

# Pipedrive Outlook Sync Terms of Business

The Customer's attention is particularly drawn to the provisions of clause 17 below (limitation of liability).

## 1. INTERPRETATION

1.1 Definitions. In this agreement, the following definitions apply:

**Additional Fees:** any additional fees payable by the Customer for Additional Services.

**Additional Services:** any additional services ordered by the Customer, including but not limited to extra applications, custom integrations, bespoke development, add-ons, online services.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 19.8.

**Contract:** the contract between the Supplier and the Customer for the supply Software and/or Services in accordance with this agreement.

**Customer:** the person or firm who purchases Software and/or Services from the Supplier as set out in the Order Form.

**Customer Data:** the data inputted into the information fields of the Software by the Customer, or by the Supplier on the Customer's behalf.

**Effective Date:** the date set out in the Order Confirmation, or the date that the Services and Software are delivered or made available to the Customer, whichever is the earlier.

**Fees:** means the Subscription Fee, the Hosting Fee, the Maintenance and Support Fee and any Additional Fees as set out in the Order.

**Hosting Services:** the services that the Supplier provides to allow the Customer to access and use the Software, including hosting set-up and ongoing services, as described in the Order Confirmation.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Maintenance and Support:** any error corrections, updates and upgrades that the Supplier may provide or perform with respect to the Software and Hosting Services, as well as any other support or training services provided to the Customer under this agreement.

**Order:** the order for the Equipment, Software and/or Services by the Customer.

**Order Confirmation:** the order confirmation from the Supplier, following receipt of the Customer's Order.

**Online Fees:** the online fees as set out in the Order Confirmation, or if none is included, the Supplier's standard fee rates as confirmed from time to time.

**Services:** any services the Supplier agrees to provide to the Customer as set out in the Order Confirmation, including but not limited to Hosting Services and/or Maintenance and Support as applicable.

**Software:** any operating system or Software installed on the Equipment or provided to the Customer by the Supplier on a subscription basis under the Software Licence, including any error corrections, updates, upgrades, modifications and enhancements to it provided to the Customer under this agreement.

**Software Licence:** the Software user licence granted by the Supplier to the Customer to use the Software who subscribe for the Software in accordance with clause 2.8.

**Subscription Users:** the subscription users is the number of users licensed to use the subscription package.

**Subscription Period:** the subscription period defines the length of the time in months a customer subscribes to the Software Subscription. The Supplier provides subscription periods of 1 Month and 12 Months

**Subscription Package:** the subscription package for the Software that the Customer has chosen as specified in the Order, the number of Subscription Users within the package and the Subscription Period.

**Subscription Fee:** the fee payable by the Customer for the Software subscription to have access to the Software. The fee is defined by the Subscription Package type and the number of Subscription Users.

**Supplier:** Redev Limited registered in England and Wales with company number 4010926 whose registered office is at 30-38 Dock Street, Leeds LS10 1JF.

**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 viruses, trojan horses, viruses and other similar things or devices.

1.2 In this agreement, the following rules apply:

- (a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to writing or written includes faxes and e-mails.

## 2. BASIS OF CONTRACT

2.1 This agreement shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in or referred to in the Customer's purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 The Software Licence found at:

[www.pipedriveoutlooksync.com/PipedriveOutlookSyncEULA.pdf](http://www.pipedriveoutlooksync.com/PipedriveOutlookSyncEULA.pdf)

shall apply to and be incorporated in the Contract. The Customer is deemed to have read and acknowledged the Software Licence by agreeing to this agreement.

2.3 By subscribing for the Services the Customer shall be deemed to have agreed to and accepted liability for the payment of all Fees, rates and other charges associated with the Services.

2.4 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on the Supplier unless in writing and signed by a duly authorised representative of the Supplier.

2.5 The Supplier reserves the right to update these terms from time to time and the terms will be available at: [www.pipedriveoutlooksync.com/PipedriveOutlookTermsAndConditions.pdf](http://www.pipedriveoutlooksync.com/PipedriveOutlookTermsAndConditions.pdf)

2.6 The Software will be made available to the Customer on a subscription basis covered in clause 2.8 shall apply.

2.7 The default standard **Subscription Period** for all Customers is **1 Month** unless otherwise stated in the Subscription Package ordered or otherwise agreed with the Supplier in writing.

2.8 The Software is made available to the Customer on a subscription basis, this agreement covers usage for the specified number of **Subscription Users** defined in the **Subscription Package** only; this agreement shall commence on the Effective Date and unless terminated earlier in accordance with clause 18, this agreement shall continue for **Subscription Period** from the Effective Date. This agreement shall continue, unless terminated earlier in accordance with clause 18, or until either party gives **Subscription Period (months)** written notice to the other party to terminate this agreement. The Customer shall not downgrade their Subscription Package during the current Subscription Period.

2.9 The Customer may upgrade their Subscription Package at any time during the Subscription Period by giving notice in writing to the Supplier. The Supplier will agree with the Customer the date on which the upgrade will occur and the Customer will pay the increased fee for their new Subscription Package from that date. After upgrading a Subscription Package the Customer must continue with their new Subscription Package until the end of the current **Subscription Period** unless otherwise agreed in writing. After the expiry of the current Subscription Period the Customer has the right to request to downgrade to a different Subscription Package.

## Additional Services

2.10 The Supplier may from time to time offer Additional Services which shall be provided on the basis set out in the Order. The terms of clause 2.8 and clauses 11. Payments shall apply to such Additional Services.

## 3. SUPPLY

3.1 Each Order or acceptance of a quotation by the Customer shall be deemed to be an offer by the Customer subject to this agreement. The Customer shall ensure that its Order is complete and accurate.

3.2 A binding contract shall not come into existence between the Supplier and the Customer unless and until the Supplier issues a

written Order Confirmation to the Customer, or the Supplier delivers the Equipment, Software or Services to the Customer (whichever occurs earlier), or the Customer clicks to accept the terms of the Software Licence.

- 3.3 No order which has been acknowledged by the Supplier may be cancelled by the Customer, except with the agreement in writing of the Supplier and provided that the Customer indemnifies the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

#### 4. CUSTOMER'S OBLIGATIONS

- 4.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides to the Supplier is complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Equipment, Software or Services;
  - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier;
  - (d) provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Equipment, Software or Services;
  - (e) obtain and maintain all necessary licences, permissions and consents which may be required; and
  - (f) pay the Fees, Additional Fees and Administration Fees and all other fees in connection with the Services on the due date.

#### 5. QUANTITY AND DESCRIPTION

- 5.1 The quantity and description of the Equipment, Software or Services shall be as set out in the Order Confirmation, or (if there is no Order Confirmation) the Order itself.
- 5.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier are issued or published for illustrative purposes only and they do not form part of the Contract.
- 5.3 The Supplier reserves the right (but does not assume the obligation) to make any changes in the specification of the Equipment, Software or Services which are required to conform with any applicable legislation or which do not materially affect their quality or performance. Where the Supplier is not the manufacturer of the Equipment, the Supplier shall use reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given by the manufacturer to the Supplier.
- 5.4 The Supplier's employees, contractors and agents are not authorised to make any representations or contractually binding statements concerning the Equipment, Software or Services.

#### 6. HOSTING SERVICES, MAINTENANCE AND SUPPORT

- 6.1 The Supplier provides free updates and free support for the Software from the Effective Date for a period of 12 months. This free support and free update period may be extended at the Supplier's discretion. After the 12 month period, the Supplier reserves the right to charge the Customer Additional Fees as agreed from time to time.
- 6.2 The Customer must ensure that the computer system is online for a short period of time (less than an hour) at the end of each month so that Software updates, Licence renewals and maintenance can be performed by the Supplier. If the computer is switched off, or is off line (not connected to the internet), the Supplier will not be able to perform the Software updates, update the Licence, or perform any required maintenance. Failure to have the computer online will disrupt the Customer's usage of the Software.
- 6.3 Maintenance includes all scheduled error corrections, software updates and those upgrades limited to improvements to features described in the Software. Support for additional features developed by the Supplier, as requested by the Customer, may be purchased separately at the Supplier's then current rates.
- 6.4 Where possible, maintenance of the hosting equipment, facility, Software or other aspects of the Hosting Services that may require interruption of the Hosting Services shall not be performed during Normal Business Hours. However, the Supplier may interrupt the Services to perform emergency maintenance.

#### 7. SOFTWARE

- 7.1 In relation to the Software:
- (a) the Supplier hereby grants to the Customer on and subject to the terms and conditions of this agreement and the Software Licence a non-exclusive, non-transferable licence to allow the Customer to

access the Software through the Hosting Services and to use the Software solely for the Customer's business purposes;

- (b) the Customer shall not store, distribute or transmit any Virus, or any material through the Hosting Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religion, religious belief, sexual orientation, disability, or any other illegal activities;
- (c) the rights provided under this clause 7.1 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer;
- (d) the Customer shall not:
  - (i) attempt to copy, duplicate, modify, create derivative works from or distribute all or any portion of the Software except to the extent expressly set out in this agreement or as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or
  - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties; or
  - (iii) access all or any part of the Software or Hosting Services in order to build a product or service which competes with the Software and/or the Services
  - (iv) use the Software or Hosting Services to provide services to third parties; or
  - (v) transfer, temporarily or permanently, any of its rights under this agreement; or
  - (vi) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this clause 7.1; and
- (e) the Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Software and notify the Supplier promptly of any such unauthorised access or use.
- (f) the Customer acknowledges that it is granted a licence to use the Software subject to the terms of the Software Licence, and nothing contained in this agreement shall be construed as an assignment of any Intellectual Property Rights in the Software or user manuals;
- (h) the Customer shall comply with the Software Licence, all licence agreements, terms of use and registration requirements relating to them; and
- (i) if the Customer fails to pay the Fees, or any subscription fees, the Software Licence will terminate.

#### 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 It is the Customer's responsibility to back up their Customer Data and to make sure such backups are successful. 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 try to restore the lost or damaged Customer Data from the latest back-up of such Customer Data, subject to the Customer paying the Supplier for any costs incurred. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 8.3 The Customer grants a non-exclusive, royalty free licence to the Supplier to use the Customer Data for the purposes of extracting anonymised data from the Customer Data and processing it. The Supplier confirms that such anonymised data will not be 'personal data' as defined in the Data Protection Act 1998.
- 8.4 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under these Conditions, 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 is located in order to carry out the Services and the Supplier's other obligations under these Conditions;
  - (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) 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;
- (e) the Customer acknowledges that it must back-up all data held by the Supplier and that on termination of the Contract the Supplier has the right to delete all Customer Data in its possession.

## 9. SUPPLIER'S OBLIGATIONS

- 9.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Order Confirmation and with reasonable skill and care.
- 9.2 The undertaking at clause 9.1 shall not apply to the extent of any non-conformance which is caused by use of the Software contrary to the Supplier's instructions or modification or alteration of the Software by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Software does 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 9.1. Notwithstanding the foregoing, Supplier does not warrant that the Customer's use of the Software and the Services will be uninterrupted or error-free.

## 10. PRICES

- 10.1 All prices shall be as stated on the Order. All prices are exclusive of delivery, packaging, packing, shipping, carriage, insurance, VAT and other charges and duties.
- 10.2 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of such of the Licence/Subscription Fee or any Equipment, Subscription Package, Software or Services that has not been delivered to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (including any foreign exchange fluctuation, currency regulation, alteration of duties, change in legislation, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Equipment, Subscription Package, Software or Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate information or instructions.
- 10.3 The Supplier shall be entitled to increase the Fees, or the Additional Fees payable in respect of Additional Services purchased by the Customer at any time during the Term upon giving not less than one month's prior notice to the Customer and the Order Confirmation shall be deemed to have been amended accordingly.

## 11. PAYMENTS

- 11.1 The Customer must provide the Supplier with:
  - (a) a valid credit card and/or debit card for all payments to be authorised; and
  - (b) a signed standing order form/direct debit instruction.

### Fees

- 11.2 Payment for the Equipment, Software or Services and any Fees shall take place on such date as is agreed between the parties or at the time the Equipment, Software or Services is delivered to the Customer.
- 11.3 The Customer shall pay the Fees as set out in the Order Confirmation for the initial set-up, the Software, maintenance and support of the Software, any Additional Fees and the Hosting Services.
- 11.4 The Supplier shall invoice the Customer for the Fees and any Additional Fees and the Customer shall pay all invoices in full and in cleared funds immediately on receipt.
- 11.5 Where the Supplier has agreed a payment plan with the Customer, the Customer shall make all payments in accordance with that payment plan on the dates specified.
- 11.6 The Customer shall pay the Subscription Fees in advance for each Subscription Period as set out in the Order Confirmation, for the initial set-up, the Software, maintenance and support of the Software, any Additional Fees and the Hosting Services.
- 11.7 The Supplier shall invoice the Customer each Subscription Period for all the Fees at the beginning of the Subscription Period.
- 11.8 The Customer agrees to set up a continuous payment authority with their banks for the payment of the Fees.
- 11.9 If a subscription payment is missed during the Subscription Period, the Supplier reverses the right to take payment for the missing

amount and for the balance of all amounts owing for the duration of the Subscription Period. The Supplier will also charge the Customer an administration charge of £20 plus VAT, and £25 for each bank 'charge back' or cancellation fee charged by the bank or credit card provider ("**Administration Fees**").

- 11.10 If a subscription payment is missed after the Subscription Period, the Supplier reverses the right to take payment for the missing amount and to charge the Customer for the Administration Fees.
- 11.11 The Customer hereby authorises the Supplier to charge the Customer under the continuous payment authority for the Fees, the Additional Fees and any Administration Fees as set out above.
- 11.12 If the Customer does not pay the subscription Fees when they are due, the Licence will terminate and the Customer will need to purchase a new Licence.
- 11.13 The **Billing Cycle** for the subscription services is defined by the **Subscription Period**. (i.e. if the Customer's Subscription Period is 1 Month the Customer is charged for the Service on a monthly basis at the beginning of the Subscription Period), starting on the day immediately following Customer's subscription, or, if a free trial period has been granted to Customer, on the day immediately following such trial period.
- 11.14 Payment for the Service is due in advance by the first day of each Subscription Period (billing cycle) and should be effected by credit card/debit card, unless otherwise agreed. The Customer shall ensure that sufficient funds are available on the relevant account and acknowledges that late payment may result in the suspension of Services including access to the Software, being charged Administration Fees, or cancellation of the Subscription and License.
- 11.15 If the Customer cancels their subscription, or if their subscription is terminated, no refund will be given to Customer for any payment relating to that Subscription Period (billing cycle).
- 11.16 Where a Customer upgrades their subscription package during a subscription period they shall be charged the revised fee from the date on which the upgrade occurs. The Supplier shall take an additional payment for that billing cycle from the Customer's credit card to the Customer's account against the next monthly payment.
- 11.17 Where a Customer downgrades their subscription package during a subscription period no refund will be given to Customer for any payment relating to the downgrading of services during Subscription Period (billing cycle).

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- 11.18 Time for payment shall be of the essence of the Contract.
- 11.19 Prepayments or payments in advance are non-refundable.
- 11.20 If the Customer fails to make payment in full on the due dates, the whole of the balance of the price of the Equipment, Software or Services then outstanding shall become immediately due and payable and, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:
  - (a) terminate the Contract or suspend any further deliveries of Equipment (whether ordered under the same contract or not) to the Customer;
  - (b) appropriate any payment made by the Customer to such of the Equipment, Software or Services (or the Equipment supplied under any other contract between the Customer and the Supplier) as it thinks fit (despite any purported appropriation by the Customer);
  - (c) charge interest on the amount outstanding from the due date to the date of receipt by the Supplier (whether or not after judgment), at the annual rate of 4% above the base lending rate from time to time of HSBC Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment. The Supplier reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998;
  - (d) terminate all Software Licences, further manufacture, delivery, installation or warranty services until payment has been made in full; and
  - (e) exercise a general lien on all Equipment and property belonging to the Customer, exercisable in respect of all sums lawfully due from the Customer to the Supplier. The Supplier shall be entitled, on the expiry of 14 days' notice in writing, to dispose of such Equipment or property in such manner and at such price as it thinks fit and to apply the proceeds towards the amount outstanding.
- 11.21 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision of the Contract. This clause 11.21 is without prejudice to any right to claim for interest under the law, or any right under the Contract.
- 11.22 The Customer shall pay all amounts due under the Contract 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 prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.

## **12. DELIVERY AND ACCEPTANCE**

- 12.1 The Supplier shall use its reasonable endeavours to deliver the Equipment, Software or Services on the date or dates specified in the Supplier's acknowledgement of order, but any such date is approximate only. If no dates are so specified, delivery shall be within a reasonable time of acceptance of the order. Time is not of the essence as to the delivery of the Equipment, Software or Services and the Supplier is not in any circumstances liable for any delay in delivery, however caused.
- 12.2 Delivery shall be made during normal business hours (excluding bank or public holidays). The Supplier may levy additional charges for any deliveries made outside such hours at the Customer's request.
- 12.3 The Customer shall be deemed to have accepted the Equipment when the Customer has had 7 days to inspect it after delivery and has not exercised in writing its right of rejection within 7 days from the date of delivery.

## **13. RISK AND PROPERTY**

- 13.1 The Equipment shall be at the risk of the Supplier until delivery to the Customer at the place of delivery specified in the Supplier's acknowledgement of order.
- 13.2 Ownership of the Equipment shall only pass to the Customer on the later of completion of delivery (including off-loading), or when the Supplier has received in full in cleared funds all sums due to it in respect of:
- (a) the Equipment; and
  - (b) all other sums which are or which become due to the Supplier from the Customer on any account, including any Licence/Subscription Fee payable.
- 13.3 Until ownership of the Equipment has passed to the Customer under clause 13.2, the Customer shall:
- (a) hold the Equipment on a fiduciary basis as the Supplier's bailee;
  - (b) store the Equipment (at no cost to the Supplier) in satisfactory conditions and separately from all the Customer's other equipment or that of a third party, so that it remains readily identifiable as the Supplier's property;
  - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment; and
  - (d) keep the Equipment insured on the Supplier's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of the Supplier, ensure that the Supplier's interest in the Equipment is noted on the policy, and hold the proceeds of such insurance on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 13.4 The Customer's right to possession of the Equipment before ownership has passed to it shall terminate immediately if any of the circumstances set out in clause 18 arise or if the Customer encumbers or in any way charges the Equipment, or if the Customer fails to make any payment to the Supplier on the due date.
- 13.5 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Equipment is or may be stored in order to inspect it, or where the Customer's right to possession has terminated, to remove it. All costs incurred by the Supplier in repossessing the Equipment shall be borne by the Customer.
- 13.6 On termination of the Contract for any reason, the Supplier's (but not the Customer's) rights in this clause 13 shall remain in effect.

## **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1 All Intellectual Property Rights in or arising out of or in connection with the Equipment or Software shall be owned by the Supplier.
- 14.2 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Software and the Services. 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, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Software, Services or any related documentation.
- 14.3 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Customer.

- 14.4 The Supplier shall retain the property and copyright in all documents supplied to the Customer in connection with the Contract and it shall be a condition of such supply that the contents of such documents shall not be communicated either directly or indirectly to any other person, firm or company without the prior written consent of the Supplier.

- 14.5 The Supplier's Intellectual Property Rights in and relating to the Equipment and Software shall remain the exclusive property of the Supplier, and the Customer shall not at any time make any unauthorised use of such Intellectual Property Rights, nor authorise or permit any of its agents or contractors or any other person to do so.

## **15. CONFIDENTIALITY**

- 15.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier or its agents, and any other confidential information concerning the Supplier's business or its products which the Customer may obtain. The Customer shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Customer's obligations to the Supplier, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Customer.
- 15.2 All documents, materials, drawings, specifications and data supplied by the Supplier to the Customer shall at all times be and remain the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.
- 15.3 This clause 15 shall survive termination of the Contract, however arising.

## **16. WARRANTIES**

- 16.1 The Supplier warrants to the Customer that the Equipment is free from defects of workmanship and materials. The Supplier undertakes (subject to the remainder of this clause 16), at its option, to repair or replace Equipment (other than consumable items) which is found to be defective as a result of faulty materials or workmanship within six months of delivery and installation.
- 16.2 The Supplier shall not in any circumstances be liable for a breach of the warranty contained in clause 16.1 unless:
- (a) the Customer gives written notice of the defect to the Supplier within seven days of the time when the Customer discovers or ought to have discovered the defect; and
  - (b) after receiving the notice, the Supplier is given a reasonable opportunity of examining such Equipment and the Customer (if asked to do so by the Supplier) returns such Equipment to the Supplier's place of business at the Customer's cost for the examination to take place there.
- 16.3 The Supplier shall not in any circumstances be liable for a breach of the warranty in clause 16.1 if:
- (a) the Customer makes any use of Equipment in respect of which it has given written notice under clause 16.2(a); or
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or (if there are none) good trade practice; or
  - (c) the Customer alters or repairs the relevant Equipment without the written consent of the Supplier.
- 16.4 Any repaired or replacement Equipment shall be under warranty for the unexpired portion of the six-month period.
- 16.5 All Software supplied either separately or embedded in products or Equipment is supplied without warranty. The Supplier's liability is restricted solely to that of replacing faulty media within a 90 day period. NOTE: A RMA (Return Merchandise Authorisation) Number is required for all returns; the Supplier will issue this number.
- 16.5 The Supplier shall not in any circumstances be liable for any damage or defect to the Equipment caused by improper use of the Equipment or use outside its normal application.
- 16.6 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer (other than by reason of a Force Majeure Event under clause 19.1), the Customer shall in all circumstances be liable to pay to the Supplier all reasonable costs, charges or losses sustained by it as a result, subject to the Supplier notifying the Customer in writing of any such claim it might have against the Customer in this respect.

16.7 In the event of any claim by the Customer under the warranty given in clause 16.1, the Customer shall notify the Supplier in writing of the alleged defect. The Supplier shall have the option of testing or inspecting the Equipment at its current location or moving it to the Supplier's premises (or direct to the manufacturer of the Equipment) at the cost of the Customer. If the Customer's claim is found by the Supplier to be within the scope of the warranty in clause 16, the Supplier will reimburse the costs of transportation of the Equipment, investigation, return and repair to the Customer, BUT only where such costs are approved in advance by the Supplier. If the Customer's claim is found by the Supplier to be outside the scope or duration of the warranty in clause 16, the costs of transportation of the Equipment, investigation, return and repair shall be borne by the Customer.

#### 17. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

17.1 The following provisions set 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 the Contract howsoever arising; and
- (b) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising out of or in connection with the Contract.

17.2 Nothing in this agreement shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation.

17.3 Except as expressly and specifically provided in this agreement:

- (a) the Customer assumes sole responsibility for results obtained from the use of the Software and the Services 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 Services, 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 implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement.

17.4 Subject to clauses 17.2 and 13.3

- (a) the Supplier shall not in any circumstances be liable, whether in tort (including for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for:
  - (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of use; or
  - (viii) loss or corruption of data or information; or
  - (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to either (1) the price payable for the Equipment and the total amount of Licence/Subscription Fee paid during the 12 months preceding the date on which the claim arose or (2) the price paid for the Services during the 12 months preceding the date on which the claim arose, whichever is the higher.

#### 18. TERMINATION

18.1 Without prejudice to any other right or remedy available to the Supplier, the Supplier may terminate the Contract or the Software Licence, or suspend any further deliveries under the Contract without liability to the Customer and, if the Equipment has been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary if:

- (a) the Customer fails to pay any amount due under this agreement on the due date for payment;
- (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 (being a company) is deemed unable to pay its

- (c) debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
- (d) the other party (being an individual) is the subject of a bankruptcy petition or order; or
- (e) the Customer takes or suffers any similar or analogous action to any of the foregoing in any jurisdiction in consequence of debt.

18.2 Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive or implicitly surviving termination.

18.3 On termination of this agreement for any reason:

- (a) all fees due and payable to the Supplier shall be paid immediately, including, where the agreement is a Subscription, the total Fees payable for the current Subscription Period;
- (b) all licences granted under this agreement shall immediately terminate;
- (c) each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party;
- (d) the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession; and
- (e) 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.

#### 19. GENERAL

##### 19.1 Force majeure:

- (a) For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to 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 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 subcontractors.
- (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

##### 19.2 Assignment and subcontracting:

- (a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier reserves to impose a charge for its time for processing such a transfer and will only grant consent on payment of its invoice for such charges.

##### 19.3 Notices:

- (a) Any notice required to be given pursuant to 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 address of the party as set out in this agreement, or such other address as may be notified by one party to the other. A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 11.00 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.

##### 19.4 Waiver:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

##### 19.5 Severance:

- (a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or

- unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 19.6 No partnership:** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 19.7 Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 19.8 Variation:** Except as set out in this agreement, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when notified to the Customer in writing by the Supplier.
- 19.9 Governing law and jurisdiction:** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.