error! Reference source not found.** and **Error!**

==Reference source not found.== shall be (at the Supplier's option) the repair or replacement of the Software or Application (as applicable), provided that the Customer makes available all the ==information that== may be necessary to assist the Supplier in resolving the defect or fault, including sufficient information to enable the Supplier to recreate the defect or fault.

13.5 Subject to Clause 13.2 and Clause 13.3:

(a) Except as expressly stated in this Agreement the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or for loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and

(b) the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to 125% of the total Fees paid by the Customer to the Supplier during the 12 months immediately preceding the date on which the latest cause of action arose.

14. TERM AND TERMINATION

14.1 This Agreement shall, unless otherwise terminated as provided in this Clause 14, commence on the Effective Date and shall continue for the Initial Term (lasting for 12 months unless another period is specified on the Order Form) and, thereafter, this Agreement shall be automatically renewed for successive Renewal Periods (each lasting for 12 months unless another period is specified on the Order Form), unless:

(a) either Party notifies the other Party of termination, in writing, at least 90 days before the end of the Initial Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Initial Term or Renewal Period; or

(b) otherwise terminated in accordance with the provisions of this Agreement;

and the Initial Term together with any subsequent Renewal Periods shall constitute the **"Term"**.

14.2 Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate this Agreement without liability to the other if:

(a) the other Party commits a material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that Party being notified in writing of the breach; or

(b) an order is made or a resolution is passed for the winding up of the other Party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other Party; or

(c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other Party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other Party, or

notice of intention to appoint an administrator is given by the other Party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or

(d)   a receiver is appointed of any of the other Party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other Party, or if any other person takes possession of or sells the other Party's assets; or

(e)   the other Party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or

(f)   the other Party ceases, or threatens to cease, to trade; or

(g)   the other Party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

14.3   On termination of this Agreement for any reason:

(a)   all licenses' granted under this Agreement (excluding licenses' granted pursuant to Clause **Error! Reference source not found.**) shall immediately terminate;

(b)   each Party shall return and make no further use of any equipment, property, documentation and other items (and all copies of them) belonging to the other Party;

(c)   where the Agreement involves the use of an Application as part of the Services, the Customer shall delete the Application from all systems where it is installed;

(d)   the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and

(e)   the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15.   FORCE MAJEURE

The Supplier shall have no liability to the Customer under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage,
compliance with any law or governmental order, rule, regulation or direction, accident,

breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration (each a "**Force Majeure Event**").

16. WAIVER AND VARIATION

16.1   A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and to the circumstances for which it is given.

16.2   Unless specifically provided otherwise, rights arising under this Agreement are cumulative and do not exclude rights provided by law.

16.3   Any variation to this Agreement shall only be binding when agreed by both Parties in writing and signed by the Supplier.

17. SEVERANCE

17.1   If any provision (or part of a provision) of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

17.2   If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the Parties.

18. ENTIRE AGREEMENT

18.1   This Agreement, and any documents referred to in it, constitute the whole Agreement between the Parties and supersede any previous arrangement, understanding or Agreement between them relating to the subject matter they cover.

18.2   Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not or whether made negligently or innocently) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

19. ASSIGNMENT

19.1   The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

19.2   The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

20. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. THIRD PARTY RIGHTS

This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. NOTICES

22.1 Any notice required to be given under this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other Party at its address set out in this Agreement, or such other address as may have been notified by that Party for such purposes.

22.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

23. GOVERNING LAW AND JURISDICTION

23.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

23.2 The Parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date stated at the beginning of it.

Signed by_____   ....
for and on behalf of Business   Director
Systems (UK) Limited.

Signed by _____   ....

for and on behalf of [<mark>COMPANY</mark>   Director
<mark>NAME</mark>]