

## STANDARD TERMS AND CONDITIONS

(Version 2.4 September 2021 (UK))

### 1. DEFINITIONS

The following definitions apply:

<b>Affiliate</b>	Any entity controlling, controlled by or under common control with the Client. For the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any entity, means the possession, directly or indirectly, of the power to direct or exercise a fifty-one percent (51%) or more controlling influence over the management and policies of such entity, whether through the ownership of voting securities, by contract or otherwise.
<b>Business Day</b>	<b>09.00 to 17.30 on any</b> day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
<b>Client</b>	The person or firm who purchases the Goods, Software and/or Services from the Supplier under the Sales Document.
<b>Conditions</b>	These terms and conditions as amended from time to time in accordance with section 18.14.
<b>Contract</b>	The contract between the Supplier and the Client for the supply of Goods, Software and/or Services in accordance with these Conditions, a Sales Document and a Support Service Level Agreement (if applicable).
<b>Customer Materials</b>	all documents, information and materials provided by or required from the Client for the performance of a Contract, including computer programs, data, reports, designs and specifications and any other input materials specified in a Contract or as may reasonably be requested by the Supplier.
<b>Data Processing Terms</b>	the Supplier's Data Processing Terms (available <a href="#">here</a> ), as updated by the Supplier from time to time) describing the parties' responsibilities as controller or processor with respect to the processing of personal data in connection with the provision and receipt of the Services.
<b>Data Protection Law</b>	all applicable Laws relating to data protection, the processing of personal data and privacy including: (a) the GDPR; (b) any applicable national laws and regulations that implement the GDPR, including the Data Protection Act 2018; (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications and any applicable national laws and regulations that implement the Regulation); (d) any other applicable Law relating to data protection, the processing of personal data and privacy; and (e) any amendments to or replacements for such laws and regulations.

	<p>“Processing”, “Personal Data”, “Data Controller”, and “Data Processor” shall have the meanings contained within the Data Protection Laws.</p>
<b>Deliverables</b>	The deliverables set out in the Sales Document.
<b>Effective Date</b>	the date on which a Sales Document incorporating these General Terms is signed by the Client provided that it is subsequently accepted by the Supplier, or such other date as may be notified to the Client by the Supplier in its acceptance of the Sales Document;
<b>Force Majeure Event</b>	<p>An occurrence beyond the reasonable control and without the fault or negligence of the Party affected and which the said Party is unable to prevent or provide against by the exercise of reasonable diligence, including but not limited to:</p> <ul style="list-style-type: none"> <li>(i) acts of God including fires, lightning, explosions, earthquakes, drought, tidal waves and floods, storms or extreme weather conditions, epidemic, pandemic or other catastrophes or natural disasters;</li> <li>(ii) war, hostilities, invasion, act of foreign enemies, mobilisation, requisition or embargo;</li> <li>(iii) riot, commotion, strikes, go slows, lock outs of disorder, unless solely restricted to employees of either party; or</li> <li>(iv) acts or threats of terrorism.</li> </ul>
<b>Goods</b>	The goods (or any part of them) set out in the Sales Document.
<b>Goods Specification</b>	Any specification for the Goods, including any relevant plans or drawings that are agreed in writing by the Client and the Supplier.
<b>Initial Term</b>	the initial term or minimum period for a Contract or any fixed term, as stated in the Sales Document, commencing on the Service Commencement Date. Unless stated otherwise in a Sales Document, where there is a deployment of multiple Services, the provision of the Services shall commence on the Service Commencement Date for the first Service but the Initial Term shall be calculated from the date on which the last Service is commenced or deployed (as the case may be).
<b>Intellectual Property Rights</b>	All patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
<b>Law</b>	any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any regulatory body, delegated or subordinate legislation or notice of any regulatory body.

<b>Renewal Term</b>	a renewal term for a Contract, commencing on the day after the expiry of the Initial Term or the then-current Renewal Term.
<b>Sales Document</b>	The document outlining the supply of Goods, Software and/or Services, as agreed between the parties, and which forms part of the Contract between the parties. For the avoidance of doubt, a Sales Document may include a Statement of Services, Statement of Work, Sales Contract, online sales form, email order form or quotation supplied to the Client by the Supplier.
<b>Service Commencement Date</b>	the date upon which the Supplier first makes a Service available for use by the Client, unless otherwise stated in a Contract;
<b>Services</b>	The services, including the Deliverables, supplied by the Supplier to the Client as set out in the Sales Document.
<b>Software</b>	The Supplier Software and/or the Third-Party Software.
<b>Supplier</b>	Modality Systems Limited, registered in England and Wales with company number 06143649, part of the Nasstar group of companies.
<b>Supplier End User Licence</b>	The end user licence for the Supplier Software provided to the Client.
<b>Supplier Software</b>	The software programs proprietary to the Supplier.
<b>Third Party End User Licence</b>	The end user licence(s) for the Third Party Software provided to the Client.
<b>Third Party Software</b>	The software programs proprietary to third parties which are to be provided to the Client.

## 2. BASIS OF CONTRACT

- 2.1 An order or acceptance of a Sales Document by the Client shall be deemed to be an offer by the Client subject to these Conditions. The Client shall ensure that its order is complete and accurate.
- 2.2 A binding contract shall not come into existence between the Supplier and the Client unless and until the Supplier issues a written order acknowledgement to the Client, or the Supplier commences to deliver the Deliverables to the Client (whichever occurs earlier).
- 2.3 The Contract constitutes the entire agreement between the parties. The Client acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods, Software or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services, Software and/or Goods described in them. They shall not form part of the Contract or have any contractual force. The only binding documents/artefacts are these Conditions, the Sales Document and others specifically referred to within it and stated to form part of the Contract.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of thirty (30) days from its date of issue.

2.7 All of these Conditions shall apply to the supply of Goods, Software and Services except where application to one or the other is specified.

### **3. TERM**

3.1 Subject to clause 3.2, a Contract shall commence on the Effective Date and will continue until the end of the Initial Term, unless terminated earlier in accordance with its terms.

3.2 Where the Sales Document provides for automatic renewal of the Contract, the Contract will automatically renew for a further period of twelve (12) months (or such other period as may be specified in the Sales Document) at the end of the Initial Term and at the end of each applicable Renewal Term, unless:

(a) either party gives the notice required to terminate the Contract before the end of the Initial Term or the then-current Renewal Term in accordance with clause 16; or

(b) the Contract or a Service supplied under it may not be automatically renewed at Law.

### **4. DELIVERY OF GOODS**

4.1 The Goods are described in the Goods Specification.

4.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Client, the Client shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (which shall constitute any direct or legal and other reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Goods Specification. This section 4.2 shall survive termination of the Contract.

4.3 The Supplier reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirements and will advise the Client in writing of all changes made.

4.4 The Supplier shall deliver the Goods to the location set out in the Sales Document or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Client that the Goods are ready.

4.5 Delivery of the Goods shall be completed upon receipt of a Client signature on a goods received note or equivalent at the Delivery Location.

4.6 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay or failure in delivery of the Goods that is caused by a Force Majeure Event or the Client's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. The Client will not be charged or consume professional services time where they are not responsible for delivery delay or failure.

4.7 If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Client in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

4.8 The Client shall not be entitled to reject the Goods if the Supplier delivers up to and including five per cent (5%) more or less than the quantity of Goods ordered but a pro-rata adjustment

shall be made to the Sales Document invoice on receipt of notice from the Client that the wrong quantity of Goods was delivered.

- 4.9 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Client to cancel any other instalment.

## 5. QUALITY OF GOODS

- 5.1 The Supplier warrants that on delivery, the Goods shall:

- (a) conform with their description; and
- (b) be free from material defects in design, material and workmanship.

- 5.2 Subject to section 5.3, if:

- (a) the Client gives notice in writing within fourteen (14) days of discovery that some or all of the Goods do not comply with the warranty set out in section 5.1;
- (b) the Supplier is given a reasonable opportunity of examining such Goods; and
- (c) the Client (if asked to do so by the Supplier and at the Client's own expense) returns such Goods to the Supplier's place of business;

then the Supplier shall, subject to agreement with the Client, repair or replace the defective Goods, or refund the price of the defective Goods in full. The Supplier's obligations in this section 5.2 shall be the Client's sole and exclusive remedy with respect to any claim for breach of the warranty set out in section 5.1.

- 5.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in section 5.1 if:

- (a) the Client makes any further use of such Goods after giving a notice in accordance with section 5.2(a);
- (b) the defect arises because the Client failed to follow the Supplier's written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Client;
- (d) the Client alters or repairs such Goods without the written consent of the Supplier;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

- 5.4 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under section 5.2.

## 6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Client on completion of delivery (see section 4.2).
- 6.2 Title to the Goods shall not pass to the Client until the Supplier has received payment in full (in cash or cleared funds) for the Goods.

## 7. SOFTWARE

- 7.1 The Supplier shall grant to the Client a licence to use the Supplier Software in accordance with the Supplier End User Licence, a copy of which shall be provided to the Client.
- 7.2 The Supplier shall provide the Third Party Software under the standard licence terms provided by the relevant third parties (the Third Party End User Licence(s), copies of which shall be provided to the Client), and the Client agrees to be bound to the relevant third parties by such licence terms.

## 8. SUPPLIER OBLIGATIONS

- 8.1 The Supplier shall provide the Services to the Client in accordance with the Sales Document in all material respects. In providing the Services, the Supplier will at all times:
- (a) provide the Services with reasonable care and skill;
  - (b) comply with all applicable laws.
- 8.2 The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Sales Document, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Client in any such event.

## 9. CLIENT OBLIGATIONS

- 9.1 The Client shall:
- (a) ensure that the terms of the Sales Document and (if submitted by the Client) the Goods Specification are complete and accurate;
  - (b) co-operate with the Supplier in all matters relating to the Services;
  - (c) provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Client's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services, and maintain a safe working environment for the Supplier in such facilities that complies with all applicable legislative requirements (including occupational, health and safety laws and regulations).
  - (d) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
  - (e) prepare the Client's premises for the supply of the Services;
  - (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
  - (g) keep and maintain all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Client's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
- 9.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Client or failure by the Client to perform any relevant obligation (**Client Default**):

(a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations to the extent the Client Default prevents or delays the Supplier's performance of any of its obligations;

(b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this section arising from the Client Default; and

(c) the Client shall reimburse the Supplier on written demand for costs or losses, up to the value of the Goods, Software and/or Services provided by the Supplier, sustained or incurred by the Supplier arising directly from the Client Default.

9.3 The Client shall comply with the Third-Party End User Licences and shall reimburse the Supplier for all reasonable losses, costs or damages which the Supplier may incur or suffer as a result of the Client failing to comply with the Third Party End User Licences.

## **10. CHARGES AND PAYMENT**

10.1 The price for Goods and/or Software shall be the price set out in the Sales Document or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Client when it pays for the Goods.

10.2 The charges for Services shall be set out in the Sales Document or, if no charges are quoted, the default position will be that the Services are charged on a time and materials basis:

(a) the charges shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Sales Document;

(b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of a normal Business Day;

(c) unless agreed otherwise, the Supplier shall be entitled to charge overtime for any time worked by individuals whom it engages on the Services on a pro-rata basis as follows:

(i) fifty per cent (50%) uplift on the standard daily fee rate for time worked outside the defined hours of a normal Business Day; and

(ii) one hundred per cent (100%) uplift on the standard daily fee rate for time worked on a non- Business Day.

10.3 The treatment of expenses (if applicable) will be set out in the Sales Document. In the absence of any detailed expenses process in the Sales Document, the default position will be that the Supplier shall be entitled to charge the Client for any reasonable expenses incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials, subject to the production of receipts supporting such expenses which the Supplier seeks to recover. If a cap on expenses has been agreed in the Sales Document, and if it becomes apparent that such expenses will necessarily exceed pre-agreed limits, written approval will be sought from the Client.

10.4 The Supplier reserves the right to:

- (a) increase the price of the Goods, by giving notice and full written justification to the Client at any time before delivery, to reflect any increase in the cost of the Goods to the Supplier that is due to:
- (i) any factor beyond the control of the Supplier (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (ii) any request by the Client to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
  - (iii) any delay caused by any instructions of the Client in respect of the Goods or failure of the Client to give the Supplier adequate or accurate information or instructions in respect of the Goods.
- (b) Withhold Goods, Software and/or Services or sue in the event any monies are owed from the Client if invoices are past their due date and payment has not been received.
- 10.5 An invoicing schedule will be provided in the Sales Document; in the absence of any such invoicing schedule, the default position will be:
- (a) with respect to Goods, the Supplier shall invoice the Client on or at any time before completion of delivery; and
  - (b) with respect to Software and/or Support Services, the Supplier shall invoice the Client annually in advance; and
  - (c) with respect to other Services, the Supplier shall invoice the Client monthly in advance or, in the case of variable recurring charges (including charges that are payable by reference to the amount of usage), monthly in arrears.
- 10.6 The Client shall pay each invoice submitted by the Supplier:
- (a) within thirty (30) days of the date of the invoice;
  - (b) in full and in cleared funds to a Pound Sterling bank account nominated in writing by the Supplier; and
  - (c) time for payment shall be of the essence of the Contract.
- 10.7 All amounts payable by the Client under the Contract are exclusive of, and the Client is responsible for paying, all duties, sales, use or value added taxes (VAT), customs duties, GST, tariffs or other similar taxes, assessments or excises, however, designated or levied.
- 10.8 Without limiting any other right or remedy of the Supplier, if the Client fails to make any payment due to the Supplier under the Contract by the due date for payment, the Supplier shall have the right to charge interest on the overdue amount at the rate of three per cent (3%) per annum above the Barclays base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. The Client shall pay the interest together with the overdue amount.
- 10.9 The Client shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Client shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part.

## 11. INTELLECTUAL PROPERTY RIGHTS



- 11.1 Unless stipulated otherwise in the Sales Document, all Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier. In particular, the Client acquires no rights in or to the Software other than those expressly granted by this Contract. The Client is free to use, as bought, the Suppliers intellectual property but it is not transferrable or resalable to any other party, or for use in any other way not purchased. Any alternative position on Intellectual Property Rights will only take precedence over these Conditions if the Sales Document specifically notes that this section 11.1 has been overridden.
- 11.2 The Client acknowledges that, in respect of any third party Intellectual Property Rights in the Services, the Client's use of any such Intellectual Property Rights is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Client.
- 11.3 All Supplier Materials are the exclusive property of the Supplier.

## **12. CONFIDENTIALITY**

- 12.1 Confidential Information includes any information disclosed by a Disclosing Party to a Receiving Party, whether in written, tangible or verbal form, including, but not limited to, computer software and data, source code, inventions, processes, developments, design plans, drawings, patent applications, business plans, agreements with third parties, market data, clients, marketing or financial information, regardless of whether it has been marked as confidential.
- 12.2 The Receiving Party shall:
- (a) keep in strict confidence the Disclosing Party's Confidential Information;
  - (b) not disclose the Disclosing Party's Confidential Information to any other person without the Disclosing Party's prior written consent.
- 12.3 Section 12.2 shall not apply to the extent that:
- (a) such information was in the possession of the Receiving Party, without obligation of confidentiality, prior to its disclosure; or
  - (b) such information was obtained from a third party without obligation of confidentiality; or
  - (c) such information was already in the public domain at the time of disclosure otherwise than through a breach of these Conditions; or
  - (d) such information is required to be disclosed by law or by order of a court of competent jurisdiction or other competent authority or the rules of any listing authority, stock exchange, panel on takeovers and mergers or regulatory body; or
  - (e) such information was independently developed by the Receiving Party without access to the Disclosing Party's Confidential Information.
- 12.4 The Receiving Party shall restrict disclosure of such Confidential Information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging its obligations under these Conditions, and shall ensure that such employees, agents or subcontractors are aware of, and comply with, the confidentiality obligations set out in these Conditions.
- 12.5 Confidential Information is provided on an "as is" basis and neither party makes any express or implied warranty or representation concerning its Confidential Information.
- 12.6 This section 12 shall survive termination of the Contract.

## **13. WARRANTIES**



- 13.1 The Supplier warrants and represents that it has and will continue to hold all licenses, consents, rights and/or regulatory approvals or authorisations as are necessary to provide the Services and perform the Supplier's obligations.
- 13.2 The Client acknowledges that the only warranties in relation to the Supplier Software and/or Third Party Software or the supply thereof are those contained in the Supplier End User Licence and/or Third Party End User Licence (as applicable).

#### **14. INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS**

- 14.1 If either party receives a claim of infringement of Intellectual Property Rights from a third party concerning (in the case of the Client) the Services or any Supplier Software, Supplier hardware or other Deliverables supplied by the Supplier (excluding any Third Party Software or firmware) or (in the case of the Supplier) the Customer Materials (an **Infringement Claim**), it shall notify the other party promptly in writing.
- 14.2 On receipt of notice of an Infringement Claim, that party (the **Indemnifying Party**) will make reasonable efforts either to obtain for the other party (the **Indemnified Party**) (at no cost) a right to use the infringing item in accordance with the Contract or to make such modifications to the infringing item as may be necessary to remove the alleged infringement. If the Indemnifying Party is unable to obtain or if it is impractical to obtain such a right or make such a modification (at no cost), it may terminate the Contract (in whole or in part in relation to the infringing item) immediately on written notice to the Indemnified Party.
- 14.3 Without limiting section 14.2, the Indemnifying Party may in its own name and at its own cost undertake the conduct of any proceedings relating to an Infringement Claim, subject to any requirement for leave to be granted by the court or tribunal in which the Infringement Claim may be conducted and will indemnify the Indemnified Party from and against all damages awarded under any final judgment of a court of competent jurisdiction or agreed by the Indemnifying Party in final settlement of the Infringement Claim, provided that the Indemnified Party: (i) makes no statement prejudicial to the Indemnifying Party or in respect of such Infringement Claim; (ii) provides all reasonable assistance in connection with the Infringement Claim, at the Indemnifying Party's cost; and (iii) allows the Indemnifying Party to have sole conduct and control of the defence of the Infringement Claim and/or any settlement or compromise of the Infringement Claim, if the Indemnifying Party exercises its option to undertake the conduct of the proceedings. The indemnity in this section 14.3 shall be the Indemnified Party's sole and exclusive remedy with respect to any Infringement Claim.

#### **15. LIMITATION OF LIABILITY**

- 15.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) any matter for which it would be illegal or void under applicable law for the Supplier to limit or exclude its liability.
- 15.2 Subject to section 15.1, the Supplier shall not be liable to the Client, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of or interruption to business, loss of or damage to reputation or goodwill, loss of anticipated savings, loss of or damage to data, systems or programs or any indirect, special or consequential loss or damage arising under or in connection with the Contract.

- 15.3 Subject to section 15.1, the Supplier's total liability to the Client in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed one hundred and twenty five per cent (125%) of the value of the order as set out in the applicable Sales Document.
- 15.4 Section 15.3 shall be without prejudice to any obligations which the Supplier may have to provide any backup or retention Services which are intended to provide the Client with a means of recovering data, systems or programs.
- 15.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 15.6 This section 15 shall survive termination of the Contract.

## **16. TERMINATION AND SUSPENSION**

- 16.1 Unless otherwise stated in a Contract, either party may terminate a Contract for convenience at any time:
- (a) where the Services comprise of Supplier Software only, by giving at least thirty (30) days' prior written notice to the other; or
  - (b) in all other cases, by giving at least ninety (90) days' written notice to the other;
- such notice not to take effect prior to the expiry of the Initial Term or (if applicable) the then-current Renewal Term.
- 16.2 Without limiting its other rights or remedies, each party may terminate the Contract for cause with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within thirty (30) days after receipt of notice in writing of the breach, or if the breach is incapable of remedy;
  - (b) the other party enters into administration, is subject to an administration order or proposes to enter into or enters into any voluntary arrangement with its creditors in the context of a potential liquidation, or suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply.
  - (c) a Force Majeure Event under section 18.3 continues for a continuous period of more than fourteen (14) days.
- 16.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Software, Services or all further deliveries of Goods under the Contract by written notice to the Client if:
- (a) the Client fails to make payment of any undisputed amount due under the Contract on the due date for payment, provided that:
    - (i) the Supplier has given notice of non-payment to the Client; and
    - (ii) the Client has failed to remedy the breach within fourteen (14) days of such notice of non-payment;

(b) the Client becomes subject to section 16.2(b), or the Supplier reasonably believes that the Client is about to become subject to section 16.2(b).

16.4 Should the Client fail to pay the undisputed amount which gave rise to the suspension under section 16.3(a) within a further fourteen (14) days of notice of suspension, the Supplier reserves the right to terminate the Contract with immediate effect by giving written notice to the Client.

16.5 The Supplier may treat the Client's breach of any Third Party End User Licence as a breach of this Contract and terminate the Contract with immediate effect.

## **17. CONSEQUENCES OF TERMINATION**

17.1 On termination of the Contract for any reason:

(a) the Client shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and any interest due under section 10.8 and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Client immediately on receipt. No refund shall be due of any charges or fees paid in advance for the period after the cessation of the Contract or Service;

(b) if the Contract is terminated by the Supplier under section 16.2(a), 16.4 or 16.5 or by the Client other than pursuant to section 16.2(a), with effect before the end of the Initial Term or (where applicable) the Renewal Term or (in the case of a Professional Services engagement) before completion of the scope of work, the Client shall be liable to pay to the Supplier all remaining charges or fees which would have been due to the Supplier under the Contract or for the Service until the end of the Initial Term or (if applicable) Renewal Term or had the work been completed, as the case may be, or such other termination fees or cancellation charges as may be specified in the Contract;

(c) the Client shall return to the Supplier all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Client fails to do so, then the Supplier may enter the Client's premises at a mutually convenient time and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract;

(d) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and

(e) sections which expressly or by implication have effect after termination shall continue in full force and effect.

## **18. GENERAL**

18.1 Order of Precedence: In the event of any conflict or inconsistency between any of the clauses, and to the extent of any conflict between these Conditions, the Supplier End User License, the Third Party End User License, the Sales Document and any document otherwise attached to or incorporated into the Contract, the conflict shall be resolved in accordance with the following order of precedence:

- (a) in respect of Supplier Software:
  - (i) the Supplier End User License;
  - (ii) these Conditions;
  - (iii) the Sales Document (and any renewals);
- (b) in respect of Third Party Software:
  - (i) the applicable Third Party End User License;

- (ii) these Conditions;
- (iii) the Sales Document (and any renewals);
- (c) in respect of all issues other than the provision of Software:
  - (i) these Conditions;
  - (ii) the Sales Document (and any renewals);
  - (iii) the Support Service Level Agreement (if applicable);
  - (iv) any policies and procedures provide to the Supplier by the Client.

If the Client requires use of a Client-form purchase order in connection with the supply of the Goods, Software and/or any of the Services to be performed, Client hereby acknowledges and agrees that to the extent such purchase order contains any pre-printed or other terms and conditions, such terms and conditions, whether in addition to or in conflict with the Contract, shall have no effect whatsoever and the Contract shall govern the relationship between the Supplier and the Client.

- 18.2 **Publicity:** Each party is entitled to reference the other party (including use of their logo) and/or the work undertaken under these Conditions in any publicity or advertising material. Any such publicity should be in a general form and must not reveal any of the other party's Confidential Information. The Client may revoke this consent at any time in writing by sending notice to [legal@nasstar.com](mailto:legal@nasstar.com)
- 18.3 **Force Majeure:** If a Force Majeure Event prevents the Supplier from providing any of the Software, Services and/or Goods, or the Client from complying with any of its obligations for more than fourteen (14) days, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Client as per section 16.1.
- 18.4 **Assignment and subcontracting:**
- (a) The Supplier may at any time assign, transfer, novate, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract to any third party.
  - (b) The Client shall not, without the prior written consent of the Supplier, assign, transfer, novate, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
  - (c) The parties shall at all times remain responsible for the acts and omissions of its subcontractors.
- 18.5 **Data Processing and Protection:** Both parties shall at all times comply with all Data Protection Laws when undertaking or enjoying the Services or in their performance of the Contract. Both parties agree to comply with the Data Processing Terms.
- 18.6 **Transfer of Undertakings Protection of Employment (TUPE):** The parties do not consider or intend TUPE to apply to transfer the employment of any staff under the Contract.
- 18.7 **Insurance:** The Supplier shall for the duration of the Contract maintain in force insurance policies (to include at a minimum public liability insurance, professional liability insurance and employer's liability insurance) to adequately cover its relevant potential liabilities in relation to the Contract. Upon written request by the Client, the Supplier shall provide a copy of any relevant insurance policy.
- 18.8 **Dispute Resolution:** Any dispute arising out of or in connection with these Conditions or any Contract shall be referred in the first instance to a senior manager of both parties, who shall meet and endeavour to resolve the dispute between them within fourteen (14) days of referral.

A joint written decision of those senior managers shall be binding on the parties. If the senior managers are unable to resolve the dispute, then the dispute shall be determined by the English courts in accordance with section 18.15.

- 18.9 No Partnership: Nothing in these Conditions or any Contract is intended to create a partnership or the relationship of principal and agent or employer and employee between the parties.
- 18.10 Non-Solicitation: During the course of the Contract and for six (6) months thereafter, neither party shall solicit, directly or indirectly, any employee of the other party who was involved in the provision of the Goods, Software and/or Services. Solicitation does not extend to employees of either party who seek permanent employment through a genuine public advertising campaign of the other party.
- 18.11 Notices: Any notice or other communication required to be given to a party under or in connection with these Conditions shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
- 18.12 Severance: If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 18.13 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it under the Contracts (Rights of Third Parties) Act 1999.
- 18.14 Variation: Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by both parties.
- 18.15 Governing law and jurisdiction: These Conditions and any Contract, and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.