

RIVIAM DIGITAL CARE TERMS AND CONDITIONS - TARGETT BUSINESS TECHNOLOGY LTD ("TBT")

INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions.

Authorised Users:

those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.

Business Day:

a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Buyers:

other potential Customers as further defined in the Call-Off Contract.

Call-off Contract:

the legally binding agreement (entered into following the provisions of the Framework Agreement) for the provisions of Services made between the Customer and TBT.

Change of Control:

shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

Confidential Information:

information which may include (but is not limited to) any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property rights together with all information derived from any of the above and any other information clearly designated as being confidential or which ought reasonably to be considered to be confidential (whether or not it is marked 'confidential' or as identified as Confidential Information in clauses 10.5 and 10.6.

Customer:

a UK public sector, or contracting body, as described in the OJEU contract notice, that can execute a competition and a Call-Off Contract within the Framework Agreement and is identified in the Order Form.

Customer Data:

the data inputted by the Customer, Authorised Users, or TBT on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Documentation:

the document(s) made available to the Customer by TBT online via www.riviam.com or such other web address notified by TBT to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Framework Agreement:

the agreement entered into by TBT governing the provision of the Services to Customers.

Intellectual Property:

patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), moral rights, trade secrets, semi-conductor topography rights, service marks, logos and all other intellectual property rights, in each case whether registered or unregistered and including all applications 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.

Normal Business Hours:

9.00 am to 5.30 pm local UK time, each Business Day

Order Form:

an order set out in the Call-Off Contract for the Services placed by the Customer and accepted by TBT.

RIVIAM Digital Care:

Is the trading name under which TBT offers its health and social care services.

RIVIAM Digital Care platform:

TBT's software as a service that operates in a data centre served by TBT connected to the internet.

RIVIAM Core Care Record:

TBT's software service with the ability to provide a basic patient / service user record. It provides the baseline service that all other RIVIAM services require.

RIVIAM Secure Referral Forms:

Is a software service that allows referrers (GPs, health and social care professionals) and self referrers to safely and securely send sensitive information into RIVIAM Digital Care's platform. Information entered on the customised online form appears in RIVIAM within seconds of the user submitting the information.

RIVIAM Workflow:

Is a software service that allows the customer to manage a health or social care pathway from referral to discharge.

RIVIAM Mobile Community Service:

Is a software service that allows a customer to provide access to care information via RIVIAM's mobile application and allows the management of clinics to schedule work.

RIVIAM Digital Immunisations Consent Service:

Is a software service that enables providers to co-ordinate a digital, paper-free immunisation programme. The service includes eConsent forms for parents, online workflow triage and scheduling tools for service centres and a mobile application for school nurses with update of patient record.

RIVIAM Contact Management:

Is a software service allows providers to manage the contacts they have with patients, service users, carers and professionals. The contact management solution is designed for health and social care service centres and single points of access.

RIVIAM Secure Video Service:

Is a software service that provides video conferencing services between a RIVIAM user and a remote user over the public internet.

RIVIAM GP Document Delivery Service:

Is a software service that allows a customer to send a digital document to a GP system in England.

RIVIAM GP Connector:

Is a software product with the ability to integrate with clinical systems (e.g. EMIS Web or TPP Systm1) via RIVIAM Digital Care platform. It consists of both desktop software and cloud based services.

RIVIAM GP Portal:

Is a service that enables GP practices to get a real-time view of a patient's care with a service provider. This service provides a service directory of available services and allows referrals and communication with providers to be managed.

Services:

the services to be provided by TBT under these terms and conditions and as agreed between the Parties in the Order Form.

Software:

the online software applications provided by TBT as part of the Services.

Subscription Fees:

the subscription fees payable by the Customer to TBT for the User Subscriptions, as set out in the Order Form.

Subscription Term:

has the meaning given in clause 12.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Support Services:

support services provided by TBT as set out in the Order Form.

User Subscriptions:

the user subscriptions purchased by the Customer pursuant to clause 8.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with these terms and conditions.

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 these terms and conditions.

1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of these terms and conditions.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of these terms and conditions under that statute or statutory provision.
- 1.9 A reference to writing or written includes e-mail.
- 1.10 References to clauses are to the clauses of these terms and conditions.

2. USER SUBSCRIPTIONS

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 8.1, the restrictions set out in this clause 2 and the other terms and conditions of , TBT hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 2.2 In relation to the Authorised Users, the Customer must:
 - (a) 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 Services and/or Documentation;
 - (b) ensure that each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than monthly (or as otherwise agreed in the Order Form) and that each Authorised User shall keep his password confidential; and
 - (c) ensure that if it is revealed that any password has been provided to any individual who is not an Authorised User, then without prejudice to TBT's other rights, TBT shall promptly disable such passwords and TBT shall not issue any new passwords to any such individual.
- 2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its or any Authorised User's use of the Services 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
 - (e) in a manner that is otherwise illegal or causes damage or injury to any person or property;and TBT reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 2.4 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 these terms and conditions, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) 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 Software; or
 - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - (c) use the Services and/or Documentation to provide services to third parties, save as set out in an Order Form; or
 - (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify TBT.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
- 3. SERVICES**
- 3.1 TBT shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of these terms and conditions.
- 3.2 TBT shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- (a) planned maintenance carried out during the maintenance window of 10.00 pm to 6.00 am UK time; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that TBT has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 3.3 TBT will provide the Customer with Support Services. TBT may amend the Support Services in its sole and absolute discretion from time to time. The Customer may purchase enhanced Support Services separately at TBT's then current rates.
- 4. CUSTOMER DATA**
- 4.1 The Customer shall own all right, 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.

- 4.2 TBT shall follow its archiving procedures for Customer Data as set out in the Order Form.
- 4.3 TBT shall, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of the Customer Data available at www.riviam.com or such other website address as may be notified to the Customer from time to time, as such document may be amended from time to time by TBT in its sole discretion.
- 4.4 If TBT processes any personal data on the Customer's behalf when performing its obligations under these terms and conditions, the parties record their intention that the Customer shall be the data controller and TBT shall be a data processor and in any such case:
- (a) the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to TBT so that TBT may lawfully use, process and transfer the personal data in accordance with these terms and conditions on the Customer's behalf;
 - (b) 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;
 - (c) TBT shall process the personal data only in accordance with these terms and conditions and any lawful instructions reasonably given by the Customer from time to time; and
 - (d) 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.
- 4.5 This clause 4 shall survive termination of the agreement between TBT and the Customer, however arising.

5. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. TBT makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not TBT. TBT recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. TBT does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

6. TBT'S OBLIGATIONS

- 6.1 TBT undertakes that the Services will be performed substantially in accordance with 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 TBT's instructions, or modification or alteration of the Services by any party other than TBT or TBT's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, TBT 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, TBT:

- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or 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 or Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 6.3 These terms and conditions shall not prevent TBT 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 these terms and conditions.
- 6.4 TBT warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under these terms and conditions.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

- (a) provide TBT with:
 - (i) all necessary co-operation in relation to these terms and conditions; and
 - (ii) all necessary access to such information as may be required by TBT;
in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under these terms and conditions;
- (c) carry out all other Customer responsibilities set out in these terms and conditions in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, TBT may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of these terms and conditions and shall be responsible for any Authorised User's breach of these terms and conditions;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for TBT, its contractors and agents to perform their obligations under these terms and conditions, including without limitation the Services;

- (f) ensure that its network, mobile devices (where applicable) and systems comply with the relevant specifications provided by TBT from time to time; and
 - (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its mobile devices (where applicable) and systems to TBT's data centres; and
 - (h) be solely responsible for 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 When using TBT's NHS Health & Social Care ICT Network ("HSCN") the Customer agrees and warrants:
- (a) that TBT will only facilitate connections to the HSCN network from sites which are physically located within England. Connections to locations within Scotland, Wales, Northern Ireland, the Isle of Man, and Channel Islands or outside the UK will automatically be rejected;
 - (b) that any data made available over the HSCN connection cannot be viewed, processed or stored in any location outside of England. In addition, information shall not be introduced into the HSCN network from any location outside of England, nor shall the HSCN network be used to transmit any information outside of England;
 - (c) to submit a completed and signed Information Assurance Governance Statement prior to the enablement of the HSCN service, and at the renewal of that service thereafter;
 - (d) that failure to continually and fully comply with the Information Assurance Governance Statement with respect to each NHS consuming organisation will result in the prompt removal of HSCN connectivity from that organisation;
 - (e) to submit a valid business justification (including but not limited to physical site locations, network traffic flows, access requirements, encryption approach) to TBT prior to the initial enablement of each service, and at the annual renewal date of that service thereafter. Such justification shall only provide access to services/sites which are essential to the requirements of each specific NHS consuming organisation;
 - (f) to submit a supporting statement from a recognised NHS consuming organisation, that outlines the sponsorship for the Customer's need for the connection to the HSCN network. This document should be dated within the last 90 days, and its validity will be checked by UKCloud;
 - (g) to immediately notify a Director of TBT should the business justification for any individual NHS organisation change in any way or no longer be valid;
 - (h) to immediately notify a Director of TBT if the NHS organisation which sponsored each N3 connection ceases to be associated with the Customer;
 - (i) to immediately notify TBT by telephone and email of any actual or suspected incidents or security breaches which have or could impact upon the full, correct and secure operation of the HSCN network;

- (j) to fully comply with all TBT's activities (including investigations) which are associated with a reported incident or security breach;
- (k) that TBT reserves the right to verify and/or audit the Customer's submission and supporting evidence, which may be undertaken remotely or on the Customer's and/or NHS organisation's site. The Customer agrees to fully comply and co-operate with this activity, which will be subject to an appropriate NDA and undertaken on mutually acceptable dates;
- (l) to promptly act upon renewal notifications received by TBT for each Service, which include the re-submission of the IGT Toolkit, and re-affirmation of both the individual business need and confirmation from the applicable NHS sponsoring organisation;
- (m) that failure to satisfactorily complete the re-submission in advance of the stated deadlines will result in the prompt removal of HSCN connectivity from the Customer;
- (n) that any penalties imposed upon TBT or UKClouds as a result of misuse of the N3 network under its control which can be attributed to the Customer will be passed onto the Customer for payment.

8. CHARGES AND PAYMENT

- 8.1 The Customer shall pay the Subscription Fees and all other fees as set out in the Order Form.
- 8.2 The Customer shall pay TBT within 15 days of a valid invoice being submitted by TBT to the Customer.
- 8.3 All invoices issued to the Customer will include VAT at the appropriate rate if applicable.
- 8.4 All invoices issued to the Customer will contain appropriate references and a detailed breakdown of the Services provided.
- 8.5 Payment to TBT by the Customer shall be directly to TBT's bank account or as otherwise set out in the Order Form.
- 8.6 If TBT has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of TBT:
 - (a) TBT may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and TBT 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 any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (as amended from time to time).
- 8.7 In the event of a disputed invoice the Customer must make payment in respect of the undisputed amount in accordance with these terms and conditions and return the invoice to TBT within 10 Business Days of receipt with a covering statement proposing amendments to the invoice and/or a reason for any non-payment. TBT shall respond within 10 Business Days of receipt of the returned invoice stating whether or not TBT accepts the Customer's proposed amendments. If TBT does accept the amendments TBT will supply the Customer with a replacement valid invoice.
- 8.8 All amounts and fees stated or referred to in these terms and conditions:
 - (a) shall be payable in pounds sterling;

- (b) are, save as otherwise set out in these terms and conditions or the Call-off Contract, non-cancellable and non-refundable;
 - (c) are exclusive of value added tax, which shall be added to TBT's invoice(s) at the appropriate rate.
- 8.9 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation, TBT shall charge the Customer, and the Customer shall pay, TBT's then current excess data storage fees. TBT's excess data storage fees current as at the Effective Date are set out in the Order Form.
- 8.10 TBT shall be entitled to increase the Subscription Fees and/or the excess storage fees payable pursuant to the Order Form upon 90 days' prior notice to the Customer.
- 8.11 This clause 7.1(h) shall survive termination of these terms and conditions, however arising.
- 9. PROPRIETARY RIGHTS**
- 9.1 The Customer acknowledges and agrees that TBT and/or its licensors own all Intellectual Property rights in the Services, the Documentation and any additional functionality developed to support or released as part of the Software. Except as expressly stated herein, these terms and conditions does not grant the Customer any rights to, or in, patents, copyright, database right, design right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 9.2 TBT confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of these terms and conditions.
- 9.3 This clause 9 shall survive termination of the agreement between TBT and the Customer, however arising.
- 10. CONFIDENTIALITY**
- 10.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under these terms and conditions. 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.
- 10.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law or permitted under the Call-off Contract, 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 these terms and conditions other than with the relevant party's prior written consent.

- 10.3 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 these terms and conditions.
- 10.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 10.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute TBT's Confidential Information.
- 10.6 TBT acknowledges that the Customer Data is the Confidential Information of the Customer.
- 10.7 This clause 10 shall survive termination of the agreement between TBT and the Customer, however arising.
- 10.8 No party shall make, or permit any person to make, any public announcement concerning these terms and conditions without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11. INDEMNITY**
- 11.1 The Customer shall defend, indemnify and hold harmless TBT 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 the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) TBT provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 11.2 TBT shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) The indemnity shall not cover the Customer to the extent that a claim under it results from the Customer's negligence or wilful misconduct;
 - (b) TBT is given prompt notice of any such claim;
 - (c) the Customer provides reasonable co-operation to TBT in the defence and settlement of such claim, at TBT's expense; and
 - (d) TBT is given sole authority to defend or settle the claim.
- 11.3 In the defence or settlement of any claim, TBT may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the agreement between TBT and the Customer on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.

- 11.4 In no event shall TBT, 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 Services or Documentation by anyone other than TBT; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by TBT; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from TBT or any appropriate authority.
- 11.5 The foregoing states the Customer's sole and exclusive rights and remedies, and TBT's (including TBT's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 12. TERM AND TERMINATION**
- 12.1 These terms and conditions shall, unless otherwise terminated as provided in this clause 12, commence on the date set out in the Order Form and shall continue as specified in Part A of the Order Form.
- 12.2 Without affecting any other right or remedy available to it, either party may terminate these terms and conditions with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any other term of these terms and conditions or the agreement between TBT and the Customer which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 15 Business Days after being notified in writing to do so;
 - (b) 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;
 - (c) 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;
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in 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;
 - (e) 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;
 - (f) 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;

- (g) 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;
 - (h) 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 the other party's assets and such attachment or process is not discharged within 14 days;
 - (i) 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 12.2(b) to clause 12.2(h) (inclusive);
 - (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
 - (k) as regard the Customer there is a change of control of the Customer.
- 12.3 On termination of the agreement between TBT and the Customer for any reason:
- (a) all licences granted under the agreement between TBT and the Customer or these terms and conditions 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; and
 - (c) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

13. FORCE MAJEURE

Neither party shall have liability to the other party under these terms and conditions (other than a payment of money) if it is prevented from or delayed in performing its obligations under these terms and conditions, 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 TBT 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 other party is notified of such an event and its expected duration.

14. VARIATION

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

15. WAIVER

No failure or delay by a party to exercise any right or remedy provided under these terms and conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further

exercise of that or any other right or remedy. This clause 15 shall survive termination of the agreement between TBT and the Customer, however arising.

16. RIGHTS AND REMEDIES

Except as expressly provided in these terms and conditions, the rights and remedies provided under these terms and conditions are in addition to, and not exclusive of, any rights or remedies provided by law. This clause 16 shall survive termination of the agreement between TBT and the Customer, however arising.

17. SEVERANCE

- 17.1 If any provision (or part of a provision) of these terms and conditions 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 These terms and conditions, and any documents referred to within them, 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 these terms and conditions 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 the agreement between TBT and the Customer or not) relating to the subject matter of these terms and conditions, other than as expressly set out in these terms and conditions.

19. NO PARTNERSHIP OR AGENCY

Nothing in these terms and conditions 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).

20. THIRD PARTY RIGHTS

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

21. NOTICES

- 21.1 Any notice required to be given under these terms and conditions 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 these

terms and conditions, or such other address as may have been notified by that party for such purposes.

21.2 A notice may also be sent by email. The deemed delivery time for an email is 9am on the first Business Day after sending and proof of service is where the notice is dispatched in a pdf form to the correct email address without any error message.

21.3 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.

22. GOVERNING LAW

These terms and conditions and any dispute or claim arising out of or in connection with them or their 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.

23. JURISDICTION

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