

**Agreement Number: TBA**

This Agreement is made between :-

**(1) Alpha Omega Computers LTD (Company Registration Number 03867142)** whose registered address is at :-

Batley Business Park  
Grange Road  
Batley  
West Yorkshire  
WF17 6ER  
("The Company")

**(2) Insert Customer name here (Company Registration Number)** whose registered address is at :-

("The Customer")

**1. DEFINITIONS**

In this Agreement unless inconsistent with the context or otherwise specified the following non-exhaustive list of definitions shall apply :-

- 1.1 "Agreement" means this printed and bound document
- 1.2 "Beta Release" means a version of the Equipment and/or software that is still being tested and therefore is NOT necessarily known to be fully working as expected as it has been NOT been thoroughly tested by The Company prior to use by any Customer
- 1.3 "Charges" means any of the charges (both fixed and variable) including the total of all applicable annual charges ("Annual Charges") for the Services and/or Deliverables as specified within this Agreement
- 1.4 "Commencement Date" means the date the Agreement was entered into
- 1.5 "Confidential Information" means data, documentation or information which is marked as confidential or which is by its nature clearly confidential
- 1.6 "Current Release" means the audited version of the Equipment, and all Software installed on the Equipment, at the Commencement Date and any agreed Modifications or new Releases to the Equipment and/or Software
- 1.7 "Deliverable" means any item, product or service that the Supplier has agreed to provide to The Customer as outlined in this Agreement or supplemental Purchase Order as the case may be
- 1.8 "Equipment" means the Systems and Software specified in Schedule 2 and Appendix2
- 1.9 "Initial Period" means the length of the term of this Agreement in days, months or years as specified in Schedule 1
- 1.10 "Legacy System" means The Customer's existing hardware, equipment, network and software not supplied by The Company
- 1.11 "License" means the terms and clauses of use of the Software as set out by the Software copyright/patent owner
- 1.12 "License Agreement" means the authority granted by the Software copyright/patent owner to The Customer for use of the Software supplied by The Company
- 1.13 "Location" means the location of the Equipment at the address given in Schedule 1
- 1.14 "Maintenance Charge" means the periodic Charge specified in schedule 1 for the provision of the Services specified in Schedule 2 as varied from time to time in accordance with Clause 5 of this agreement
- 1.15 "Maintenance Hours" means the standard hours during which the Maintenance Service will

- be provided as specified in Schedule 2
- 1.16 "Maintenance Service" means the service(s) and/or support described in Schedule 1 and Schedule 2
- 1.17 "Modification" means any upgrade, correction, addition, amendment, enhancement, update or other change made by The Company to the Software or Equipment as part of providing the Maintenance Service
- 1.18 "Purchase Order" means a duly completed and signed order from the Customer for Deliverables and Services
- 1.19 "Release" means any version of the Equipment and/or the Software made available to The Customer
- 1.20 "Stable Release" means a version of the Equipment and/or software that is known to be working as expected as it has been thoroughly tested by The Company prior to use by any Customer.
- 1.21 "Server Operating System" means the Microsoft Windows Server Software that is required to be installed on the Equipment by The Company to allow the Equipment to function on a day to day basis
- 1.22 "Software" means any computer programme The Customer has requested, and The Company has agreed, is to be installed on the Equipment.
- 1.23 "Specification" means the specification of the Current Release describing the facilities and functions of that Release
- 1.24 "Staff" means any individual provided by The Company to perform the Maintenance Service.
- 1.2 In this Agreement, unless otherwise specified, reference to: -
- 1.2.1 "writing" includes any methods of representing words in a permanent legible form including e-mail;
- 1.2.2 a "person" includes any natural person, individual, company, firm, corporation, partnership, foundation, association, organisation, trust, government, state or agency of a state or any undertaking (in each case whether or not having separate legal personality and irrespective of the jurisdiction in or under the law of which it was incorporated or exists);
- 1.2.3 the singular includes the plural and vice versa and reference to any gender includes the other gender;
- 1.2.4 (unless otherwise specified) reference to "clauses", "paragraphs" or "Schedules" are to clauses and paragraphs of and schedules to annexes to this Agreement;
- 1.2.5 The Schedules form part of the operative provisions of this Agreement and references to this Agreement shall, unless the context otherwise requires, include references to the Schedules;

## **2. SCOPE OF THE AGREEMENT.**

- 2.1 In consideration of The Customer's payment of the Annual Charges as stated in Schedule 1 The Company agrees to provide the Maintenance Service as stated in Schedule 2 subject to the terms and clauses of this Agreement.
- 2.2 The Maintenance Service will be provided during the Maintenance Hours.
- 2.3 The Company will use reasonable endeavours to provide the Maintenance Service promptly having regard to the availability of Staff, necessary supplies and facilities and commitments to other customers. Any dates quoted for commencement of, or completion, of any part of the Maintenance Service are estimates only and time will not be of the essence.
- 2.4 The Company's obligation to provide the Maintenance Service is subject to the Licence Agreements being in force. If the Licence Agreement is terminated for any reason not attributable to the Company then this Agreement will automatically terminate without notice in accordance with clause 16.10 and the obligations of the Company will be immediately released under the terms of this Agreement.

## **3. TERM OF THE AGREEMENT.**

- 3.1 The minimum term of the Agreement will be for the Initial Period as stated within Schedule 1.
- 3.2 Upon completion of the Initial Period this Agreement will continue for successive periods of three (3) years unless terminated by either party on giving no less than 6 (six) months prior written notice, sent by either registered post or receipted e-mail, to take effect on expiry of the then current period subject to earlier termination in accordance with clause 16 of this Agreement.

#### **4. LIASON AND STAFFING.**

- 4.1 The Customer shall appoint a member or members, as the case may be, of its Staff ("the Support Representative") to act as the principal point of contact between the parties for the purposes of this Agreement.
- 4.2 The Customer's Staff at the Location shall in the first instance request Maintenance Services in respect of the Equipment or the Software from the Support Representative who will liaise with The Company's Staff to provide assistance with problems and other support requirements.
- 4.3 The Company will assign appropriately qualified Staff to provide the Maintenance Service or any part of it. The Company may at its discretion and at any time replace anyone allocated by it to the Maintenance Service.
- 4.4 The Company is may use sub-contractors for the provision of any part of the Maintenance Service but such sub-contracting will not relieve The Company from its obligations under this Agreement.

#### **5. PAYMENT TERMS.**

- 5.1 The Customer shall pay to The Company the Annual Charges and all other Charges which fall due under this Agreement of the amounts specified in Schedule 1 or otherwise invoiced by The Company from time to time in respect of the Services and Deliverables requested by The Customer. Where applicable VAT and any other taxes, duties or levies will be paid additionally by The Customer at the then prevailing rate.
- 5.2 The Annual Charges are invoiced at intervals as specified in Schedule 1 and are payable (unless agreed otherwise in writing) in advance of that specified period.
- 5.3 If additional Services and/or items of Equipment are added to Schedule 1 and/or Schedule 2 the payment in respect of such Services and Equipment shall be payable forthwith.
- 5.4 All other Charges and expenses will be payable as per the terms stated on the applicable invoice and as per the terms of this Agreement.
- 5.5 If any sum payable to The Company under this Agreement is in arrears for more than 14 days after the due date The Company reserves the right without prejudice to any other right or remedy to :-
  - 5.5.1 Charge interest on such overdue amount on a day to day basis from the original due date, applied monthly with no consideration for part months, until payment in full at the rate of 8% per annum above HSBC PLC's base lending rate in force from time to time and/or
  - 5.5.2 The Company shall suspend the provision of the Maintenance Service immediately upon notice to The Customer and/or
  - 5.5.3 The Company shall terminate this Agreement as per clause 16 of this Agreement.
- 5.6 The Customer will notify The Company in writing within 10 days of the receipt of an invoice if The Customer considers such invoice to be incorrect or invalid for any reason. Failing which The Customer will raise no objection to any such invoice and shall make full payment in accordance with it and also in accordance with clause 5.
- 5.7 The Company may, at its absolute discretion, vary the Annual Charge (fixed for the first 12 (twelve) months) for periods subsequent to the first year of the Initial Period by giving not less than 30 (thirty) days and no more than 90 (ninety) day written notice to The Customer. This notice will be in the form of a written report which will be produced by The Company having undertaken, with the assistance of the Support Representative, a full audit of The Location(s). The specifics of how the audit will be undertaken and which Charges are

subject to audit and variance and the associated charges being those listed within Schedules 1 and 2 of this agreement.

## **6. CUSTOMER RESPONSIBILITIES.**

- 6.1 Throughout the term of this Agreement The Customer shall :-
  - 6.1.1 Use only the Current Release
  - 6.1.2 Use all reasonable endeavours to ensure that the Current Release and the Equipment are used in a proper manner by competent trained employees only or by persons under their supervision.
  - 6.1.3 Notify The Company promptly if the Equipment is not working correctly.
  - 6.1.4 Notify The Company promptly if the Software is not working correctly.
  - 6.1.5 Not alter adapt or modify the Equipment in any way nor permit the Current Release to be combined with any other equipment without prior written consent from The Company.
  - 6.1.6 Not alter adapt or modify the Software in any way nor permit the Current Release to be combined with any other programmes without prior written consent from The Company.
  - 6.1.7 Not request or permit any party or 3<sup>rd</sup> party company other than The Company to provide any Maintenance Services in respect of the Current Release.
  - 6.1.8 Co-operate to a reasonable extent with The Company's personnel in diagnosis, investigation and correction of any fault in the Current Release.
  - 6.1.9 Make available to The Company free of charge all information facilities and services reasonably required by The Company to enable The Company to perform the Maintenance Service and their obligations of this Agreement.
  - 6.1.10 Provide at The Customer's expense such telecommunication facilities as are reasonably required by The Company for remote access, testing and support.
  - 6.1.11 Provide access to The Customer's Staff, The Software, The Equipment and The Location during the Maintenance Hours and at such other times as The Company may request on reasonable prior notice.
  - 6.1.12 Keep full security copies of the Current Release and of The Customer's databases and computer records in accordance with good computing practice.
  - 6.1.13 Backup all data in use on The Equipment on a daily basis.
  - 6.1.14 Additional to the above the Customer shall fulfil it's obligations in respect of data protection legislation, including the Data Protection Act 2018 and GDPR and be demonstrably fully compliant as per the then applicable Laws of England. It is the customers responsibility to ensure this happens and as syuch the Company accepts no responsibility or liability for any failure on the part of the Customer, it's staff or any other 3<sup>rd</sup> party unrelated to the Company.

## **7. EXCLUSIONS.**

- 7.1 The Annual Charge does not include the provision of the Maintenance Service in respect of any pre-existing, defect, error or other problem:-
  - 7.1.1 Attributable to the Legacy Equipment
  - 7.1.2 Resulting from any Modification to the Software or Equipment made by any person other than The Company and it's sub-contractors without The Company's prior written approval.
  - 7.1.2 In any version of The Software other than the Current Release.
  - 7.1.3 Resulting from the incorrect use of The Software, The Equipment or operator error including any form of damage, be that deliberate or accedident, that cannot be attributed to the Company.
  - 7.1.4 In or attributable to The Equipment or The Software in other equipment and software used in conjunction with The Software or The Equipment or to any other reason external to The Software or The equipment.
- 7.2 The Maintenance Service provided under The Agreement does not include:-
  - 7.2.1 The provision of consumable items including (but not exhaustively) ribbons, paper, backup tapes, floppy discs, printheads, laser toner, laser toner drums, laser toner cartridges, fuser units. All batteries including those housed on computer system motherboards, laptops, and

all portable/notebook screens if over 12 months old.

7.2.2 Electrical work and cabling external to The Equipment.

7.3 If at the request of The Customer The Company agrees to provide any Maintenance Service in respect of any of the exclusions referred to in Clause 7.1 (but it is confirmed in writing that The Company is under no obligation to do so) The Company will endeavour to undertake the work as soon as reasonably practicable and The Company will be entitled to make an additional charge on a time and materials basis in accordance with its then current Charges.

## **8. WARRANTY**

8.1 The Company warrants that the Maintenance Service will be performed by competent Persons and will be carried out with reasonable care and skill. The Company undertakes to use all reasonable endeavours to remedy free of charge to The Customer any faulty work arising from a breach of this warranty which is reported to The Company in writing within one month after performance by The Company of such work. If The Company rectifies such faulty work by the provision of The Company's option of replacement or additional materials or services within a reasonable period of time then The Company will have no other liability of any kind in respect of or arising from faulty work.

8.2 If a problem is found upon investigation not to be The Company's responsibility under the provisions of Clause 7.1.3 the Company may charge The Customer for all reasonable costs and expenses incurred by The Company in the course of or in consequence of such investigation.

8.3 The Company will not be liable under Clause 8.1 to remedy any problem arising from or caused by any Modification (whether by way of alteration deletion addition or otherwise) made to any part of the Software (including data structure) or the Equipment by persons other than The Company without its express prior written consent.

8.4 All equipment that is supplied by The Company, other than that which is listed within Appendix2 of this Agreement, is warranted by The Company to be free from defects in material workmanship and installation for a period of 12 months after installation. Other than this specific warranty The Customer shall rely exclusively on the manufacturer's warranty and The Company excludes all liability for all other faults connected with The Customer's use of this equipment unless caused by The Company's negligence or error.

## **9. EXCLUSION AND LIMITATION OF LIABILITY**

9.1 The Customer acknowledges that The Company's obligations and liabilities in respect of the Maintenance Service are exhaustively defined in this Agreement. The Customer agrees that the express obligations and warranties made by The Company and this Agreement are in lieu of, and to the exclusion of, any warranty condition term undertaking or representation of any kind, express or implied statutory otherwise relating to anything supplied or services provided under or in connection with this Agreement including (without limitation) as to the condition quality performance merchantability satisfactory quality or fitness for purpose of the Maintenance Service or any part of it.

9.2 The Customer is responsible for the consequences of the use of the Maintenance Service and it has satisfied itself of the suitability of such Maintenance Service for its own purposes.

9.3 The Company shall not be liable for any indirect or consequential loss, damage, costs or expense of any kind whatever and however caused whether arising out of contract or tort (including negligence) or otherwise including (without limitation) loss of production, loss of or corruption to data, loss of profits or of contracts, loss of operation time and loss of goodwill or anticipated savings even if The Company has been advised of their possibility.

9.4 The Company shall not be liable to The Customer :-

9.4.1 For non delivery unless a written claim is received by The Company within 14 days of the termination of the period for which The Customer has made payment;

9.4.2 For damage to or loss of the Equipment or Software or any part of them in transit (where the Equipment and Software are carried by The Company's own transport or by a carrier on

behalf of The Company) unless The Customer shall notify The Company of any such claim within 14 days of receipt of the Equipment and Software or the scheduled date of delivery whichever shall be the earlier;

- 9.4.3 For defects in the Equipment or Software caused by wear and tear, abnormal or unsuitable conditions or storage or use or any act, neglect or default of the buyer or of any third party;
- 9.4.4 For other defects in the Equipment or Software unless notified to The Company within one month of receipt of the Equipment or Software by The Customer or where the defect would not be apparent on reasonable inspection within twelve months of delivery.
- 9.5 Where liability is accepted by The Company under clause 8.1, The Company's only obligation shall be at it's option to make good any shortage or non delivery and/ or as appropriate to replace or repair any Equipment or Software found to be damaged or defective and / or to refund the cost of such Equipment or Software to The Customer.
- 9.6 The Company shall not be liable for any loss, damage or reliability of any kind suffered by any third party directly or indirectly caused by repairs or remedial work carried out without The Company's prior written approval and The Customer shall indemnify The Company against any and all claims and costs arising out of such claims to the extent that such repairs or remedial work have been performed by The Customer or its agents.
- 9.7 Subject to the foregoing provisions of this clause 9:-
  - 9.7.1 all conditions, warranties and representations expressed or implied by statute common law or otherwise in relation to the Equipment or Software are hereby excluded;
  - 9.7.2 The Company shall be under no liability to the buyer for any loss, damage or injury, direct or indirect, resulting from defects in design, materials or workmanship or otherwise howsoever arising (and whether or not caused by the negligence of The Company, its employees or agents) (other than liability for death or personal injury resulting from The Company's negligence).
- 9.8 Nothing in Clause 9 shall exclude or limit the liability of The Company for death or injury.
- 9.9 Notwithstanding the above, The Company's total liability (whether in contract or tort, including negligence or otherwise) under or in connection with this Agreement and any other Agreement with The Customer relating to the Software or based on any claim for loss (including loss of profits) indemnity or contribution shall not exceed the payments made by The Customer to The Company, in the twelve month period preceding the date on which any such liability arises.
- 9.10 The Customer acknowledges and agrees that the allocation of risk contained in Clause 9 and Clause 10 is reflected in the Maintenance Charge and is also a recognition of the fact that inter alia it is not within The Company's control how and for what purpose the Maintenance Service is used by The Customer.

## **10. INDEMNITY**

- 10.1 The Customer will indemnify The Company in respect of any third party claim or injury loss, damage, or expense occasioned by, or arising directly or indirectly from The Customers possession, operation, use, Modification or supply to a third party of anything supplied under the Maintenance Service, any part of it except and insofar as The Company is liable as expressly provided in this Agreement.

## **11. OWNERSHIP**

- 11.1 The copyright and all other proprietary rights whatever in all materials developed under this Agreement in connection with the Maintenance Service including the Modifications will remain vested in and the absolute property of The Company. The Customer shall do all such acts and requests as The Company may reasonably require for the purpose of preserving or perfecting such investing.
- 11.2 Conditional upon payment to The Company in accordance with Clause 5 of all sums due to it under this Agreement. This Agreement will operate to grant to The Customer a non – exclusive and non-transferable licence to use and reproduce at its own expense for its own internal purposes, only those Modifications supplied for use as part of the Software will be

deemed to form part of the licence materials and be subject to the Licence Agreement.

## **12. TITLE**

- 12.1 Notwithstanding delivery and passing risk, the Equipment and Software shall remain the property of The Company at all times until such time as The Customer shall have paid to The Company the agreed price (together with any accrued interest) (and all other amounts owed by the Customer to The Company) in respect of any other contract for the Sale of Equipment or Software.
- 12.2 Until Title of the Equipment or Software has passed The Customer shall be in possession of the Equipment or Software in a fiduciary capacity and shall:-
  - 12.2.1 Not part with possession of the Equipment or Software (otherwise than in accordance with Clause 12.6)
  - 12.2.2 Take proper care of the Equipment or Software and take all reasonable steps to prevent any damage or deterioration of them;
  - 12.2.3 Keep the Equipment or Software free from any charge, lien or other encumbrance and store the Equipment or Software in such a way to show clearly that they belong to the Company
  - 12.2.4 Notify The Company forthwith upon the happening of any events set out in clause 16 and
  - 12.2.5 Give The Company such information relating to the Equipment or Software as The Company may require from time to time.
- 12.3 The Company reserves the right to repossess and re-sell any Equipment or Software to which it has retained title and The Company's consent to The Customer's possession of the Equipment or Software and any right The Customer may have to possession of the Equipment or Software shall in any event cease:-
  - 12.3.1 If the sum owed by The Customer to The Company (whether in respect of the Equipment or Software or otherwise) is not paid to The Company by the date when it is due; or
  - 12.3.2 Upon the happening of any events set out in Clause 16.1; or
  - 12.3.3 If The Customer commits a breach of any contract with The Company, or is in breach of this Agreement.
- 12.4 The Customer hereby grants an irrevocable right and licence to The Company and its servants and agents to enter upon all or any of The Customer's premises with or without vehicles during normal business hours for the purpose of inspecting and/or re-possessing Equipment or Software to which it has retained title. The right and licence shall continue to subsist notwithstanding the termination for any reason of any contract which is subject to these clauses and is without prejudice to any accrued rights of The Company under such contracts or otherwise.
- 12.5 The Customer is licensed by The Company to process Equipment or Software to which The Company has retained title in such fashion as it may wish and/or to incorporate them in or with any other products subject to the express clause that the new product(s) or any other chattel whatsoever containing any part of the said Equipment or Software shall become the property of The Company and shall be separately stored and marked by The Customer to show clearly that they belong to The Company. The Company shall hold the new product or products as trustee for itself and The Customer and The Company's interest as a beneficiary of the trust shall be equal to the total of all amounts owing by The Customer to The Company (under any contract for the sale of Equipment or Software).
- 12.6 Whilst The Customer is in possession of the Equipment or Software with The Company's consent (but not otherwise) The Customer may in the ordinary course of its business sell (or hire) the Equipment or Software (or any new product or products produced with The Company's Equipment or Software) provided that:-
  - 12.6.1 As between The Customer and its buyer The Customer shall sell (or hire) the Equipment or Software as principal and The Customer shall not be empowered to commit The Company to any contractual relationship with or liability to the buyer or any other person;
  - 12.6.2 As between The Company and The Customer, The Customer shall sell (or hire) the Equipment or Software in a fiduciary capacity as agents for The Company; and
  - 12.6.3 Notwithstanding any agreed period of credit for payment of the price of the Equipment or

Software The Customer shall pay the proceeds of such sales (or hiring) to The Company forthwith upon receipt.

- 12.6.4 The buyer acknowledges that as a consequence of it's fiduciary relationship (with The Company it is under a common law duty to The Company to hold the proceeds of any such sales (or hiring) on trust for The Company and not to mingle such proceeds with any other monies or pay them into an overdrawn bank account, such common law duty being unaffected by and wholly independent of the terms of these clauses.
- 12.7 The Customer agrees immediately upon being so requested by The Company to assign to The Company all rights and claims which The Customer may have against its buyers arising from such sales (or hiring) until payment is made in full as stated above.
- 12.8 Notwithstanding the provisions of this Clause 12 The Company shall be entitled to bring an action against The Customer for the price of the Equipment or the Software in the event of non-payment by The Customer by the due date even though the property in the Equipment or Software has not passed to The Customer and / or shall have the right by notice to The Customer at any time after delivery to pass property in the Equipment or Software to The Customer as from the date of such notice.
- 12.9 If at any time during this Agreement the Company is sold or merged with another company or wishes to change its Company name then the customer shall not withhold consent for this Agreement being transferred.

### **13. CONFIDENTIALITY.**

- 13.1 Both parties will be bound by the terms of the UK General Data Protection Regulation 2018 and all subsequent UK Data protection legislation as may be applicable at the time.
- 13.2 Each party will treat as confidential all information obtained from the other party under or in connection with this Agreement which is designated confidential by the other party or which is by its nature clearly confidential. The recipient party will not disclose such confidential information to any persons (except only to those employees, agents, sub – contractors, suppliers and other representatives who need to know it) or use such confidential information for purposes other than the Maintenance Service without the other party's prior written consent.
  - 13.2.1 Clause 13.2, as aforementioned, will remain in force throughout the term of this Agreement and will apply impetuity regardless of how this Agreement ends.
- 13.3 This clause will not extend to information WHICH:-
  - 13.3.1 Was in the possession of the recipient party (with full right to disclose) before receiving it, or
  - 13.3.2 Is already or becomes public knowledge (otherwise than as a result or breach of this clause) or
  - 13.3.3 Is independently developed by the recipient party without access to, or use of, such information.
- 13.4 Each party will ensure that all persons to whom it discloses any such confidential information of the other party are aware prior to disclosure of the confidential nature of the information and that they owe a duty of confidence to the other party. These obligations of confidentiality will survive any termination of this Agreement.
- 13.5 Each party will maintain adequate security measures to safeguard information and data of the other party in its possession from unauthorised access use or copying.

### **14. SPECIFICATIONS.**

- 14.1 Unless expressly agreed in writing by The Company all drawings, designs, Specifications and particulars of weights and dimensions submitted by The Company are approximate only and The Company shall have no liability in respect of any deviation from them.
- 14.2 The Company accepts no responsibility for any errors, omissions or other defects in any drawings, designs or Specifications not prepared by The Company and The Company shall be indemnified by The Customer against any and all claims, liabilities, costs and expenses incurred by The Company arising from them
- 14.3 Corrections to Equipment or Software required by The Customer following inspection and



approval of proofs by The Customer shall be at The Customers expense and will be charged for separately.

## **15. NON SOLICITATION**

The Customer will not, during the term of this Agreement, and for a period of 6 (six) months after that without The Company's prior written consent, directly or indirectly solicit or offer employment or engagement to any Staff who at any time of such action or during a period of 12 (twelve) months immediately preceding such action was directly involved in the provision of the Maintenance Service.

## **16. TERMINATION**

- 16.1 Notice of termination is not termination. Notice of termination is a warning that the Agreement will terminate on some future date.
- 16.2 Either party may terminate this Agreement by notice of termination with immediate effect if the other Party is in breach of this Agreement and fails to remedy the breach (if capable of remedy) within 28 (twenty eight) days of written notice of the breach being given by the Party not in breach.
- 16.3 Either party may terminate this Agreement by notice of termination with immediate effect if the other Party is in persistent material breach of this Agreement and fails to remedy the breach within 28 (twenty eight) days of written notice of the breach being given by the Party not in breach.
- 16.4 Either party may terminate this Agreement by notice of termination with immediate effect if the other party voluntarily ceases to trade or liquidates its business or threatens to do so.
- 16.5 Either party may terminate the Agreement by notice of termination with immediate effect if the other Party ceases to conduct business in the normal course, becomes unable to pay its debts within the meaning of The Corporate Insolvency and Governance Act 2020, has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income, passes a resolution for its winding up, or the other Party enters into any composition or arrangement (whether formal or informal) with its creditors;
- 16.6 The Company may terminate this Agreement by notice of termination with immediate effect if payment for any invoice that has been correctly issued to The Customer is more than 30 days overdue.
- 16.7 Termination will not prejudice any other rights or remedies of the injured party and will be without liability for any loss or damage suffered by the party in default.
- 16.8 Termination will not affect clause 13 (Confidentiality) which will survive the expiry or termination of this Agreement as per clause 13.2.1.
- 16.9 Notwithstanding clause 3 of this Agreement The Customer may, at any time after the (insert date here) and before the (insert date here), terminate this Agreement with immediate effect, with or without prior notice or reason by immediately paying compensation to affect full and final settlement of this Agreement, to The Company as specified within Appendix3 of this Agreement.
- 16.10 In the event of termination as per clause 2.4 The Company is entitled to receive all outstanding charges as if it had wholly fulfilled it's obligations to the Customer under the initial term of this agreement as stated in Schedule1. Additionally in the event of any variance of this Agreement where the Customer has requested additional Services and/or deliverables to be added to this Agreement these will be accounted for as if they were part of the original Agreement and the Customer will responsible for payment of the same under the terms of this Agreement.
- 16.11 Regardless of when The Customer chooses to exercise their rights under clause 16.9 The Customer will also, having exercised those rights correctly, have the option to purchase the Equipment. The charge for this purchase will be as specified within Appendix3 of this Agreement.

## **17. FORCE MAJEURE**

- 17.1 The Company shall not be liable to The Customer for any loss or damage which may be suffered by The Customer as a direct or indirect result of the supply of Equipment or Software by The Company being prevented, hindered, delayed, cancelled or rendered uneconomic by reason of circumstances or events beyond The Company's reasonable control, including but not limited to, act of God, war, riot, strike, lock out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of the goods or of raw materials by The Company's normal source of supply or the manufacture of the Equipment or Software by The Company's normal means or the delivery of the Equipment or Software by The Company's normal route or means of delivery.
- 17.2 In force majeure circumstances The Company may in its sole discretion terminate any contract for the supply of Equipment or Software pursuant to these Clauses or cancel delivery of Equipment or Software to The Customer or may, with the Agreement of The Customer, deliver Equipment or Software at an agreed rate of delivery commencing after any suspension of deliveries.
- 17.3 If due to force majeure circumstances The Company has insufficient stocks to meet all its commitments, The Company may apportion available stocks between its customers at its sole discretion.

## **18. NOTICES**

- 18.1 All Notices which are required to be given under this Agreement will be in writing.
- 18.2 Postal Notices will be sent by receipted delivery and may be sent to the address of the recipient set out on the front page of this Agreement or such other address as the recipient may designate by notice given in accordance with this clause.
- 18.3 Electronic Notices will be sent by receipted E-mail and will be sent to the applicable authorised signatory as set out in Schedule 2 of this agreement.
- 18.4 Any such notice will be deemed to have been served when delivered to the recipient.

## **19. SEVERABILITY**

If any part of this Agreement is found by a Court of competent jurisdiction to be invalid, unlawful or unenforceable then such part will be severed from the remainder of this Agreement which will continue to be valid and enforceable to the fullest extent permitted by the law.

## **20. WAIVER**

No delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement will operate as a waiver of them nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver to be effective shall be in writing. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

## **21. WHOLE AGREEMENT**

- 21.1 This Agreement is the complete and exclusive statement of the Agreement between the parties relating to the subject matter of the Agreement and supersedes all previous communications, representations and other arrangements oral or written. The Customer acknowledges that no reliance is placed on any representation made but not embodied in this Agreement. The printed terms and clauses of any purchase order or other correspondence and documents of The Customer issued in connection with this Agreement will not apply unless expressly requested in writing by The Company.

21.2 Except as otherwise permitted by this Agreement no change to its terms will be effective unless it is in writing and signed by persons authorised on behalf of both parties.

**22. GOVERNING LAW**

This Agreement will be construed in accordance with and governed by the Law of England and each party agrees to submit to the exclusive jurisdiction of the Court of England.