

SMH IT

TERMS AND CONDITIONS FOR SALE, LICENCE AND MAINTENANCE

These terms and conditions apply to the sale, license and maintenance (as applicable) of any computer hardware or software or other similar or associated items or materials by SMH IT Solutions Limited ("SMH Solutions" "SMH IT") SMH IT Solutions Limited is a company registered in England and Wales with company number 13431017, These terms are divided into three parts: Sales, Support Maintenance and General. The General Terms apply to all contracts of SMH IT. The remaining terms apply depending upon the service provided by SMH IT.

Part 1 – Sale of Goods

The following terms and conditions in this Part 1 apply to the sale of Goods by SMH IT.

1. Formation of Contract

1.1 SMH IT will sell and the Customer will buy the Goods in accordance with SMH IT's written quotation (if accepted by the Customer) or the Customer's written order (if accepted by SMH IT) subject in either case to these Terms. No order submitted by the Customer is deemed to be accepted by SMH IT unless SMH IT confirms this in writing.

2. Accuracy of Order

2.1 The Customer is responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer.

3. Software

3.1 All software, whether supplied, installed or implemented, is provided within the terms and conditions and licence of the software provider.

3.2 If the software comprised in the Goods is not owned by SMH IT, then the Customer will be required to enter into an end-user licence agreement with the owner of the software concerned.

3.3 If any software has to any extent been written or developed by SMH IT, then subject to clause 3.2 above, SMH IT hereby grants a non-exclusive, non-transferable licence for the use of such software by the Customer for the duration of this Contract and all copies of such software are the property of SMH IT and notwithstanding clause 5.1 no title or ownership thereof will be transferred to the Customer.

4. Delivery

4.1 Delivery of the Goods will take place by SMH IT delivering the Goods to the place agreed in writing with the Customer.

4.2 Any dates and times quoted for delivery are estimates only and unless otherwise agreed in writing, delivery times are not of the essence of the contract. SMH IT will not be liable for any loss or damage (however arising) to the Customer should SMH IT be unable to deliver the Goods within the quoted period.

4.3 SMH IT is entitled to make partial deliveries by instalments and these Terms will apply to each partial delivery.

4.4 If the Goods are to be delivered in instalments, each delivery will constitute a separate contract and failure by SMH IT to deliver any one or more instalments in accordance with these Terms will not entitle the Customer to treat the Contract as a whole as terminated.

5. Transfer of Property and Risk

5.1 Risk in respect of the Goods passes to the Customer at the time of delivery, but the title in the Goods will not pass to the Customer until SMH IT has received payment in full of the price of the Goods and all other goods agreed to be sold or services to be provided by SMH IT to the Customer for which payment is then due.

5.2 Until title in the Goods has passed to the Customer, SMH IT will be entitled at any time to require the Customer to deliver up the Goods to SMH IT, and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

5.3 Until title in the Goods has passed to the Customer, the Customer will hold the Goods as SMH IT's fiduciary agent and bailee, will not dispose of the Goods and will keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as SMH IT's property.

6. Installation

6.1 Where SMH IT's written quotation for the sale of the Goods or the Customer's written order for the Goods (if accepted by SMH IT) specifies installation of the Goods or SMH IT otherwise undertakes any such installation, then the Customer will complete all necessary works that may be required to receive the installation of the Goods, including all necessary IT infrastructure and suitable electrical supply. If SMH IT is prevented from carrying out the installation through no fault of SMH IT, then SMH IT is entitled to charge the Customer at SMH IT's then current prices for any additional works carried out by or on behalf of SMH IT to complete the installation.

7. Warranty

7.1 The Goods supplied hereunder are warranted to be free from defects in materials and workmanship for a period of 60 days from the date of delivery by SMH IT. The Customer must within the said period of 60 days notify SMH IT in writing of any such defects and permit SMH IT to inspect the Goods as required by SMH IT. If the Customer does not so notify, then the Customer will not be entitled to reject the Goods and SMH IT will have no liability for such defect.

7.2 The above warranty only applies where the Goods have been properly used in accordance with the relevant manufacturer's specifications and any instructions by SMH IT and does not apply to any Goods that have been repaired or modified by anybody other than SMH IT.

7.3 If a valid claim is notified under clause 7.1 above, then SMH IT may at its discretion repair or replace the Goods free of charge or refund the price of the Goods (or a proportionate part), in which case SMH IT will have no further liability to the Customer.

Part 2 – Provision of Support Maintenance Service

The following terms and conditions apply to the maintenance service described in the Support Terms to be provided and the Equipment specified in the Scope of the Service.

1. SMH IT Responsibilities

1.1 SMH IT will, subject to these Terms, provide the Support Maintenance in accordance with the terms of the Support Terms.

1.2 SMH IT will use its reasonable endeavours to respond to a valid Call within the response time set out in the Support Terms.

1.3 SMH IT will use its reasonable endeavours to rectify defects or malfunctions in the Equipment on the telephone or by use of remote access where provided by the Customer.

1.4 If a defect or malfunction in the Equipment cannot be resolved on the telephone or by remote access, SMH IT will use its reasonable endeavours to visit the Installation Address within the response times set out in the Support Terms.

1.5 When carrying out work in accordance with these Terms, SMH IT will use its reasonable endeavours to return the Equipment to service and, subject to these Terms, reinstate the Customer's applications.

1.6 SMH IT may at its discretion provide a permanent replacement part for the Equipment, either new or refurbished, and on exchange that part becomes the property of the Customer, and the faulty part replaced becomes the property of SMH IT.

1.7 SMH IT may repair the Equipment away from the Installation Address when it considers it necessary to do so.

1.8 SMH IT may at its discretion, lend the Customer temporary replacement equipment (as compatible as may be available) while repairs are carried out. Equipment loaned to the Customer remains SMH IT's property and will be returned to SMH IT on demand. The Customer is entirely responsible for such equipment and will indemnify SMH IT in respect of any loss of or damage to that equipment.

1.9 SMH IT may make use of new releases, patches and updates of Third-Party Software to rectify known problems where this is permitted under the applicable software licence agreement.

1.10 Where SMH IT is required to carry out or does carry out work that is subsequently found to be outside Support Maintenance, SMH IT will be entitled to charge for that work at SMH IT's then current rate.

2. Term

2.1 Support Maintenance shall commence on the date set out in the Support Terms and, subject to these Terms, will continue unless and until either party serves on the other one month prior written notice of termination, which may only be served after the Initial Term has expired.

3. Period of Availability

3.1 SMH IT will only provide Support Maintenance during the Scheduled Service Hours. If the Customer requests SMH IT to carry out any Support Maintenance outside the Scheduled Service Hours then, SMH IT will

use its reasonable endeavours to comply with this request but will charge the Customer for such services at SMH IT's then current rates.

3.2 The time taken by SMH IT to respond to a Call will only be measured during the Scheduled Service Hours.

4. Customer Responsibilities

4.1 The Customer will keep the Equipment in the environmental conditions recommended by the Equipment manufacturer and ensure that the external surfaces, cables and fittings of the Equipment are kept clean and in good condition.

4.2 The Customer will ensure that the Equipment is only used by properly trained staff in accordance with the manufacturer's user instructions, current computing practice and instructions issued by SMH IT from time to time.

4.3 The Customer will ensure that only personnel authorised by SMH IT adjust, modify, configure, maintain, repair, replace or remove any part of the Equipment.

4.4 The Customer will maintain adequate records of the use, maintenance and malfunction of the Equipment and will provide SMH IT with such information and assistance concerning the Equipment, its application, use, location and environment as SMH IT may reasonably require to enable it to carry out the Support Maintenance.

4.5 The Customer will immediately notify SMH IT if there is any failure of the Equipment and will allow SMH IT full and free access to the Equipment and all documentation, software, materials and services necessary for the provision of the Support Maintenance.

4.6 The Customer will ensure that relevant trained and experienced staff are available when required by SMH IT to provide SMH IT with information required by SMH IT to diagnose and/or repair the Equipment.

4.7 Where SMH IT provides remote diagnostic services in respect of the Equipment, the Customer will put and keep in place a remote access link to the Equipment which is acceptable to SMH IT.

4.8 The Customer must tell SMH IT in writing immediately that the Equipment or any part of it is changed.

4.9 The Customer will notify SMH IT of changes in the location of any part of the Equipment. Whilst any Equipment is being moved, all SMH IT's obligations to provide the Support Maintenance will be suspended. The Support Maintenance will be reinstated following re-installation of the Equipment provided that the Equipment has not been damaged or affected during the move.

4.10 Unless specifically included in the Support Terms, the Customer is responsible for the cost of any Third-Party Software upgrades which SMH IT advises are required.

4.11 It is the Customer's sole responsibility, in a manner acceptable to SMH IT, to operate and verify a proper backup routine, maintaining all backup copies in a secure environment such that they can and will be provided to SMH IT when required.

4.12 The Customer undertakes to put and keep in place adequate security measures to protect the Equipment and any other software or data from viruses, harmful code or unauthorised access.

5. Proactive Support Visits

5.1 During each consecutive 12-month period of the Support Maintenance, SMH IT will provide to the Customer the number of support visits specified in the Support Terms during Normal Working Hours, the purpose of which is to provide general support in respect of the operation of the Support Maintenance.

6. System Audit

6.1 SMH IT will, as often as SMH IT thinks is necessary and (save in the event of an emergency) upon reasonable notice, carry out a System Audit within SMH IT's Normal Working Hours to confirm that, in SMH IT's opinion, the Equipment is in reasonable operating condition.

7. Service Exclusions

The Support Maintenance does not extend to:

- 7.1.1 any Equipment not specified or included in the Support Terms including any part of the Equipment which is in any way changed from that included in the Support Terms;
- 7.1.2 any Equipment which was, in SMH IT's reasonable opinion, operating in an unstable or unsuitable manner prior to commencement of the Support Maintenance;
- 7.1.3 any work arising as a result of any breach by the Customer of any of its obligations under these Terms;
- 7.1.4 any work arising from any incident, wilful act or any error or omission in the operation of the Equipment or any other cause (except for wear and tear) which is not due to the neglect or default of SMH IT;
- 7.1.5 any failure or defect caused by hardware or software not covered by these Terms;
- 7.1.6 failures or defects due to manufacture or design defects over which SMH IT has no control;
- 7.1.7 refurbishment or repair of casing or outer surfaces;
- 7.1.8 any work to accessories, alterations, attachments or any other equipment that is external to the Equipment not identified within the Support Terms;
- 7.1.9 reinstatement of customised versions of the standard desktop/operating system;
- 7.1.10 reinstatement of the Customer's software and data not identified within the Support Terms;
- 7.1.11 any consultancy, training or software or hardware SMH IT may provide;
- 7.1.12 integration of the Equipment or any part thereof with other systems;
- 7.1.13 cleansing of viruses and spyware, or resolving the consequences of security breaches and incompatibilities in hardware and/or software;
- 7.1.14 upgrading the Operating Platform to be able to operate the Customer's selected software applications;
- 7.1.15 consumable supplies or accessories such as magnetic media, batteries, print heads, toner cartridges, ink, paper, and any other items identified as consumable by the Equipment manufacturer, unless listed in the Support Terms;
- 7.1.16 any equipment in respect of which a notice has been served by SMH IT under clause 8 or 9;
- 7.1.17 any work arising by reason of any maintenance or repair work carried out in respect of the Equipment by a third party not previously approved by SMH IT.

8. Beyond Reasonable Repair

8.1 SMH IT will give the Customer written notice if, in its reasonable opinion, the Equipment (or any part of it) is identified as “end of life”, becomes beyond reasonable repair or spare parts become not readily available, or if faults and/or its condition are such that overhaul or replacement is necessary, at which point any obligations of SMH IT to provide the Support Maintenance in respect of such Equipment will be suspended. If the Customer declines to have the Equipment overhauled or replaced at its expense within thirty days of such notification, SMH IT may on written notice exclude such equipment from this Contract and refund to the Customer by way of credit note a fair proportion of any Charges which have been paid by the Customer in respect of such equipment from the end of the notice period and will remove any loan equipment relating to the said equipment from the end of the notice period.

8.2 The provisions of clause 8.1 will apply equally in respect of any software included within the Equipment which, in the reasonable opinion of SMH IT, is no longer economically viable to maintain or requires upgrading or updating.

9. Pre-Inspection

9.1 Prior to commencement of the Support Maintenance, SMH IT may during Normal Working Hours inspect the Equipment, or any part of it, at the Installation Address to confirm that it is, in SMH IT’s reasonable opinion, in full working order in accordance with the manufacturer’s requirements. If work is required to put the Equipment in such full working order, SMH IT will notify the Customer accordingly. If the Customer declines to have such work carried out at its expense within thirty days of such notification, SMH IT may on written notice exclude such Equipment from Support Maintenance and will refund to the Customer by way of credit note a fair proportion of any Charges which have been paid by the Customer in respect of such equipment from the end of the notice period.

Part 3 – General Provisions

The following terms and conditions apply to all Equipment sold or to be sold and/or Software licensed or to be licensed and/or System Maintenance provided or to be provided to the Customer.

1. General

1.1 These Terms may only be amended or varied with SMH IT’s agreement in writing. The parties agree that these Terms will prevail notwithstanding any conflicting or additional terms or any orders or other notifications submitted by the Customer.

1.2 Words of a technical nature used in these Terms will (unless inconsistent with the context) be construed in accordance with general trade use in the computer industry in the United Kingdom.

1.3 Headings in these Terms are for convenience only and have no effect on the interpretation.

1.4 Failure by either party to exercise or enforce any rights, or the giving of any forbearance, delay or indulgence, will not be construed as a waiver of its rights under these Terms or otherwise, nor will any single or partial exercise thereof preclude any further or subsequent exercise.

2. Specification

2.1 The description of any Goods contained in any invoice, order form, descriptive matter, specifications, catalogue or advertising material published or issued by SMH IT is for identification only and the use of such description will not constitute a sale by description. Any typographical or other error or omission in any such literature or any other document issued or provided by SMH IT may be corrected by SMH IT without any liability on the part of SMH IT.

2.2 SMH IT reserves the right to supply Goods which differ from the specifications agreed between the parties and/or to modify any specifications in respect of the System Maintenance provided that this does not materially affect the performance of the Goods or the System Maintenance.

3. Price

3.1 Unless otherwise stated in writing, quotations are valid for 30 days from the date of issue and are exclusive of VAT and any other relevant taxes which are payable by the Customer in addition.

3.2 All waiting time spent by any employees or agents of SMH IT as a result of any delay, variation or failure by the Customer to comply with these Terms will be payable by the Customer to SMH IT at SMH IT's then hourly rate.

4. Payment

4.1 In respect of the Support Maintenance, the Customer will pay the Charges to SMH IT on the date(s) set out in the Support Terms.

4.2 In respect of the sale of all other Goods and services:

4.2.1 Payment will be made by the Customer on the date(s) agreed in writing between the Customer and SMH IT at the point of order for the Goods or the requirements for services in accordance with these Terms.

4.2.2 Invoices for Goods will ordinarily be issued on delivery of the Goods. If the Goods are specific to the Customer or if the Customer fails to take delivery when required, SMH IT may invoice the Customer at any time after the Goods become available.

4.2.3 SMH IT may require the Customer at any time prior to delivery to pay a deposit to secure any order or part thereof.

4.2.4 Any quantity discount given by SMH IT at the point of order may be removed if the order quantity is subsequently reduced.

4.3 If no payment date(s) has been agreed in writing in accordance with clauses 4.1 or 4.2.1 above, then payment by the Customer will be made within 30 days after the date of SMH IT's invoice.

4.4 If any payments from the Customer under these Terms are payable by instalments, the Customer will pay such instalments in advance, by standing order, direct debit or such other method as SMH IT may agree, at the intervals agreed in writing with SMH IT.

4.5 If the Customer fails to make any payment due to SMH IT (whether under these Terms or otherwise) on its due date then SMH IT may (without prejudice to any other remedy) cancel the Contract or suspend any further performance of any obligations by SMH IT to the Customer or appropriate any money received from the Customer against such sums as SMH IT may determine (notwithstanding any instructions from the Customer).

4.6 All payments due to SMH IT under these Terms will be paid in full without any set-off, deduction, counterclaim or withholding of any sum for whatever reason.

4.7 SMH IT reserves the right to charge interest on the amount of any delayed payment at the rate of 4% per annum above the base rate of HSBC Bank Plc from time to time per calendar month or part thereof on the outstanding amount until the outstanding payment has been made in full.

5. Lease

5.1 If any payments due to SMH IT in respect of the Goods or the System Maintenance are to be paid by a third party, then the Customer agrees that immediately on delivery of the Goods the Customer will sign the acceptance note for the leasing company or other third party and will generally take all steps as may be necessary to ensure that payment is made to SMH IT for the Goods and/or the System Maintenance in accordance with these Terms.

6. SMH IT Employees

6.1 The Customer will take all such steps as may be necessary to ensure the safety and welfare of any of SMH IT's representatives who visit any premises of or on behalf of the Customer.

6.2 The Customer will fully indemnify and hold harmless SMH IT from and against any claim or loss, damage or injury to any person or property occasioned by or arising directly or indirectly from any negligence or misuse of the Goods or the Equipment or any other breach of these Terms by or on behalf of the Customer.

7. Liability

7.1 Subject as expressly provided in these Terms and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977 and the Consumer Rights Act 2015), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of SMH IT for fraudulent misrepresentation.

7.2 Where Goods, services, or digital content are supplied under a consumer transaction, the statutory rights of the Customer under the Consumer Rights Act 2015 and applicable consumer protection legislation are not affected by these Terms.

7.3 The Customer accepts that in respect of the sale of the Goods, whilst SMH IT will endeavour to use its expertise and experience to advise the Customer, SMH IT is acting as a supplier only and it is the Customer's responsibility to ensure that the Goods will be suitable for its requirements, and the Customer acknowledges that prior to the Contract it has fully and accurately advised SMH IT of its requirements, both present and anticipated, in respect of the goods.

7.4 If SMH IT is unable, other than through the act or default of the Customer, within a reasonable time to repair or replace any defective Goods in accordance with the Warranty set out in these Terms and where such Goods are unusable due to such defect, then the Customer's only remedy is to reject such Goods and on their return to SMH IT's premises the Customer is entitled to recover the price paid for such Goods provided the Customer notified such defect in accordance with these Terms.

7.5 Without prejudice to clause 7.7, if SMH IT fails to provide System Maintenance in accordance with its obligations hereunder, the total liability of SMH IT in any one year for any Loss suffered by the Customer as a

result of such failure will not exceed the Charges paid by the Customer in such year for the System Maintenance in question.

7.6 Except in the case of death or personal injury caused by SMH IT's negligence, or liability for defective products under the Consumer Protection Act 1987, SMH IT will not have any Liability to the Customer for loss of profit or any indirect, special or consequential Loss of the Customer arising out of or in connection with the provision of any goods or services or any delay in providing or failure to provide any goods or services even if SMH IT had been advised of the possibility of such potential loss.

7.7 Except in the case of death or personal injury caused by SMH IT's negligence, or liability for defective products under the Consumer Protection Act 1987, in no event shall SMH IT's Liability in respect of any Loss to the Customer exceed £50,000.00.

7.8 Except in the case of death or personal injury caused by SMH IT's negligence, or liability for defective products under the Consumer Protection Act 1987, no action regardless of form may be brought by the Customer more than 12 months after the cause of action has accrued.

7.9 SMH IT will have no liability under these Terms or otherwise to the Customer arising out of:

7.9.1 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising by reason (in whole or in part) of the Customer's failure to maintain adequate back-up copies of all of its operating system software, application software, data files and other documents;

7.9.2 any loss or corruption of any documents, data, memory erasure of media stored on disk, whether total or partial howsoever arising, including but not limited to loss which may occur, whilst installation, service or maintenance work is being carried out by or on behalf of SMH IT in accordance with these Terms or any other reason;

7.9.3 any act or omission of any third-party telecommunication provider, or fault or failure of their equipment (including any prevention of any remote servicing facilities in respect of the equipment); and if any damage to any of the program or data files of the Customer occurs, then SMH IT's responsibility will be confined to assisting the Customer to restore the latest backup copy and installing application software made available on site by the Customer. If on-site assistance is required to reconstruct the files, then SMH IT will charge the Customer for the cost of such assistance at SMH IT's then current rates.

8. Warranties

8.1 The Customer warrants and represents that the use by SMH IT of any data, materials or equipment supplied by the Customer for use by SMH IT in the provision of the System Maintenance, will not infringe the intellectual property rights of any third party and the Customer will fully indemnify SMH IT in this respect.

9. Confidentiality

9.1 Except as expressly provided, neither party may at any time whether during or after the expiry of these Terms use or disclose the other party's Confidential Information and the Customer will take all reasonable steps to ensure that its employees are bound by the same obligations and that such obligations will continue beyond the termination of employment with the Customer.

10. Performance

10.1 SMH IT will not be liable for any failure or delay in complying with these Terms if the failure or delay was due to force majeure, including any circumstances whatsoever beyond the reasonable control of SMH IT in which event SMH IT will as soon as reasonably practicable notify the Customer of the nature and extent of the circumstances in question. If the force majeure continues for more than 30 days then SMH IT may cancel this Contract (or any part thereof) without liability to the Customer.

11. Sub-Contracts

11.1 SMH IT may assign, sub-contract or otherwise transfer the benefit of, and/or its obligations under this Contract to any person at any time. SMH IT is a member of a group of companies and accordingly SMH IT may perform any of its obligations or exercise any of its rights under this Contract through any member of its group.

11.2 The Customer acknowledges that this Contract is personal to the Customer and that it may not assign or in any way make over to any third party, whether in whole or in part, the benefit of, and/or its obligations under this Contract without the prior written authority of SMH IT and on such terms as SMH IT may reasonably require.

11.3 Save where expressly stated in these Terms, no person will become entitled to enforce any provisions of these Terms who would not have been so entitled but for the provisions of the Contracts (Rights of Third Parties) Act 1999, the provisions of which do not apply to these Terms.

12. Termination

12.1 SMH IT may without prejudice to any other remedy available to it at any time by giving written notice terminate or suspend this Contract or such part of it as SMH IT may elect (including stopping any Goods in transit) if:

12.1.1 The Customer commits any continuing or material breach of these Terms and if the breach is capable of remedy, is not remedied within thirty days of a written notice detailing the breach;

12.1.2 a resolution is passed or an order is made for the liquidation of or the winding up of the Customer (save for the purpose of a bona fide reconstruction or amalgamation);

12.1.3 the Customer becomes subject to an administration order, a receiver or manager or administrative receiver is appointed over the Customer's property or assets;

12.1.4 the Customer suffers execution or distress or takes or suffers any similar action in consequence of a debt;

12.1.5 the Customer is insolvent or would be taken as insolvent under section 123 Insolvency Act 1986;

12.1.6 the Customer is dissolved or otherwise threatens or ceases to carry on business or a substantial part of it;

12.1.7 in the case of a sole trader or partnership anything analogous to any of the above occurs.

12.2 On termination of this Contract for any reason the Customer will return or delete any of SMH IT's Confidential Information and return to SMH IT all property of SMH IT under the Customer's possession or control.

12.3 On termination of the Contract any licence to use software granted by SMH IT will immediately terminate and the Customer will return to SMH IT any such software and all copies thereof and will not use or permit the use of any such software. The Customer acknowledges and agrees that SMH IT will be entitled to remove such software from all operating systems of the Customer whether by means of remote access or otherwise. The Customer will not do or omit to do anything which might prevent or hinder such removal.

12.4 If the Customer terminates this Contract (or SMH IT terminates by reason of any acts or omissions of the Customer) then:

12.4.1 in respect of any Goods, such termination can only be made with SMH IT's written consent and on terms that the Customer will indemnify SMH IT in full against all loss (including loss of profit), costs, charges and expenses incurred by SMH IT as a result of such termination; and

12.4.2 in respect of the System Maintenance, if the termination occurs prior to the end of the Initial Term, SMH IT may without prejudice to any other remedies available to it demand and receive from the Customer an early termination charge. This charge will be calculated to recover such costs as SMH IT has reasonably incurred in equipping itself to deliver the System Maintenance and which have not been fully recovered by SMH IT from the Charges paid by the Customer at the date of termination.

13. Data Protection

13.1 Both parties will comply with all applicable requirements of Applicable Data Protection Laws.

"Applicable Data Protection Laws" means the UK GDPR (as defined in section 3(10) of the Data Protection Act 2018), the Data Protection Act 2018, and any successor or secondary legislation in force in the UK.

13.2 To the extent SMH IT processes any personal data on behalf of the Customer as a data processor in connection with the performance of its obligations under these Terms, SMH IT shall:

13.2.1 process such personal data only on documented written instructions from the Customer;

13.2.2 ensure appropriate technical and organisational measures are implemented to protect personal data against unauthorised or unlawful processing and against accidental loss, destruction, or damage;

13.2.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

13.2.4 assist the Customer in responding to any requests from data subjects and in ensuring compliance with its obligations under Data Protection Laws with respect to security, breach notifications, and impact assessments.

13.3 The Customer acknowledges that data transmitted over the internet cannot be guaranteed to be entirely secure against external transmission risk, but SMH IT shall implement industry-standard security safeguards to protect transmitted data.

14. Non-Solicitation

14.1 The Customer acknowledges the investment made by SMH IT in the training of SMH IT's Personnel and the commercial interest which SMH IT has in retaining their services.

14.2 The Customer agrees that if any of the SMH IT Personnel who have provided all or any part of any services for or on behalf of SMH IT to the Customer within 3 months of leaving the employment or engagement of SMH IT accepts an Engagement with the Customer, then the Customer will pay to SMH IT

such sum as represents 30% of the anticipated annual salary or other sums to be paid by the Customer to such person(s) within the first year of such Engagement.

14.3 For the purpose of this clause 14, references to the Customer will include any person or entity to whom such person(s) is introduced (directly or indirectly) by the Customer.

15. Notices

15.1 All notices under these Terms must be in writing and will be effective only if given by either party to the other party at their last known principal place of business or such other address as that party has nominated, in writing, for that purpose.

16. Law and Jurisdiction

16.1 These Terms will be governed by and construed in accordance with English Law and the English Courts will have jurisdiction to hear all disputes arising in connection with these Terms.

16.2 The invalidity or unenforceability for whatever reason will not prejudice the continuation in force of the remainder of these Terms and if any part of these Terms is held by a Court or competent authority to be illegal or ineffective it or they will be replaced with such legal and effective terms that most closely approach the ineffective terms.

17. Entire Agreement

17.1 These Terms and the Support Terms contain the entire agreement between the parties with respect to their subject matter and supersede all previous written and oral agreements and understandings between the parties. The Customer acknowledges that in entering into the Contract it does not rely on any representation, warranty, agreement or other provision except as expressly set out in these Terms and that all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law, but nothing in these Terms will affect the liability of SMH IT for any fraudulent misrepresentation.

Definitions

In these terms and conditions, unless the context otherwise requires, the following words have the following meanings:

Call: Communications received by SMH IT from the Customer reporting a defect or malfunction in the Equipment.

Charges: The sums payable by the Customer to SMH IT for the System Maintenance, as set out in the Support Terms.

Confidential Information: Any trade secrets or confidential or proprietary information of either party, including these Terms, but excluding any information: (a) in the public domain otherwise than by a breach of the Contract; (b) which, prior to disclosure, was already known by the recipient; (c) that the recipient develops independently or without reference to any information that is disclosed to it under the provisions of the Contract; or (d) which is subsequently disclosed to the recipient by a third party at liberty to disclose it.

Contract: The contract between the Customer and SMH IT for the sale of Goods and/or System Maintenance in accordance with these Terms.

Customer: The person who accepts SMH IT's written quotation for the sale of the Goods and/or the supply of the System Maintenance or whose written order in respect thereof is accepted by SMH IT.

Engagement: The employment, hire or other use, directly or indirectly and whether as an employee or on a self-employed basis.

Equipment: All or part of the network, hardware, software and Third-Party Software as specified or identified in the Support Terms.

Goods: The computer hardware, software and related equipment which SMH IT is to supply in accordance with these Terms.

Initial Term: The fixed period for which the System Maintenance is to be provided as specified in the Support Terms.

Installation Address: The address specified in the Support Terms at which the Equipment is located or such other address as may be agreed in writing by SMH IT.

Liability: Any liability arising by reason of any representation (unless fraudulent), or any breach of any implied warranty, condition or other term or any duty at common law, or under any statute, or under any express term of this Contract.

Loss: In relation to the Customer means loss of profit (or any other loss), damages, costs or other compensation and any legal or other expenses awarded against or incurred by or paid or agreed to be paid in settlement of any claim by the Customer, howsoever arising and whether by reason of negligence of SMH IT, its employees, its agents or otherwise.

Normal Working Hours: 09:00 to 17:00 Monday to Friday, excluding bank or statutory holidays.

Operating Platform: The complete configuration of hardware, ancillaries/accessories and operating system for an item of Equipment.

Personnel: Any employee, agent, consultant and/or sub-contractor of the party concerned.

Scheduled Service Hours: The times during which SMH IT will endeavour to provide the System Maintenance as specified in the Support Terms.

Support Terms: The Schedule signed by the Customer setting out details of the Equipment, response times and other information in respect of the System Maintenance.

System Maintenance: The provision of a maintenance service for the Equipment together with proactive support visits as set out in the Support Terms.

System Audit: An inspection of the Equipment or part thereof, but excluding repair or replacement.

Third-Party Software: Software developed and licensed by a third party, for which SMH IT has agreed to provide support, as detailed in the Support Terms.

SMH IT: Company Registration Number 13431017, or such other group company as may be notified to the Customer from time to time.