

## General Terms and Conditions

### 1. DEFINITIONS

- 1.1 'Additional Term' means any term of this Agreement which is subsequent to the expiry of the Minimum Term, set out in the Order attached hereto.
- 1.2 'Agreement' means these General Terms and Conditions and any engrossed Order(s), Supplement(s) and Service Schedules, all of which, taken together constitute the agreement between the parties for the supply of Goods and Services.
- 1.3 'Applicable Service' means a Service or part thereof for which Eloquent makes an express commitment in relation to performance and sets out remedies in the event of failure to meet such commitment.
- 1.4 'Commencement Date' means the date of commencement of this Agreement, as set out on the Order, which is the date of Eloquent's acceptance of the Order.
- 1.5 'Confidential Information' means information, documentation, know-how, data, diagrams, specifications or other materials (digital, written or oral), belonging to the other and concerning the business and affairs of the other, and in the case of Eloquent, Customer Data and Customer Information.
- 1.6 'Customer Data' means data that is the property of the Client.
- 1.7 'Customer Information' means information supplied by the Client (including names, email addresses, telephone numbers) which is required by Eloquent to enable it to deliver the Services under the terms of this Agreement.
- 1.8 'Equipment' means telephony and computational hardware, including telephone handsets, workstations, servers, routers and switches.
- 1.9 'Fault' means any defect or failure in the Services.
- 1.10 'Force Majeure' means an event affecting the performance by a party of its obligations under this Agreement, arising from circumstances beyond its reasonable control, including flood, fire, earthquake, war, tempest, hurricane, industrial action (except any industrial action relating to Eloquent, its subcontractors or suppliers or any other failure in Eloquent's supply chain), government restrictions, legislation, act of God or any other occurrence of a like nature.
- 1.11 'General Terms and Conditions' means these General Terms and Conditions
- 1.12 'Goods' means any goods that are supplied to the Client by Eloquent.
- 1.13 'Group' means in relation to either party, itself and each of its holding companies or subsidiaries for the time being and any subsidiary of any such holding company and the terms 'holding', 'company' and 'subsidiary' shall have the meanings given to them in the Companies Act 2006.
- 1.14 'Hour' means clock hour, which may fall outside of the Working Day.
- 1.15 'Infrastructure' means Eloquent's network infrastructure, servers and storage.
- 1.16 'Intellectual Property' means all intellectual property, including patents, utility models, trade and service marks, trade names, domain names, rights in designs, copyrights, moral rights, rights in databases, trade secrets and know-how, in all cases whether or not registered or able to be registered and including registrations and applications for registration of any of these and rights to apply for the same, rights to receive equitable remuneration in respect of any of these and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world.
- 1.17 'Intellectual Property Rights' ('IPR') means the right to title to Intellectual Property.
- 1.18 'Loan Equipment' means Equipment that is loaned to the Client by Eloquent under the terms of this Agreement, to which Eloquent shall retain title.

- 1.19 'Minimum Term' means the initial term of this Agreement, set out in the Order attached hereto.
- 1.20 'Order' means the order form attached hereto which sets out the Goods to be supplied and summary of Services to be delivered hereunder.
- 1.21 'Rented Equipment' means Goods that shall be rented to the Client and to which Eloquent shall retain title.
- 1.22 'RFS Date' (Ready For Service Date) means the date from which the Services are available for use (at all sites) by the Client, as notified by Eloquent.
- 1.23 'Services' means services provided to the Client by Eloquent under the terms of this Agreement.
- 1.24 'Service Component' means an individual component of the Services which is separately itemised on the Order and described in the Schedules.
- 1.25 'Service Credit' means credit applied to the Client's account to be used as credit against future invoices.
- 1.26 'Service Schedule' means the schedule which forms part of any service-specific Supplement attached hereto which sets out the detailed services to be provided and any applicable service levels.
- 1.27 'Software' means any software and associated documentation provided by Eloquent to the Client or its end users pursuant to this Agreement or used by Eloquent to provide the Services, including any software which is embedded in the Equipment.
- 1.28 'Supplement' means service-specific supplementary terms and conditions and its associated Service Schedule.
- 1.29 'Tariff' means the document that lists prices and charges, as amended from time to time and made available by Eloquent on request.
- 1.30 'Working Day' means 08.30am to 5.30pm Monday to Friday, excluding Bank and Public Holidays.
- 1.31 'Working Hour' means any hour within the Working Day.

## **2. THE PARTIES**

The parties to this Agreement are (I) Eloquent Technologies Ltd ('Eloquent'), whose registered office is at Viney Court, Viney Street, Taunton, Somerset, TA1 3FB and (II) the Client, whose name and place of business are set out on the Order

## **3. GENERAL**

- 3.1 These General Terms and Conditions shall govern the overall relationship of the parties to this Agreement in relation to the Services provided by Eloquent to the Client.
- 3.2 Eloquent shall provide the Services to the Client in the manner and on the terms of these General Terms and Conditions and on the terms of each applicable Supplement.
- 3.3 From time to time, the Client may engage Eloquent to provide additional Services under the terms of an additional Supplement and applicable Order, which shall be incorporated into this Agreement.
- 3.4 In the event of a conflict between the terms set out in an Order, these General Terms and Conditions or the terms and conditions set out in the applicable Supplement, the following order of precedence shall apply:
  - 3.4.1 The terms in the applicable Order;
  - 3.4.2 The terms in the applicable Supplement and its attached Service Schedules;
  - 3.4.3 The terms of these General Terms and Conditions.
- 3.5 In this Agreement:

- 3.5.1 The words 'including' and 'includes' when followed by particular examples shall be construed as illustrative and not exhaustive;
- 3.5.2 Words of a technical nature shall be construed in accordance with the relevant common usage in the information technology industry in the United Kingdom;
- 3.5.3 References to a 'person' include a natural person, body corporate, unincorporated body of persons, individual, company, firm, government, state or agency of the state;
- 3.5.4 References to the singular includes the plural and vice versa;
- 3.5.5 Headings to clauses have been inserted for convenience of reference only and should not be construed as forming part of this Agreement;
- 3.5.6 A reference to a statute, statutory provision, order, regulation instrument or other subordinate legislation is a reference to that statute, statutory provision, order, regulation, instrument or other subordinate legislation and amendments and re-enactments made to such from time to time;
- 3.5.7 A reference to a regulatory authority or other competent body shall be deemed to include any successor authority or body;
- 3.5.8 A reference to the parties is a reference to Eloquent and the Client and a reference to a party is a reference to one of them;
- 3.5.9 All periods expressed in days shall mean calendar days unless expressly stated otherwise;
- 3.5.10 Copyright in supplier and other third party product and service names is acknowledged.

#### **4. COMMENCEMENT AND TERM**

- 4.1 This Agreement shall be deemed to come into effect on the Commencement Date set out in the Order and shall run until terminated in accordance with the terms hereof.
- 4.2 Additional Supplements shall come into force on the date specified in the relevant Order and shall continue until such time as specified in such Supplement, or until such Supplement is terminated earlier, in accordance with the terms set out therein or the terms of these General Terms and Conditions.
- 4.3 The termination of any particular Services provided in accordance with its specific Supplement shall not affect any other Services provided under the terms of any other Supplement save that on termination of the last remaining Supplement, the entire Agreement shall be deemed terminated.

#### **5. ELOQUENT'S OBLIGATIONS**

During the term of this Agreement, and subject to the performance by the Client of its obligations hereunder, Eloquent shall:

- 5.1 Immediately notify the Client when it becomes aware of the RFS Date or any subsequent change thereto.
- 5.2 Provide the Services set out in the Supplement(s) and associated Schedule(s), in accordance with the relevant Service Levels and subject to any Service Limitations, including:
  - 5.2.1 The delivery and if set out in the Order, installation of pre-configured Equipment at the Client's site(s), set out in the Orders attached hereto;
  - 5.2.2 The provision of training in the use of the Equipment and Services as appropriate; and
  - 5.2.3 Making timely responses to reported Incidents ('Support Tickets') made by the Client and make reasonable endeavours to repair any Incident arising in the Services Eloquent according to the service level or targets set out in the relevant Schedule.

- 5.3 Warrant that it and its suppliers hold and shall continue to maintain all licences, authorisations, approvals and consents necessary to allow Eloquent, its suppliers and subcontractors to provide the Services In accordance with all Applicable Laws.
- 5.4 Being engaged by the Client for its professional expertise, Eloquent warrants that the Services shall be performed by competent staff, exercising a level of skill appropriate to their responsibilities.
- 5.5 Without prejudice to any other remedy to which the Client may be entitled under the terms of this Agreement, promptly make good any failure to perform the Services arising from a failure of Eloquent, its employees, subcontractors or suppliers at no charge to the Client.
- 5.6 Without prejudice to its other obligations or responsibilities, ensure that when any of its obligations are performed on the Client's premises all rules and instructions in force and published thereat are complied with.
- 5.7 Make reasonable endeavours to provide reasonable notice of any bona fide restriction which, for operational reasons Eloquent may place on the Services.
- 5.8 Take full ownership of any Incidents in the Services as properly reported to Eloquent or of which it ought to be aware and maintain ownership until such Incident is resolved.
- 5.9 Work directly with its suppliers if such suppliers are involved in the resolution of particular Incidents.
- 5.10 Recognising that the Services may be used in conjunction with services, software and equipment that may be provided and maintained by third parties (i.e. suppliers other than Eloquent and its suppliers):
  - 5.10.1 Whilst Eloquent cannot assume responsibility for the repair of any third party Incidents, it will however assist the Client in the tracing and identification of problems incurred by the Client which prove not directly attributable to the Services;
  - 5.10.2 Where it is appropriate, Eloquent will also take reasonable steps to demonstrate to a third party supplier where the cause of the Incident lies; and
  - 5.10.3 If such Incident(s) are shown not to result from the Services, Eloquent shall be entitled to charge the Client for work carried out, at its prevailing rates.
- 5.11 On the commencement of Services provided under the terms of a service-specific Supplement hereto provide a target time-scale for the RFS Date and make reasonable endeavours to provide Services by such date.
- 5.12 Make reasonable endeavours to ensure that it provides sufficient resources to perform their respective obligations under the terms of this Agreement.

## **6. CLIENT'S OBLIGATIONS**

During the term of this Agreement and subject to the performance by Eloquent of its obligations hereunder, the Client shall:

- 6.1 If installation charges are indicated on the Order to be estimates, undertake to pay the actual charge incurred for the installation of the Equipment or Services.
- 6.2 Place calls for support services using the designated telephone number, email-address or web portal as notified to the Client on commencement of the relevant Supplement or as updated from time to time.
- 6.3 Provide suitably qualified personnel for such times as may be reasonably required by Eloquent:
  - 6.3.1 To promptly provide any information within the Client's possession or control which Eloquent may reasonably require in order to perform its obligations;
  - 6.3.2 To give Eloquent information and assistance in identifying and correcting any malfunctions;

- 6.3.3 To receive and execute the appropriate corrective measures (or other instructions in relation to this Agreement) given by Eloquent; and / or
- 6.3.4 To carry out diagnostic tests on the Equipment as requested by Eloquent.
- 6.4 Allow Eloquent, its subcontractors or agents proper access to the Client's premises and a suitable, safe working environment during the Working Day and at other times as may be reasonably requested; and
  - 6.4.1 Indemnify Eloquent and its subcontractors for death or personal injury claims that arise out of the Client's failure to comply with the provisions of this clause, save where such claim arises out of the negligence of Eloquent or its subcontractors
- 6.5 Provide and prepare a suitable place for the installation of Equipment necessary for the delivery of the Services (including availability of electrical supply and connection points) in accordance with Eloquent's reasonable instructions.
- 6.6 If Eloquent has to install Equipment at a third party's site, seek all necessary permissions prior to Eloquent gaining access to the site.
- 6.7 Following Eloquent's installation of Equipment at the Client's site be responsible for replacing items of furniture and any necessary redecoration, provided that any such damage is minor, cosmetic and reasonably incurred and;
  - 6.7.1 If, prior to such installation Eloquent becomes aware that damage will occur or re-decoration will be required, Eloquent shall notify the Client prior to carrying out the installation work.
- 6.8 If Eloquent sells, loans or rents Equipment to the Client to enable the delivery of the Services, the Equipment will be provided under the terms of Eloquent's Supplemental terms for the Sale, Rental or Loan of Equipment, attached hereto.
- 6.9 Ensure that the use of the Services complies with the acceptable use clauses set out in this Agreement and not cause Eloquent or its suppliers to contravene any legislation, regulation or authorisation.
- 6.10 Ensure that the existence of this Agreement does not breach the terms of any agreement made between the Client and any other party for the supply of similar services.
- 6.11 Disclose to Eloquent any facts that are known or potential issues that are suspected which might have a material impact on the implementation of the Services, including breach or potential breach of this Agreement.
- 6.12 In the event of a failure or interruption to the Services which has been investigated and or repaired by Eloquent and found to be caused by the Client or a third party (not connected with or under the control of Eloquent), pay any reasonable charges levied by Eloquent in respect of the work carried out.
- 6.13 Warrant that it holds and shall continue to maintain all licences, authorisations, approvals and consents:
  - 6.13.1 Necessary to allow it to use the Services;
  - 6.13.2 Necessary for any data, including documentation, software or data which may be supplied to Eloquent for the purpose of assisting with the provision of the Services.
- 6.14 Save as provided by Eloquent under the terms of this or another Agreement, provide all equipment necessary to enable access to the Services; and
  - 6.14.1 Make all reasonable measures to ensure that such equipment used in conjunction with the Services is free from viruses, worms, Trojan horses or any other malware.

## **7. CONFIDENTIALITY**

- 7.1 Each of the parties to this Agreement agrees to use Confidential Information solely for the purposes of executing this Agreement and for the evaluation of future products and services. Neither party shall

disclose Confidential Information to any other person without the owner's written consent except when it is deemed that such disclosure is required to execute this Agreement, in which case the disclosing party will obtain binding commitment from the receiving party to keep such information confidential.

- 7.2 Each of the parties to this Agreement shall, and procure that its staff, agents, regulators and subcontractors shall, keep confidential all Confidential Information that it shall have obtained as a result of the discussions leading up to or entering into or performance of this Agreement except:
- 7.2.1 To the extent that it can be shown that the information is publicly available other than through a breach of this Agreement;
  - 7.2.2 To the extent that it can be shown that the information was lawfully in its possession prior to the date of its disclosure by any other party;
  - 7.2.3 To the extent that the receiving party may have received the information from a third party without (bona fide) restriction as to disclosure;
  - 7.2.4 Where the receiving party receives or has received written consent to such disclosure from the party entitled to such information;
  - 7.2.5 To the extent that the receiving party may be required by law to make such disclosure, whereupon the receiving party shall forthwith notify the disclosing party of such requirement and shall limit disclosure to the portion of the Confidential Information which is legally required;
  - 7.2.6 To the extent that it can be shown that such has been independently developed by the receiving party;
  - 7.2.7 The parties agree in writing that such need not be kept confidential.
- 7.3 Upon written request from the other party, either party will return to the other all copies of the Confidential Information obtained during the performance of the Agreement within thirty days of such request.
- 7.4 Within thirty days of the date of termination of this Agreement, all Confidential Information and copies thereof shall be returned to the disclosing party, or at the disclosing party's request, destroyed by the receiving party.
- 7.5 Nothing in this clause shall prohibit Eloquent from supplying the same or similar Goods or Services to other persons.
- 7.6 Neither party shall provide Confidential Information which has been received from the other in response to a request made under the Freedom of Information Act 2000 prior to giving the other party no less than ten Working Days to make its representations.
- 7.7 Without prejudice to any other rights or remedies that the disclosing party may have, the receiving party agrees that if Confidential Information is used, disclosed or threatened to be used or disclosed in breach of this clause 7, the disclosing party shall be entitled, without proof of special damage, seek injunctive relief or other equitable relief for any actual or threatened breach of this clause 7.
- 7.8 The provisions of this clause 7 shall survive in perpetuity the termination of this Agreement, howsoever occasioned.

## **8. DATA PROTECTION**

- 8.1 In this Agreement the terms:

- 8.1.1 'Data Protection Legislation' means the Data Protection Act 2018, the General Data Protection Regulation (GDPR) EU2016/679, any amendments and re-enactments made thereto from time to time and any other data protection regulations currently in force;
- 8.1.2 'Personal Data', 'Data Subject', 'Data Controller', 'Data Processor', 'Subject Access Request', 'Supervisory Authority', 'Process' and 'Processing' shall have the meanings defined in the Data Protection Legislation;
- 8.1.3 'Sub-Processor' means a subcontractor or supplier to Eloquent who Processes Customer Data on Eloquent's behalf.
- 8.2 Eloquent and the Client each agree to comply with their respective obligations under the Data Protection Legislation and to maintain all necessary consents, registrations and notifications.
- 8.3 The parties to this Agreement agree that in relation to Customer Information that Eloquent Processes on its own behalf in order to provide its Services, Eloquent shall be a Data Controller, not a joint Controller and, acting in the capacity of Data Controller shall:
  - 8.3.1 Collect from the Client, Process, use or share with its suppliers or subcontractors Customer Information that Eloquent shall determine the purpose of Processing to enable it to provide the Services, including:
    - a) Administration, tracking and fulfilment of Client orders;
    - b) Management of Fault reports;
    - c) Administration of access to Eloquent's support portal;
    - d) Administration of access to the Services;
    - e) Raising and issuing invoices;
    - f) Management of this Agreement, including issuing notices and providing management reporting.
  - 8.3.2 Process the Customer Information in accordance with the applicable Data Protection Legislation and where applicable, Eloquent's Privacy Policy;
  - 8.3.3 Not disclose to any person Customer Information other than to its suppliers, subcontractors or employees who shall be placed under the same binding obligation of confidence and who need access to such Customer Information to facilitate proper performance of their contractual obligations (in relation to this Agreement), to Eloquent;
  - 8.3.4 Eloquent shall be entitled to use selected Customer Information and data pertaining to the Client's use of the Services to advise appropriate members of the Client's staff about additional products, services and offers;
  - 8.3.5 If the Client does not consent to the provisions of sub-clause 8.3.4, it shall be entitled to notify Eloquent and forthwith upon receipt of such notice Eloquent shall cease to advise the Client about additional products, services and offers.
- 8.4 The parties agree that in relation to Personal Data contained within Customer Data that Eloquent Processes on behalf of the Client, the Client shall be the Data Controller and Eloquent shall be the Data Processor and that under the terms of this Agreement:
  - 8.4.1 The duration of Processing shall be limited to the duration of this Agreement and thereafter for as long as is required by Applicable Law following the termination thereof;
  - 8.4.2 The nature of Processing is (a) the transmission; (b) the storage; and (c) the use for the purpose of configuration of the Client's Equipment and Software, (collectively, the 'Permitted Uses') of



Customer Data as required to deliver the Services and the purpose of the Processing is the delivery of the Services ordered by the Client under the terms of this Agreement;

- 8.4.3 The parties acknowledge that save email and internet protocol addresses, which may be transmitted via the Services, types of Personal Data and categories of Data Subjects that may be included within the Customer Data shall be determined exclusively by the Client and Eloquent shall not be privy to such information;
  - 8.4.4 To the extent necessary to enable it to provide the Services, Eloquent shall be entitled to and may transfer Customer Data outside of the European Economic Area or to an international organisation, subject to its compliance with the terms of sub-clause 8.7.5;
  - 8.4.5 This Agreement forms inter alia the Client's complete written instruction to Process Customer Data.
- 8.5 The Client agrees that it shall be solely responsible for its compliance with its obligation under the Data Protection Legislation to take the necessary technical and organisational measures to ensure that Customer Data is protected (to a level that is appropriate to the risks associated with Processing) against accidental destruction, damage, loss or disclosure where such Customer Data is:
- 8.5.1 Created and / or stored within Eloquent's Infrastructure by the Client using applications including email, desk-top applications, third party software and software developed by or for the Client, including such being executed in managed desktop and infrastructure as a service environments;
  - 8.5.2 Created and / or stored within Eloquent's Infrastructure either automatically or in response to third party user input using third party software or software developed by or for the Client, including web-sites and web-services;
  - 8.5.3 Created and / or stored within Eloquent's Infrastructure by any other means, including telephone voice recording.
- 8.6 The Client hereby agrees that certain Services Eloquent provides under the terms of this Agreement may be provided to Eloquent by one or more suppliers or subcontractors who in respect of Personal Data, may act in the capacity of Sub-Processor; and
- 8.6.1 Eloquent shall be entitled to change its suppliers or subcontractors at its sole discretion. For the avoidance of doubt, if Eloquent appoints a Sub-Processor to Process Customer Data or Customer Information on its behalf, Eloquent shall remain fully liable to the Client for the performance of that Sub-Processor's data protection obligations; and
  - 8.6.2 If Eloquent elects to change a supplier or subcontractor who is acting in the capacity of Sub-Processor, it shall notify the Client without undue delay; and
    - a) If the Client objects to the appointment of a Sub-Processor, the Client shall notify Eloquent within thirty days of the change and Eloquent will address the objection in accordance with the process set out in clause 18 hereof; and
    - b) Eloquent shall be entitled to use the Sub-Processor until the objection is resolved; and
    - c) If the Client does not object within thirty days of notification of the changed Sub-Processor, such change will be deemed acceptable to the Client.
- 8.7 The Client, in its capacity of Data Controller hereby authorises Eloquent, in its capacity of Data Processor to Process Customer Data and to permit its suppliers and subcontractors, whether direct or indirect, who may be acting in the capacity of Sub-Processor to Process Customer Data for the purposes of performing its obligations under this Agreement, subject to Eloquent's, its suppliers' and subcontractor's compliance with the following conditions:



- 8.7.1 To restrict Processing of Customer Data to the Permitted Uses thereof;
- 8.7.2 Notwithstanding the provisions of sub-clause 8.7.1, Eloquent and / or its supplier(s) shall be entitled use and store information including origin, destination, duration, route and time of data transmitted over its network services, exclusively for the purposes of:
  - a) Collating statistics for network planning purposes; and
  - b) Providing such information to government security agencies in response to specific requests.
- 8.7.3 Not to retain any copy (save as required for the provision of specific services under the terms of this Agreement, including backup and disaster recovery services), abstract, summary or précis of the whole or any part of the Customer Data (save as set out in sub-clause 8.7.2); permit its employees to do the same and shall procure similar written, binding undertakings from its subcontractors and suppliers, who may be acting in the capacity of Sub-Processor;
- 8.7.4 Not to modify any part of Customer Data or permit its employees to do the same and shall procure similar written, binding undertakings from its subcontractors and suppliers, who may be acting in the capacity of Sub-Processor;
- 8.7.5 Not to transfer Customer Data outside of United Kingdom or the European Economic Area or to an international organisation without complying with the provisions of the Data Protection Legislation regarding inter alia the adequate level of protection of any Personal Data that may be contained therein, unless such transfer is required under Applicable Law in which case Eloquent shall, provided that it is not prevented from so doing under the Applicable Law, promptly notify the Client of such transfer.
- 8.7.6 To promptly notify the Client if it becomes aware of any accidental destruction, disclosure or illegal Processing of Customer Data;
- 8.7.7 To undertake to implement appropriate processes and technology to ensure that:
  - a) The Processing of Customer Data meets the requirements of the Data Protection Legislation;
  - b) Customer Data is protected (to a level that is appropriate to the risks associated with Processing) against accidental destruction, damage, loss or disclosure;
  - c) Eloquent's employees as fully as it is reasonable to expect, understand their obligations under the Data Protection Legislation.
- 8.7.8 To undertake to assist the Client with the Client's own obligations under the Data Protection Legislation, taking into account the nature of the Processing and the information available to Eloquent by:
  - a) Communicating to the Client within five Working Days of receipt, any Subject Access Requests that relate to the Customer Data;
  - b) In response to written instructions, assisting the Client in providing Subject Access to the extent practicable;
  - c) In the event of a security breach which involves Customer Data, providing to the Client details of the Customer Data that is involved in the breach;
  - d) Providing responses to reasonable requests for technical and organisational information in relation to the Processing of Customer Data;
  - e) On request making available to the Client any of Eloquent's relevant documentation that demonstrates its compliance with its obligations under the Data Protection Legislation;

- f) Allow the Client or an authorised representative of the Client to audit Eloquent's compliance with the Data Protection Legislation, the frequency of such audits to be not greater than once every twelve months.

And the Client agrees to reimburse Eloquent for its reasonable expenses incurred for any assistance provided under this sub-clause 8.7.8, save sub-clause 8.7.8(c).

8.7.9 To undertake to on termination of this Agreement:

- a) On request, return to the Client copies of all Customer Data;
- b) Delete all Customer Data that is held within Eloquent's (or its supplier's) Infrastructure (unless such is prohibited by Applicable Law).

8.8 Eloquent undertakes that it shall:

8.8.1 Not disclose to any person Customer Data other than to its suppliers, subcontractors or employees who shall be placed under the same written, binding obligation of confidence and who need access to such Customer Data to facilitate proper performance of their contractual obligations (in relation to this Agreement), to Eloquent;

8.8.2 If required to disclose Customer Data, including communications content, to an appropriate judicial, law enforcement or government agency under Applicable Law, Eloquent shall prior to disclosure use reasonable endeavours to promptly notify the Client of the disclosure, PROVIDED THAT it is not prohibited from doing so by the requesting agency.

8.9 The Client agrees that in the event of Eloquent's ceasing to trade and any subsequent novation of this Agreement or part thereof by Eloquent's supplier, Customer Data and Customer Information, will be transferred to the supplier or its assignee.

8.10 Eloquent will on demand, deliver to the Client all documents that may be in its possession or in the possession of its agents, subcontractors, suppliers or employees (including documents prepared by the Client) which may include Personal Data.

8.11 The provisions of this clause 8 shall survive in the termination of this Agreement, howsoever occasioned, until such time as Eloquent no longer retains any Customer Data or Customer Information.

## **9. CHARGES AND PAYMENT**

9.1 In consideration of the provision of the Services, the Client shall pay the charges in accordance with this Clause 9 (the 'Charges').

9.2 Eloquent shall invoice the Client according to the billing period set out in the Order and Charges will be calculated using the details recorded by Eloquent.

9.3 The Client agrees to pay the whole amount of the Charges, by direct debit unless otherwise agreed in writing, (without any withholding, deduction, set off or counter-claim), within thirty days of the date of Eloquent's invoice.

9.4 Eloquent shall be entitled to offset any monies owed to the Client against any monies owed to Eloquent.

9.5 Invoices shall be deemed accepted by the Client unless a written objection, which clearly identifies the reason for the dispute is received by Eloquent within ten Working Days of the date of the invoice. If the Client disputes the invoice, the parties shall make all reasonable endeavours to resolve the dispute promptly. In the event that the dispute has not been resolved within fifteen Working Days of the receipt by Eloquent of the Client's letter, the dispute shall be escalated in accordance with the provisions of Clause 18 of this Agreement.

- 9.6 If the Client fails to make any payment in respect of Goods or Services by the due date, Eloquent shall be entitled to take one or more actions:
- 9.6.1 Suspend the provision of Services to the Client until such time as the outstanding invoice(s) is/are paid;
  - 9.6.2 Charge the Client interest at the rate of 6% per annum above the prevailing HSBC Bank plc base rate, on any amount outstanding from the due date to the date of actual payment. Interest shall be applied on a daily basis;
  - 9.6.3 Terminate this Agreement;
  - 9.6.4 Recover from the Client damages for any costs or losses suffered by Eloquent as a result of the Client's failure to make payment.
- 9.7 If during the execution of this Agreement Eloquent incurs reasonable expenses, Eloquent shall be entitled to charge the Client at cost for such expenses provided that such provision has been indicated in the Order or otherwise agreed in writing with the Client.
- 9.8 If Eloquent is requested to provide Goods or Services in addition to those set out in the Order, Eloquent shall charge the Client for the provision of such Goods or Services at its prevailing rates.
- 9.9 All prices or Charges stated or referred to in this Agreement are exclusive of packing, packaging, shipping, carriage and insurance charge, if applicable.
- 9.10 All prices or Charges stated or referred to in this Agreement are exclusive of Value Added Tax which shall be charged in addition at the rate ruling at the tax point.
- 9.11 All elements of the Charges for Services shall be reviewed by Eloquent to be effective at the end of the Minimum Term, and each subsequent anniversary thereof, and:
- 9.11.1 Provided that no material changes occur in suppliers' charges to Eloquent, the maximum annual increase in the annual charge will not exceed 10%;
  - 9.11.2 If there is material change to the charges made by Eloquent's supplier, Eloquent shall be entitled to pass such costs on to the Client;
  - 9.11.3 Any proposed changes in charges will be notified to the Client in writing not less than ninety days prior to any anniversary.
- 9.12 Notwithstanding the provisions of clause 9.11, Eloquent shall be entitled to increase its charges for any part of the Services if its suppliers increase their charges due to their increased costs at any time by providing the Client not less than thirty day's notice.
- 9.13 Eloquent shall be entitled to conduct credit checks in respect of the Client from time to time.
- 9.14 Eloquent shall be entitled to require that the Client pays a deposit before the commencement of Services or during the term of this Agreement if Eloquent becomes aware of an adverse change to the Client's financial standing:
- 9.14.1 Eloquent shall be entitled to apply all or any of the deposit against any unpaid charges at its sole discretion;
  - 9.14.2 Deposits shall not attract interest.
- 9.15 Eloquent shall be entitled to raise or correct an invoice issued to the Client for a period of twelve months following the date of the invoice and the provisions of this sub-clause 9.15 shall continue in force for a period of twelve months following termination of this Agreement, howsoever occasioned.
- 9.16 If the Client modifies the Order after the Order has been accepted by Eloquent, Eloquent shall be entitled to charge the Client for all expenses incurred up to the date of the modification.
- 9.17 Time is of the essence with regard to payments due under the terms of this Agreement.

## 10. LIMITATION OF LIABILITY

10.1 This clause 10 sets out Eloquent's entire financial liability (including any liability for the acts or omissions of its employees, subcontractors agents and suppliers) to the Client in respect of:

10.1.1 Any breach of the express or implied terms of this Agreement by Eloquent, its employees, subcontractors agents and suppliers;

10.1.2 Any use made by the Client of the Services;

10.1.3 Any of the Services, their supply or failure or delay in the supply thereof;

10.1.4 Any fraudulent misrepresentation, tortious act or omission (including negligence) arising under or in connection with this Agreement.

Whether arising in contract (including under any indemnity), tort (including negligence), under common law or statutory duty.

10.2 Nothing in this Agreement shall limit Eloquent's liability:

10.2.1 For death or personal injury caused by or arising from the negligence of Eloquent, its employees, subcontractors agents or suppliers;

10.2.2 For any damage incurred by the Client resulting from fraudulent misrepresentation by Eloquent, its employees, subcontractors agents or suppliers;

10.2.3 For any breach by Eloquent, its employees, subcontractors agents or suppliers of warranties as to title, quiet possession and freedom from encumbrance which may be implied by Section 2 of the Supply of Goods and Services Act 1982;

10.2.4 For losses arising directly whether in contract, tort (including negligence and a breach of statutory duty) or otherwise from Eloquent's breach of Clause 8 of this Agreement where such breach results in the damage to, loss of, illegal Processing of or disclosure of Personal Data;

10.2.5 Any other liability than cannot be excluded or limited by law.

10.3 In the event of damage to or loss, illegal Processing or disclosure of Personal Data:

10.3.1 Eloquent shall accept liability for direct losses, costs and damages which arise in respect of:

- a) Regulatory inspection;
- b) Notification of Data Subjects;
- c) Remediation efforts with Data Subjects;
- d) Data Subject claims;
- e) Restoration of Personal Data;

Where such losses, costs or damages arise from Eloquent's breach of its obligations under clause 8 hereof, up to a maximum liability of one million pounds per event or series of connected events.

10.3.2 Eloquent excludes liability for:

- a) Any indirect losses, costs or damages;
- b) Losses, costs or damages to the extent that such arise from the Client's breach of its obligations under clause 8 and / or the Data Protection Legislation;
- c) Losses, costs or damages that result directly from the interception by a third party of Personal Data whilst such Personal Data is being transmitted via the Public Internet or

telephony network, unless the possibility of such interception arises directly from Eloquent's negligence.

10.4 Notwithstanding any other provision of this Agreement but subject to sub-clauses 10.2 and 10.3, Eloquent's maximum aggregate liability in one calendar year whether in contract, tort (including negligence and breach of statutory duty), misrepresentation restitution or otherwise for any direct loss or damage howsoever caused shall be limited to:

10.4.1 In relation to direct loss of or physical damage to tangible property, £2,000,000;

10.4.2 In relation to direct losses reasonably incurred in any other cases not falling within sub-clause 10.2 or 10.3, the lesser of:

a) The total amount of the charges (including VAT) collected by Eloquent in relation to the Services in the twelve month period prior to the date of the event which gave cause to the claim;

b) Twenty thousand pounds.

In respect of any one event or series of connected events, PROVIDED THAT before any such claim is made Eloquent is given reasonable opportunity to make good the breach giving rise to such claim.

10.5 Except as expressly set out in this Agreement, all conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise are hereby wholly excluded to the maximum extent permitted by law.

10.6 Subject to any express terms and conditions of this Agreement to the contrary, Eloquent shall not be liable in respect of any matter arising out of or in connection with this Agreement in contract, tort (including negligence and breach of a statutory duty), misrepresentation, restitution or otherwise for:

10.6.1 Any direct or indirect loss of Production, time, goodwill, reputation, use, opportunity, revenue, profit, contracts, business, expenditure or anticipated savings;

10.6.2 Any loss or corruption of data or information;

10.6.3 Losses incurred by third parties;

10.6.4 Any indirect, special loss or damage;

10.6.5 Any purely economic losses or punitive damages;

10.6.6 Any loss or damage that could not be reasonably foreseen.

And the Client hereby waives and releases any claims it might otherwise have to be compensated in respect of such losses (without limitation), even if Eloquent has been advised of the possibility of such loss or damages.

10.7 Eloquent shall not in any event have any liability for non-provision in the provision of Services which:

10.7.1 Can be reasonably attributed to the acts or omissions of the Client (including fraud), its employees, agents or subcontractors including provision of complete, accurate information in a timely fashion to Eloquent;

10.7.2 Can be reasonably attributed to the un-serviceability, un-suitability, mis-configuration or misuse of the Client's equipment which is attached to the Services and is under the control of the Client;

10.7.3 Arises from or consequence of use of Eloquent's Services other than in accordance with the express terms of this Agreement;

10.7.4 Occurs during any period during which the Services have been suspended by Eloquent in accordance with clause 12.

- 10.8 Eloquent shall not in any event have any liability for:
- 10.8.1 Non-provision of services arising from a delay to the RFS Date, howsoever caused;
  - 10.8.2 Non-performance of services provided under the Client's direct agreements with third parties even if Eloquent invoices the Client for such services.
- 10.9 The Client acknowledges and agrees that data transmitted over technology including the public internet, telephony network or any other electronic means cannot be guaranteed to be free from the risk of interception, corruption or loss even if transmitted in an encrypted form, and that Eloquent shall not be liable for any losses the Client may incur resulting from the interception, corruption or loss of such data, and:
- 10.9.1 The Client shall be responsible for insuring against loss of or damage to data stored or transmitted via the Services; and
  - 10.9.2 The Client shall be responsible for adopting such security measures as are appropriate to protect the Client's systems.
- 10.10 The Client acknowledges and agrees that:
- 10.10.1 The allocation of risk contained in this clause 10 is reflected in the price charged for the Goods and Services;
  - 10.10.2 Eloquent shall not be liable to the Client in respect of any fraud or otherwise illegal activity perpetrated by the Client, its employees, agents and subcontractors, nor any third party howsoever occurring;
  - 10.10.3 The Client shall be liable for all losses incurred by Eloquent arising directly from the Client's breach of clause 8 of this Agreement;
  - 10.10.4 The Client agrees that Eloquent shall not be liable for any losses, costs or damages incurred by third parties resulting from such third party's use of or reliance upon the Services, whether with or without the permission of the Client;
  - 10.10.5 Nothing in this clause 10 excludes or limits the Client's liability to pay the charges due under the terms of this Agreement;
  - 10.10.6 Eloquent shall not be liable for any losses, costs or damages whatsoever under the terms of this Agreement, where proceedings for such losses, costs or damages are begun one year or more after the occurrence of the breach giving rise to the claim.
- 10.11 If any exclusion in clause 10.6 is held to be invalid or any reason Eloquent's liability for loss or damage that may be lawfully limited shall be limited to the aggregate liability set out in clause 10.4.2.
- 10.12 The Client agrees and accepts that the express obligations and warranties made by Eloquent in this Agreement are in lieu of and to the exclusion of any other warranty, condition, term, undertaking or representation of any kind, (excluding fraudulent misrepresentations) express or implied, statutory or otherwise relating to the Services provided under or in connection with this Agreement, including (though not limited to) those as to the quality, performance and care and skill used in its provision.
- 10.13 The Client acknowledges that Eloquent's obligations and liabilities are exhaustively defined in this Agreement.
- 10.14 The provisions of this clause 10 shall survive the termination of this Agreement, howsoever occasioned for a period of twelve months.

## 11. TERMINATION

- 11.1 This Agreement may be terminated (without prejudice to the terminating party's other rights and remedies) by written notice to the other party:
- 11.1.1 Forthwith by Eloquent if Eloquent's invoice remains unpaid two Working Days after receipt of written notice from Eloquent to do so;
  - 11.1.2 Forthwith by Eloquent if that two consecutive direct debit requests are rejected;
  - 11.1.3 Forthwith by either party if the other commits any material breach of any terms of this Agreement and which (in the case of a breach capable of being remedied) shall not have been remedied within thirty days of a written request to remedy the same; or
  - 11.1.4 Forthwith by either party if the other convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act of 1986 or a proposal for any other composition, scheme or arrangement with (or assignment for the benefit of) its creditors or if the other is unable to pay its debts within the meaning of the Section 123 of the Insolvency Act 1986, or if a trustee receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or if a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction); or
  - 11.1.5 Forthwith by Eloquent in advance of the supply of Services under the terms of this Agreement if Eloquent's supplier declines to accept Eloquent's order for the supply of Services;
  - 11.1.6 Forthwith by either party if Eloquent ceases to be authorised by a competent authority to provide the Services;
  - 11.1.7 Forthwith by either party if the other party ceases to trade;
  - 11.1.8 Forthwith by either party if the other party commits a breach which cannot be remedied;
  - 11.1.9 Forthwith by either party if the other party is repeatedly in material breach of this Agreement;
  - 11.1.10 Forthwith if a right of termination arises in the event of Force Majeure;
  - 11.1.11 In accordance with any additional terms of the attached Supplement(s).
- 11.2 On termination of this Agreement, the Client shall forthwith return all Rental Equipment and Loan Equipment to Eloquent and shall pay all Charges and any applicable Cancellation Charges to Eloquent.
- 11.3 If any Equipment that is Eloquent's property is not returned to Eloquent within fourteen days of the date of termination, Eloquent shall be entitled to:
- 11.3.1 Enter into the Client's premises to recover the property and charge the Client any costs reasonably incurred; or
  - 11.3.2 Charge the Client for the full retail price of the property as at the Commencement Date.
- 11.4 Any termination of the Agreement (however occasioned) shall not affect any accrued rights, remedies or liabilities of either party. Nor shall it affect the continuance in force of any provision of this Agreement that is expressly or by implication intended to continue in force after such termination.

## **12. SUSPENSION OF SERVICES**

- 12.1 Eloquent shall be entitled to suspend the provision of the Services in whole or part, without notice (save as where it is reasonably possible to provide prior written notice) or liability to the Client if:
- 12.1.1 In Eloquent's reasonable opinion, the Services are being used for activities that are in breach of any acceptable use clause contained in any supplemental terms and conditions attached hereto or any other fraudulent, illegal or wrongful activity, knowingly or otherwise, by the Client;



- 12.1.2 In Eloquent's reasonable opinion, the Client is in material breach of any other provision of this Agreement;
  - 12.1.3 Payments are unpaid within thirty days of the due date;
  - 12.1.4 Eloquent is instructed to do so by Government or any other competent authority;
  - 12.1.5 There are critical operational reasons or emergency;
  - 12.1.6 Planned or emergency work is required to systems that underpin the delivery of the Services;
  - 12.1.7 Any consent, wayleave or authority required by Eloquent or its supplier is withdrawn, revoked or otherwise ceases to have effect.
- 12.2 In the event of suspension of Services under the terms of sub-clause 12.1:
- 12.2.1 Services shall be immediately restored by Eloquent the situation which has given cause to the suspension is resolved by the Client and Eloquent shall be entitled to charge a reinstatement fee as set out in the Tariff;
  - 12.2.2 Suspension of any part of the Services under the terms of this Agreement shall not constitute a termination and the Client shall continue to pay all of Eloquent's charges in relation to this Agreement during the period of suspension of Services;
  - 12.2.3 If the Client fails to rectify the situation which has given cause to the suspension within thirty days of the commencement of the suspension, Eloquent shall be entitled to terminate the Agreement under the terms of clause 11;
  - 12.2.4 Eloquent shall not be liable for any costs, expenses or losses or other liabilities incurred by the Client as a result of suspension of the Services.
- 12.3 Eloquent is not obliged to suspend services or give notice of suspension prior to exercising its right to terminate this Agreement.

### **13. PERFORMANCE AND SERVICE CREDITS**

- 13.1 Service performance targets that are deemed to be Applicable Services are clearly indicated as such in the service level agreement which is set out in the Service Schedule attached to the relevant Supplement(s).
- 13.2 Eloquent commits to ensure that the Applicable Services meet the performance targets set out in the service level agreement.
- 13.3 If Eloquent does not meet its commitment in relation to an Applicable Service, the Client shall be entitled to claim a Service Credit as set out in the relevant Service Schedule.
- 13.4 To make a claim for Service Credit, the Client must notify Eloquent within three days of the beginning of the incident that gives rise to the claim.
- 13.5 The notification of the claim must include:
  - 13.5.1 The Client name and contact;
  - 13.5.2 The start and end time for each incident for which a claim is being made;
  - 13.5.3 Clear and accurate evidence to enable Eloquent to confirm the claim for Service Credit.
- 13.6 Failure to provide the required information as set out in this clause shall invalidate the claim for Service Credit.
- 13.7 In the event of a claim for a Service Credit, Eloquent shall review such claim and determine at its sole discretion whether or not a Service Credit is due.
- 13.8 The Client acknowledges and accepts that:

- 13.8.1 Service levels set out in the Schedules are conditional upon the Client allowing Eloquent unrestricted 24/7 access to its site(s) without prior notice in the event of a malfunction or other failure of the Services;
  - 13.8.2 For certain performance measures, Service Credit eligibility will be based solely on Eloquent's own measures of core performance of the Services (acting reasonably and in good faith);
  - 13.8.3 It is technically impractical to provide the Services free from faults or interruption and Eloquent does not give any undertaking to do so. The Client therefore agrees that Service Credits set out for any Applicable Service shall constitute the Client's sole financial remedy for Eloquent's failure to meet any service level targets set out in the Schedules, and that such financial remedy is full and final satisfaction of Eloquent's liability for such failure;
  - 13.8.4 Eligibility for payment of Service Credits shall be restricted to the Service Component whose performance fails to meet its target. For the avoidance of doubt, Service Credits shall not be payable for the consequential lack of availability or otherwise of Service Components that are reliant upon the serviceability of the Service Component that has failed to meet its performance target.
- 13.9 If a Service Credit is deemed due, such shall be applied to the Client's account within thirty days of the date of Eloquent's determination.
- 13.10 The payment of Service Credits is subject to the following limitations:
- 13.10.1 The Client's entitlement to claim Service Credits as provided in this Agreement shall be the Client's sole and exclusive remedy for any failure by Eloquent to provide the Applicable Services according to the Schedule;
  - 13.10.2 Service Credits are non-refundable and non-transferrable and may only be used as credit against future invoices due in respect of the Client's usage of the Services under the terms of this Agreement;
  - 13.10.3 The aggregate monetary amount of credits payable by Eloquent in any month shall not exceed 20% of the recurring monthly charge (excluding VAT and usage-based charges).
- 13.11 Service Credits shall not apply following any failure of Eloquent to provide the Applicable Services due to:
- 13.11.1 Incidents outside of Eloquent's reasonable control including force majeure events; or
  - 13.11.2 Law enforcement activity; or
  - 13.11.3 Actions of a third party including denial of service attacks; or
  - 13.11.4 Suspension or termination of Services by Eloquent under the Terms of this Agreement; or
  - 13.11.5 Any action or inaction whatsoever by the Client, its employees, agents or subcontractors in connection with the Applicable Services.
  - 13.11.6 Any incident, action or event that occurs before the RFS Date.
- 13.12 The Client shall be ineligible to claim for Service Credits under the terms of this Agreement if:
- 13.12.1 The Client is in breach of any part of the Agreement; or
  - 13.12.2 The Services have been suspended or terminated by Eloquent under the Terms of this Agreement; or
  - 13.12.3 Invoices issued by Eloquent are due to be paid but remain outstanding.
  - 13.12.4 Notice to terminate this Agreement has been served by either party and acknowledged by the other; or

13.12.5 The Client has been served notice to remedy a breach of these terms and conditions and such remedy remains un-discharged.

#### **14. INTELLECTUAL PROPERTY RIGHTS**

- 14.1 All Intellectual Property in the Equipment and associated documentation owned or used by Eloquent, its subcontractors, agents or suppliers ('Owners') in the performance of this Agreement shall be and will remain vested in the Owners except as expressly provided in this Agreement, the Client shall not acquire any rights, title or interest in or to any Intellectual Property owned by the Owners. To the extent to which it is entitled, Eloquent grants to the Client a royalty-free, non-exclusive, revocable, non-transferable licence to use all such Intellectual Property as is required to use the Services in accordance with the terms of this Agreement, until this Agreement is terminated or expires.
- 14.2 Eloquent shall if applicable acquire for the Client (a) non-exclusive, non-transferable, royalty-free licence(s) to use the Software and associated documentation set out in the Schedule attached to the relevant Supplement(s) for the purposes of using the Services for the term of the relevant Supplement(s).
- 14.3 The Client hereby undertakes to protect and keep confidential all Software and associated documentation and, except to the extent and in the circumstances expressly permitted by Eloquent in accordance with Section 50B of the Copyright Designs and Patents Act 1988, the Client hereby undertakes that it shall make no attempt to examine, copy, alter, reverse engineer, disassemble or tamper with such Software.
- 14.4 In the event of the Client's breach of sub-clause 14.3, the Client undertakes to:
- 14.4.1 Immediately notify Eloquent of the breach;
  - 14.4.2 Take reasonable steps to remedy the breach within forty eight hours of having become aware of the breach.
- 14.5 All Intellectual Property owned or used by the Client and/or its subcontractors, agents and suppliers ('Client Owners') pursuant to this Agreement shall be and will remain vested in Client Owners and except as expressly provided in this Agreement, Eloquent shall not acquire any rights, title or interest in or to any Intellectual Property owned by Client Owners.
- 14.6 The Client shall indemnify Eloquent in respect all losses, damages, costs or expenses and other liabilities (including reasonable legal fees) arising from any and all claims from third parties relating to the Client's infringement of or non-compliance with any third party licences or other end user terms applicable to the use of any Software, either by the Client and/or its employees, subcontractors, agents or customers, including but not limited to any end user licence agreements. Eloquent shall:
- 14.6.1 If Eloquent, rather than the Client becomes aware of such a claim, promptly notify the Client in writing of any such claim with full details of the claim;
  - 14.6.2 Promptly provide the Client and its advisers with all information and assistance that they may reasonable require, at the Client's cost;
  - 14.6.3 Allow the Client (at its request) to use its chosen advisers and to have the exclusive conduct of all negotiations and proceedings (to include for the recovery of costs of Eloquent) and provide the Client with such reasonable assistance required by the Client, regarding the claim; and
  - 14.6.4 Not, without the consent of the Client, make an admission relating to the claim.
  - 14.6.5 Promptly take any action and give any information and assistance as the Client may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party's rights in relation to the matter.

- 14.7 Eloquent shall indemnify the Client and keep the Client indemnified against all losses, damages, costs or expenses and other liabilities (including reasonable legal fees) arising from an Intellectual Property rights claim ('IPR Claim') by the Owner of Equipment or Software supplied by Eloquent under the terms of this Agreement, provided that the Client shall:
- 14.7.1 If the Client, rather than Eloquent becomes aware of such a claim, promptly notify Eloquent in writing of any IPR Claim with full details of the IPR Claim;
  - 14.7.2 Promptly provide Eloquent and its advisors reasonable access to premises and personnel and to all relevant assets, accounts, documents and records that it possesses or controls (with the right to take copies) for the purposes of investigating the matter and enabling Eloquent to take the action referred to in this sub-clause 14.7;
  - 14.7.3 Allow Eloquent to use its chosen advisors and to have the exclusive conduct of all negotiations and proceedings (to include for the recovery of costs of the Client) and provide Eloquent with such reasonable assistance required by Eloquent, regarding the IPR Claim;
  - 14.7.4 Not, without the consent of Eloquent, make any admission relating to the IPR Claim;
  - 14.7.5 Promptly take any action and give any information and assistance as Eloquent may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party's rights in relation to the matter.
- 14.8 In the event of an IPR Claim arising from Equipment or Software provided by Eloquent to facilitate the use of the Services, the Client acknowledges that Eloquent may, at its discretion and cost, licence to the Client or procure a licence to the Client of an alternative item and/or modify or procure the modification of the infringing item in each case provided that (i) this resolves the original IPR Claim, (ii) it does not give rise to another IPR Claim; (iii) is of no extra cost to the Client and (iv) it does not materially affect the performance of the Services.
- 14.9 The provisions of clauses 14.6 and 14.7 shall not apply to the extent that such a claim is due to the negligence of that party against whom the claim has been made, or its customers or their respective officers, employees or agents.
- 14.10 Both the Client and Eloquent shall have a duty to mitigate any loss which it may incur as a result of a matter giving rise to a right of indemnification under this clause.
- 14.11 Eloquent acknowledges that Customer Data is and shall remain the property of the Client and the Client reserves all IPRs which may at any time subsist in the Customer Data. To the extent that any Customer Data vest in Eloquent by operation of law, such IPRs shall be assigned by Eloquent to the Client immediately on the creation of such Customer Data.
- 14.12 Eloquent shall:
- 14.12.1 Not alter, store, copy, disclose or use Customer Data other than in strict accordance with this Agreement;
  - 14.12.2 Preserve, so far as possible, the integrity of Customer Data and prevent any loss, disclosure, theft, manipulation or interception of Customer Data and shall advise the Client immediately in the event thereof.
- 14.13 To the extent that any Customer Data is held or Processed by Eloquent, Eloquent shall return such Customer Data to the Client as may be requested from time to time.
- 14.14 The Client shall indemnify and hold Eloquent harmless against all IPR claims, costs, losses and damages arising out of IPR infringement in respect of Customer Data.

## **15. MISCELLANEOUS**

- 15.1 Eloquent may recommend that another party carries out work, supplies goods, software or services to the Client. The Client shall not be obliged to engage any such recommended party and shall not be prejudiced in any way should it choose not to do so. However, if it does engage any such recommended party, Eloquent does not guarantee the work, goods, software or services unless it has been negligent in making the recommendation.
- 15.2 In the case where Eloquent provides goods or software originally manufactured or developed by third parties it passes on statements or representations in good faith but doesn't verify them or guarantee their accuracy.
- 15.3 Eloquent cannot accept responsibility for any statements or representations unless such are made in writing.
- 15.4 If Goods or Services are provided to the Client at reduced or no charge for a trial period, Eloquent shall commence charging for the provision of the Services and Goods, at the price agreed between the parties, from the end of the trial period unless it is agreed between the parties that such Services or Goods shall not be required after the trial period.
- 15.5 The signing by Eloquent of any of the Client's documentation shall not imply any modification to this Agreement.
- 15.6 For the purpose of this Agreement, communications made between Eloquent and the Client by electronic mail shall be regarded as made in writing and signed by the party sending the electronic mail, save for the serving of notices under the terms of this Agreement, which is subject to the provisions of clause 26.
- 15.7 Eloquent shall be entitled to correct any clerical or typographical error made by its employees at any time.
- 15.8 The parties agree to comply with the provisions of the Bribery Act 2010; and
  - 15.8.1 Maintain such processes and procedures to ensure compliance therewith; and
  - 15.8.2 Promptly report to the other party any request or demand for any undue financial or other advantage of any kind it receives in connection with the performance of this Agreement.

## **16. THIRD PARTY RIGHTS**

Save as expressly stated, these terms and conditions do not confer any rights on third parties as provided for under the Contracts (Rights of Third Parties) Act of 1999 and it is not the intention of the parties to this Agreement to confer such rights.

## **17. GOVERNING LAW**

This Agreement and the rights and obligations of the parties hereto shall be governed by the laws of England and both parties hereby agree to submit to the exclusive jurisdiction of the English courts and if this Agreement is translated into any other language, the English Language version shall prevail.

## **18. DISPUTE RESOLUTION**

- 18.1 If the Client is not satisfied with any aspect of the delivery of the Services, in the first instance the Client should make a complaint to Eloquent using the procedure set out in the Schedule to the applicable Supplement.
- 18.2 The parties to this Agreement will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same.

- 18.3 Except in the case of disputes arising from non-payment of invoices which are deemed accepted by the Client:
- 18.3.1 If the dispute is not resolved through negotiation within ten Working Days, the parties will attempt in good faith to resolve the dispute through mediation in accordance with the Centre for Effective Dispute Resolution's Communication and Internet Service Adjudication Scheme (CISAS);
  - 18.3.2 Neither party may commence any court proceedings in relation to any dispute arising out of this Agreement except those excluded in clause 18.3 until they have attempted to settle said dispute by mediation and that mediation has terminated;
  - 18.3.3 The fees and the costs of such mediation or arbitration shall be borne equally by the parties.
- 18.4 Nothing in this clause 18 shall prevent either party from:
- 18.4.1 Referring the dispute to the appropriate regulatory authority in accordance with any right either party may have to request a determination;
  - 18.4.2 Exercising any remedies or rights that may be available in respect of any breach of this Agreement.

## **19. FORCE MAJEURE**

- 19.1 Subject always to the provisions of this clause 19, neither party shall in any circumstance be liable to the other for any loss of any kind whatsoever including any damages whether directly or indirectly caused or incurred by reason of any delay or failure in the performance of its obligations hereunder which is due to Force Majeure.
- 19.2 If either party becomes aware of circumstances of Force Majeure which prevent or are likely to prevent its performance of any obligations under the terms of this Agreement, it shall:
- 19.2.1 Notify the other in writing as soon as reasonably possible and in any case within five Working Days of the onset of such Force Majeure, specifying its nature and extent of the circumstances;
  - 19.2.2 Use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Agreement; and
  - 19.2.3 Notify the other party as soon as the Force Majeure event has ceased to affect performance of the agreement and resume performance of its obligations as soon as reasonably possible..
- 19.3 If either party is unable to perform its obligations due to Force Majeure, the other party shall be released to an equivalent extent from its obligations relating thereto, including making payment for affected Services.
- 19.4 If either party is unable to perform its obligations due to Force Majeure for a period exceeding two months, the other party shall be entitled to terminate this Agreement by giving notice in writing, in which case neither party shall have any liability to the other except rights and liabilities which accrued prior to such termination shall continue to subsist.
- 19.5 For the avoidance of doubt:
- 19.5.1 Eloquent acknowledges and agrees that any default of any of its subcontractors, suppliers or agents shall not constitute a Force Majeure event and such default shall not excuse Eloquent from the performance of its obligations under this Agreement; and
  - 19.5.2 During the period of any Force Majeure event, the Client shall be entitled to engage an alternative supplier to provide a replacement to the Services.

## **20. ADVERTISING**

Neither party shall be entitled to use any trademark or trade name of the other, refer to the other, this Agreement or the Services to be rendered hereunder, either directly or indirectly, in connection with any promotion or publication without the prior, written consent of the other (such consent not to be unreasonably withheld or delayed).

## **21. ASSIGNMENT**

- 21.1 Eloquent shall be entitled to subcontract all or any part of the Services on notice to, but not requiring the consent of, the Client. Such assignment will not relieve Eloquent of any of its obligations under this Agreement.
- 21.2 Eloquent shall be entitled to:
  - 21.2.1 Assign the benefit of this Agreement, such assignment shall not relieve Eloquent of any of its obligations under this Agreement; or
  - 21.2.2 Assign the benefit and burden of this Agreement to an affiliated body or third party in the event of a sale of all or substantially all of its assets on notice to, but not requiring the consent of, the Client.
  - 21.2.3 Notwithstanding the provisions of Clauses 7 and 8, disclose to a proposed assignee any information in its possession that relates to this Agreement for the purposes of the proposed assignment.
- 21.3 The Client shall not be entitled to assign the benefit or burden of this Agreement without the prior written consent of Eloquent (such consent not to be unreasonably withheld or delayed).
- 21.4 Either party shall be entitled to assign the benefit or burden of this Agreement to members of its Group.

## **22. VARIATION**

- 22.1 If the Client requests a change to the Services or Goods provided under the terms of this Agreement, such request shall be made in writing and will not be deemed accepted until acknowledged and agreed in writing by Eloquent; and
  - 22.1.1 If Eloquent fails to accept such change, such failure shall not affect the provision of any foregoing Services.
- 22.2 Subject to the provisions of sub-clause 22.3, Eloquent shall be entitled to change the terms of this Agreement by giving the Client not less than one month's notice, in order to:
  - 22.2.1 Comply with legal or regulatory obligations;
  - 22.2.2 Maintain the security and integrity of the Services;
  - 22.2.3 Improve or clarify the Agreement;
  - 22.2.4 Reflect contractual changes imposed by its suppliers;
  - 22.2.5 Protect the use of Intellectual Property;
  - 22.2.6 Add, change or withdraw Services or service levels.
- 22.3 If Eloquent makes any change to the terms of this Agreement other than those listed in clause 22.2 and such change results in material adverse effect, which for the avoidance of doubt does not include price changes or the Client shall be entitled to terminate this Agreement by giving one month's notice without incurring Cancellation Charges, PROVIDED THAT such notice is given within fourteen days of the variation being made; and



22.3.1 If notice is not given by the Client within fourteen days of the notification of the variation, the variation shall be deemed agreed by both parties.

22.4 No modification, amendment or other variation to this Agreement shall affect the rights of either party accrued prior to the date of the variation.

22.5 No modification, amendment or other variation to this Agreement made by the Client shall be valid unless agreed in writing and signed by both parties.

### **23. STAFF**

23.1 Each party agrees not to approach employees or subcontractors of the other in order to entice them to join the other in a role that relates directly to the provision of the Services whether as an employee or in any other capacity, during the term of this Agreement or for a period of six months after its termination. If either party breaches the terms of this clause 23.1 the party in breach agrees, by way of liquidated damages and not a penalty, to pay the other a sum equal to the annual salary or otherwise of the employee or subcontractor concerned except where that employee has responded to a bona fide advertisement or other offer published or made to the general public.

23.2 Nothing in this Agreement or Eloquent's performance thereof shall be construed as creating any relationship as between employer and employee, agent and principal, joint venture or any mutual obligation between the parties other than set out in this Agreement.

23.3 Eloquent shall, at its sole discretion determine the allocation of its personnel in furnishing the Services.

23.4 The parties consider that the Transfer of Undertakings (Protection of Employment) Regulations 2006 ('TUPE') will not apply on the commencement (or cessation (in whole or in part) of the provision of Services by Eloquent; and

23.4.1 Both parties agree to indemnify the other and keep the other indemnified against any liabilities arising out of or in connection with any claim that or decision by a Court or Tribunal that the contract of employment of any staff has transferred to the other under the TUPE Regulations or otherwise as a result of the parties entering into this Agreement, including (without limitation), any liability for failure to inform and consult under the TUPE Regulations;

23.4.2 If any contract of employment of any staff of the either party has effect (or is argued to have effect) as if originally made between one party and staff of the other as a result of the TUPE Regulations or otherwise at any time, then the affected party shall be entitled, on becoming aware of that effect (or argued effect) to terminate the contract of employment of such staff and the other party agrees to indemnify the affected party against any liabilities arising out of such termination and against any sum payable to or in respect of such staff prior to termination of employment.

23.5 The indemnities in sub-clauses 23.4.1 and 23.4.2 are not subject to the limitation of liability set out in sub-clause 10.4.2.

### **24. WAIVER**

24.1 No forbearance, 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.

24.2 Any single or any partial exercise of any such powers or rights or remedies shall not preclude any other or further exercise of them.

24.3 Any waiver to be effected must be agreed in writing and shall:

24.3.1 Be confined to the specific circumstances in which it is given;

24.3.2 Not affect any other enforcement of the same or any other right;

24.3.3 Unless expressly stated, be revocable at any time (in writing).

## **25. SEVERABILITY**

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

## **26. NOTICES**

26.1 Any notice to be given hereunder shall be delivered or sent by recorded delivery first class post addressed to the company secretary at the address of the other party set out in this Agreement and shall be deemed to have been received by the addressee within two Working Days of sending.

26.2 Notices shall not be deemed validly served if sent only by email or fax

26.3 For the avoidance of doubt, day-to-day operational matters excluding formal notifications (including notices to terminate) may be communicated by fax or email.

26.4 Either party may at any time notify the other of a change of address or person for the purpose of the serving of notices under the terms of this Agreement, subject to the terms of this clause 26.

## **27. ENTIRE AGREEMENT**

27.1 This Agreement contains the entire agreement between the parties and supersedes any previous agreement between the parties, including understandings, commitments, agreements, draft agreements oral or written, and terms and conditions attached to the Client's purchase order.

27.2 The parties acknowledge and agree that:

27.2.1 The parties have not been induced to enter into this Agreement by, nor have relied on any statement, representation, promise, inducement or any other assurance not set forth herein;

27.2.2 Except for fraudulent misrepresentations, the parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein;

27.2.3 Eloquent and the Client have the power to enter into, exercise its rights under and perform and comply with its obligations under the terms of this Agreement.

27.3 No changes amendments or modifications of any of the terms or conditions of this Agreement shall be valid unless in writing, signed by both parties and engrossed into this Agreement.

27.4 Unless expressly stated to the contrary, general guidance documents including user manuals, handbooks or marketing collateral supplied by Eloquent shall not form part of this Agreement.

27.5 The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.