

TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Agreed Purposes: the provision of the Services in accordance with these Conditions.

Applicable Laws: all regional, national and international laws, regulations and standards applying to the person or circumstances in question, including standards imposed by or notices issued by any governmental or regulatory authorities and all generally applicable industry standards, including those attributable to self-regulation.

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges: the charges payable by the Customer for the supply of the Services in accordance with clause 5.

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 12.8.

Contract: a contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases Services from the Supplier.

Data Controller: has the meaning given to it in the Data Protection Legislation.

Data Processor: has the meaning given to it in the Data Protection Legislation.

Data Protection Legislation: the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the law implementing the Network and Information Systems Security Directive 2016/1148, (from implementation) the General Data Protection Regulation (EU) 2016/679 ("GDPR"), and all Applicable Laws and regulations relating to processing of Personal Data and privacy, as each are amended, updated or replaced from time to time, and including where applicable any guidance and/or codes of practice issued by the Article 29 Working Party, the European Data Protection Board, the supervisory regulatory authority responsible for the enforcement of the Data Protection Legislation (including the Information Commissioner's Office and its successors) as may be replaced or revised from time to time, or other relevant regulator and/or Government department in relation to applicable data protection law.

Data Subject: has the meaning given to it in the Data Protection Legislation.

Deliverables: the reports or other documents relevant to the particular Services as specified in the Order and as produced by the Supplier for the Customer.

Guarantor: any prospective guarantor who is the subject of a reference report.

Initial Period: the initial period specified under the first tenancy agreement entered into by the Tenant or guaranteed by the Guarantor following provision of the Services.

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.

Order: the Customer's order for Services as set out in the Customer's order form or submitted by the Customer through the agent suite at www.rent4sure.co.uk.

Permitted Recipients: the parties to the Contract, the employees of each party, any third parties engaged to perform obligations in connection with the Contract.

Personal Data: personal data as defined by the Data Protection Legislation.

Rebate: shall have the meaning given in clause 5.9.

Services: the services supplied by the Supplier to the Customer as specified in the Order being the tenant referencing and/or know your customer and/or right to rent services and/or any other services set out in the Order in each case including the Deliverables and as more particularly described at www.rent4sure.co.uk.

Shared Personal Data: the Personal Data to be shared between the parties under the Contract.

Supplier: Rent4sure Limited registered in England and Wales with company number 06988086.

Tenant: any prospective tenant who is the subject of a reference report and/or any other Services.

1.2 Interpretation. In these Conditions, 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 personal representatives, 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 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted upon the earlier of:

- (a) the Supplier issuing written acceptance of the Order; or
- (b) the Supplier commencing performance of Services specified in the Order at which point and on which date a Contract shall come into existence (**Commencement Date**).

2.3 The Customer acknowledges and agrees that due to the nature of the Services and the time frame in which they are provided the Customer shall have no right to cancel any Order once submitted to the Supplier.

2.4 A Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, assurance, warranty or representation made or given by or on behalf of the Supplier which is not set out in that Contract.

2.5 Any samples, descriptive matter or advertising issued by the Supplier, and any descriptions contained in the Supplier's catalogues or brochures or on the Supplier's website, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of any Contract or have any contractual force.

2.6 These Conditions apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.7 Any quotation given by the Supplier shall not constitute an offer, and is subject to change at any time prior to acceptance.

2.8 Each Order accepted by the Supplier shall constitute a separate Contract between the Supplier and the Customer.

3. SUPPLY OF SERVICES

3.1 The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.

3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order or agreed in writing with the Customer but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

3.3 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. The Customer acknowledges and agrees that any changes to the Services made by the Supplier shall not in any circumstances constitute any acknowledgement or agreement by the Supplier that the Services as previously provided were defective or failed to meet the standards required under these Conditions.

3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

3.5 The Customer acknowledges that when providing referencing services as part of the Services the Supplier will:

- (a) undertake searches of the databases and records specified for each particular service at www.rent4sure.co.uk using the data supplied by the Tenant or Guarantor and present the results of those searches to the Customer; and
- (b) record and present to the Customer the results of communications entered into by the Supplier using names and contact details provided by the Tenant or Guarantor for referencing purposes; and

(c) provide a reference outcome of accepted or declined based, in the case of a credit check, solely on the Tenant or Guarantor's credit score and in the case of a full reference, any other information as may be considered reasonably necessary by the Supplier (in the Supplier's sole discretion) for the purposes of providing the Services to the Customer, which may include any information provided by the Customer.

3.6 The Customer acknowledges that any new or extended tenancy or term granted or permitted to take effect on or after expiry of the Initial Period shall not be deemed to have been granted or permitted in reliance on the Services.

4. CUSTOMER'S OBLIGATIONS

4.1 The Customer shall:

- (a) ensure that the terms of the Order are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier with such information as the Supplier may reasonably require in order to supply the Services (including, without limitation, any relevant information required in respect of the Tenant and/or the Guarantor), and ensure that such information is accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required before submitting the Order; and
- (e) be responsible for advising any landlord or other party relying on the Deliverables of the risks in so doing and the availability of insurance cover (including rent protection cover) to mitigate against such risks.

4.2 If the Supplier's performance of any of its obligations under a Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (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 4.2; 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.

4.3 If the Customer fails to follow the advice set out in any report or other Deliverable provided by the Supplier, or instructs the Supplier to change the report or other Deliverable (including, without limitation, instructing the Supplier to override or change the outcome of the referencing report so that the Tenant passes the reference), the Supplier shall not be liable for any liabilities, costs, expenses, damages and losses suffered or incurred in connection with such failure or instruction. The Supplier shall be entitled to rely on the instruction of any person identifying themselves as acting on behalf of the Customer and shall be entitled to rely on that person having authority to bind the Customer.

4.4 The Customer shall have sole responsibility for reviewing any report and/or other Deliverable provided by the Supplier to the Customer in order to determine if the Tenant's and/or the Guarantor's application is accepted or rejected. The Customer must also undertake its own separate checks and enquiries to determine if the application is accepted or rejected and the Customer should not solely rely on the report and/or other Deliverables provided by the Supplier.

5. CHARGES AND PAYMENT

5.1 The Charges for the Services shall be calculated in accordance with the Supplier's published prices applicable at the date upon which the Order is submitted unless otherwise agreed in writing between the Supplier and the Customer.

5.2 The Customer acknowledges that the Supplier updates its published prices from time to time and agrees that it is the Customer's responsibility to review and confirm the prices applicable as at the date on which an Order is submitted.

5.3 The Supplier shall invoice the Customer by no later than the tenth day of each month in respect of all Services provided in the preceding month.

5.4 The Supplier shall be entitled to render a single invoice in respect of Services performed pursuant to multiple Contracts in a given period.

5.5 The Customer shall pay each invoice submitted by the Supplier:

- (a) by no later than the 28th day of the month following the month in which the invoice was rendered; and
- (b) in full and in cleared funds to a bank account nominated in writing by the Supplier and time for payment shall be of the essence of every Contract.

5.6 All amounts payable by the Customer under a Contract are exclusive of amounts in respect of value added tax chargeable for the time being (VAT). Where any taxable supply for VAT purposes is made under a Contract 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.

5.7 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under any Contract by the due date for payment (Due Date), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly and to recover from the Customer all costs reasonably incurred by the Supplier in pursuing payment including all legal and professional fees. An additional charge of £200.00 plus VAT will be added to the outstanding accrued balance immediately upon referral to a recovery agent to cover additional costs.

5.8 In the event that the Customer seeks to make payment of an invoice by cheque and the cheque is returned unpaid the Supplier shall be entitled to recover from the Customer £25.00 in respect of additional administrative costs incurred by the Supplier.

5.9 To the extent that any rebate is deemed payable to the Customer by the Supplier in connection with the Services (the "Rebate"), the Rebate shall only be available as credit on the Customer's account to be set-off against future charges payable by the Customer to the Supplier. The Supplier shall not be obliged to pay any or all of the Rebate in cash or by any other means to the Customer but, in its absolute and sole discretion, may elect to do so. In the event that the Customer closes its account with the Supplier, unless otherwise agreed by the Supplier in writing, the benefit of any Rebate shall be lost and will not be payable to the Customer by the Supplier.

5.10 Failure to make any payment due to the Supplier by the Due Date in respect of any rent protection or insurance product shall result in that product being cancelled with immediate effect without liability to the Supplier.

5.11 The Customer shall pay all amounts due under every Contract in full without any deduction or withholding except as required by law or as otherwise agreed by the Supplier in accordance with clause 5.9, 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.

6. INTELLECTUAL PROPERTY RIGHTS

6.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

6.2 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.

6.3 All materials provided to the Customer by the Supplier shall be the exclusive property of the Supplier or the relevant third party licensor.

6.4 The Customer grants to the Supplier a fully paid-up, worldwide, non-exclusive, royalty-free licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Services to the Customer.

7. CONFIDENTIALITY

7.1 A party (Receiving Party) 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 Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for

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- the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.
- 7.2 The Customer acknowledges that any password or log-in details provided or made available to the Customer by the Supplier shall be treated as confidential information. The Customer shall procure that its officers, employees, agents, consultants and subcontractors do not disclose such password or log-in details to any third party. The Supplier reserves the right to disable the Customer's password and/or log-in details at any time if the Supplier reasonably believes that the Customer is in breach of any term of the Contract. The Customer acknowledges that it shall be responsible for any consequences arising from the use or misuse of its account, password and/or log-in details. Any instructions and actions transmitted from the Customer's account shall be deemed to have originated from the Customer if its password and/or log-in details have been utilised.
- 7.3 This clause 7 shall survive termination of the Contract.
- 8. DATA PROTECTION**
- 8.1 This clause 8 sets out the framework for the sharing of Personal Data between the parties as Data Controllers. Each party acknowledges that one party (the "Data Discloser") will regularly disclose to the other party (the "Data Recipient") Shared Personal Data collected by the Data Discloser for the Agreed Purposes. Each party shall:
- ensure that it has all necessary consents and notices in place to enable lawful transfer of the Shared Personal Data to the Data Recipient for the Agreed Purposes;
 - give full information to any Data Subject whose Personal Data may be processed under the Contract of the nature such processing. This includes giving notice that, on the termination of the Contract, Personal Data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assigns;
 - process the Shared Personal Data only for the Agreed Purposes;
 - not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less demanding than those imposed by the Contract;
 - ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data;
 - not transfer any Personal Data outside of the European Economic Area unless the transfer:
 - complies with the provisions of Article 26 of the GDPR (in the event the third party is a joint controller); and
 - ensures that (i) the transfer is to a country approved by the European Commission as providing adequate protection pursuant to Article 45 GDPR; (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.
- 8.2 Each party shall comply with the Data Protection Legislation and agrees that any material breach of the Data Protection Legislation shall, if not remedied within 30 days of written notice from the other party, give grounds to the other party to terminate the Contract with immediate effect.
- 8.3 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:
- consult with the other party about any notices given to Data Subjects in relation to the Shared Personal Data;
 - promptly inform the other party about the receipt of any Data Subject access request;
 - provide the other party, at the Customer's cost, with reasonable assistance in complying with any Data Subject access request;
 - not disclose or release any Shared Personal Data in response to a Data Subject access request without first consulting with and obtaining the consent of the other party;
 - assist the other party, at the cost of the Customer, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - notify the other party without undue delay on becoming aware of any breach of the Data Protection Legislation;
 - at the written direction of the Data Discloser, delete or return Personal Data and copies thereof to the Data Discloser on termination of the Contract unless required by law, or some other legitimate reason, to store the Personal Data; and
 - maintain complete and accurate records and information to demonstrate its compliance with this clause 8.
- 8.4 The Supplier may authorise a third party (subcontractor) to process the Personal Data provided that the subcontractor's contract:
- is on terms which are substantially the same as those set out in the Contract; and
 - includes an obligation on the subcontractor to ensure that the subcontractor shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data, ensure a level of security appropriate to the risk and protect against its accidental loss, destruction or damage.
- 8.5 The Customer acknowledges and agrees that the Supplier shall not have any control over the information requested by the Customer on any dynamic forms to be completed by the Tenant or Guarantor. The Customer shall not request any information that would be considered "sensitive personal data" or "special category personal data" (as such terms are defined under the Data Protection Legislation) or any other information that would reasonably be considered as discriminatory, defamatory, harmful, offensive, harassing or otherwise inappropriate.
- 8.7 The Customer shall indemnify and keep indemnified the Supplier against all liabilities, costs, expenses, damages and losses (including, but not limited to, any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with:
- any breach by the Customer of this clause 8; or
 - any claim against the Supplier or its officers, employees, agents or subcontractors by any third party arising out of or in connection with the Supplier's use of Shared Personal Data under the Contract.
- 9. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 9.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - the Supplier's fraud or fraudulent misrepresentation; or
 - breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 9.2 The Customer acknowledges and agrees that the Supplier does not (whether under these Conditions or otherwise) make any guarantee, warranty, statement or representation in respect of the veracity, accuracy, completeness or truthfulness of any information provided by the Customer, the Tenant and/or the Guarantor or information obtained from any database or record or from any individual nominated as a referee by the Tenant and/or Guarantor. Subject to clause 9.1, the Customer acknowledges and agrees that the Supplier shall not be liable for any liabilities, damages, costs, expenses or losses (including, without limitation, any direct, indirect or consequential losses, loss of profit, loss of reputation and/or any interest, penalties and/or professional costs) suffered or incurred by the Customer as a result of or in connection with any information provided by the Customer, the Tenant and/or Guarantor or information obtained from any database or record or from any individual nominated as a referee by the Tenant and/or the Guarantor being incomplete, inaccurate, false or otherwise misleading (whether deliberately or otherwise).
- 9.3 By providing the Services (including any report or other Deliverable), the Supplier makes no guarantee or warranty that the Tenant and/or the Guarantor will make payment of rent and/or comply with any other obligations in respect of the tenancy (including those under any tenancy agreement). Any report provided by the Supplier as part of the Services is only accurate as at the date of the report and cannot guarantee or represent the future financial position of the Tenant and/or the Guarantor. The Supplier shall have no liability for any loss or damage suffered by the Customer in respect of non-payment of rent and/or non-compliance with any other obligations in respect of the tenancy (including those under any tenancy agreement) as a result of a change in the Tenant's and/or the Guarantor's financial or other circumstances.
- 9.4 Subject to clauses 9.1, 9.2 and 9.3:
- the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or income, or any indirect or consequential loss arising under or in connection with any Contract; and
 - subject to clause 9.5, where the Customer can demonstrate to the Supplier's reasonable satisfaction that (during the Initial Period only) it has suffered direct loss as a result of non-payment of rent falling due and/or damage to property in circumstances where the Services did not meet the standards set out at clauses 3.4 and 3.5 hereto, the Supplier's total liability to the Customer in respect of its losses arising under or in connection with any Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed an amount equal to the Charges paid under that Contract multiplied by ten.
- 9.5 Any liability under clause 9.4(b) shall be conditional on the Customer discharging the following obligations set out in this clause 9.5. If any third party makes a claim, or notifies an intention to make a claim, against the Customer which may reasonably be considered likely to give rise to a liability under clause 9.4(b) (a "Claim"), the Customer shall:
- as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably withheld or delayed);
 - give the Supplier and its professional advisers access at reasonable times (on reasonable prior notice) to its premises and its offices, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Customer, so as to enable the Supplier and its professional advisers to examine them and take copies for the purpose of assessing the Claim;
 - serve all statutory notices and commence and progress proceedings to recover possession of the property at the earliest possible opportunity and take all other steps to mitigate its loss as may be reasonable in the circumstances; and
 - agree with the Supplier in writing, so far as reasonably practicable, all costs for which the Supplier may be liable prior to incurring the same.
- 9.6 The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Supplier arising out of or in connection with any claim made against the Supplier by any landlord, lessor or property owner as a result of or in connection with any information provided by the Customer, the Tenant and/or the Guarantor or information obtained from any database or record or from any individual nominated as a referee by the Tenant and/or the Guarantor being incomplete, inaccurate, false or otherwise misleading (whether deliberately or otherwise).
- 9.7 Subject to clause 9.1 the Supplier shall have no liability for any loss of any nature whatsoever incurred following the expiry of the Initial Period.
- 9.8 The Customer acknowledges and agrees that, under any Contract with the Supplier, the Customer is contracting with the Supplier in its own capacity and is not contracting with the Supplier as agent of any landlord, lessor, property owner or other third party.
- 9.9 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from every Contract.
- 9.10 This clause 9 shall survive termination of a Contract.
- 10. TERMINATION**
- 10.1 Without limiting its other rights or remedies, each party may terminate a Contract with immediate effect by giving written notice to the other party if:
- the other party commits a material breach of that Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing of the breach;
 - 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 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;
 - 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 (where a company) 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;
 - 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 (being a company) 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;
 - the other party (being an individual) is the subject of a bankruptcy petition or order;
 - a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 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 (being a company);
 - a floating charge holder over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 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;
 - 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 10.1(b) to clause 10.1(i) (inclusive);
 - the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
 - the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 10.2 Without limiting its other rights or remedies, the Supplier may terminate all Contracts with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under any Contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, each party shall have the right to terminate a Contract by giving the other party 1 month's written notice.
- 10.4 Without limiting its other rights or remedies, the Supplier shall have the right to suspend provision of the Services under all Contracts or any single Contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.1(b) to clause 10.1(i), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.5 The Supplier may exercise its rights under clauses 10.1 (b) to (i), 10.2, 10.3 or 10.4 by serving a single notice on the Customer in respect of all Contracts or some Contracts or a single Contract between the Supplier and the Customer provided always that the Contracts to which such notice shall apply is clearly stated upon the face of the notice and the Customer may exercise its rights under clauses 10.1 (b) to (i) or 10.3 by serving a single notice on the Supplier in respect of all Contracts or some Contracts or a single Contract between the Supplier and the Customer provided always that the Contracts to which such notice shall apply is clearly stated upon the face of the notice.
- 11. CONSEQUENCES OF TERMINATION**
- On termination of a Contract or Contracts for any reason:
- the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest in respect of the cancelled Contract(s) and, in respect of Services supplied but for which no invoice has been issued, the Supplier shall submit an invoice which shall be payable by the Customer immediately upon receipt;

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- (b) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of the terminated Contract(s) which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

12. GENERAL

12.1 Force majeure:

- (a) For the purposes of a 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.
- (c) If the Force Majeure Event prevents the Supplier from providing any of the Services for more than 4 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate any Contract immediately by giving written notice to the Customer.

12.2 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 any Contract and may subcontract or delegate in any manner any or all of its obligations under any 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 any Contract.

12.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with a Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- (b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- (c) This clause 12.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

12.4 Waiver:

- (a) A waiver of any right under any Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default or of any breach or default under any other Contract. No failure or delay by a party in exercising any right or remedy under a 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 a Contract are cumulative and do not exclude rights provided by law.

12.5 Severance:

- (a) If a court or any other competent authority finds that any provision of a 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 that Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of a 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.

- 12.6 No partnership: Nothing in any 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.

- 12.7 Third parties: A person who is not a party to a Contract shall not have any rights under or in connection with it.

- 12.8 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to a Contract, shall only be binding when agreed in writing and signed by the Supplier.

- 12.9 Governing law and jurisdiction: A 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.