

Definitions

The following provides clear definitions of terms used within this document.

- “Ad Hoc Work” means services requested by the Customer and performed or agreed to be performed by Part Four for the Customer on an ad hoc basis in accordance with an Order Form(s) and/or Proposal Document(s) and/or Scope of work(s);
- “Agreement” means any agreement between the Customer and Part Four for the provision of services and/or computer hardware and/or software as set out in an Order Form together with one or more Proposal Document(s) from time to time and these Terms and Conditions of Business, and as evidenced by agreement in writing and signed by both of the Parties or authorised by electronic means as may be proposed by Part Four and agreed by the Customer. For these purposes where a Customer is being supplied with any Infrastructure Services the Agreement between Part Four and the Customer in respect of those Infrastructure Services shall be a separate agreement from any agreement for Specified Services or Ad Hoc Work, and where a Customer is being supplied with Ad Hoc Work the Agreement between Part Four and the Customer in respect of that Ad Hoc Work shall be a separate agreement from any Agreement for Specified Services or Infrastructure Services;
- “Business Day” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;
- “Charges” means (a) in the case of any Agreement, the charges specified or referred to therein; and (b) in the case of Ad Hoc Work, charges calculated by reference to the Rates;
- “Consumer Prices Index” means the index of that name published by the Office for National Statistics or any replacement to that index;
- “Control” means the power of a person to secure that the affairs of Part Four are conducted in accordance with the wishes of that person;
- By means of the holding of shares, or the possession of voting power, in or relation to Part Four; or
- (A) as a result of any powers conferred by the articles of association
- (B) any other document regulating Part Four
- (C) occurs if a person who controls Part Four ceases to do so or if another person acquires Control of Part Four.
- “Customer” means the Party identified as such in any Agreement or within a Quotation;
- “Customer’s Representative” means the representative appointed by the Customer pursuant to clause 11 below;
- “Data Protection Legislation” means the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
- “Data Subject” has the meaning set out in the Data Protection Act 1998.
- “Dedicated Equipment” means any equipment dedicated to the use of the Customer by Part Four and whether exclusively or in conjunction with other customers and not intended to be purchased by or in the physical possession of the Customer;
- “Effective Date” means the date of the most recent acceptance of an Order Form in relation to the Services by the Customer;
- “Engagement” means the engagement or employment of a person employed or engaged by Part Four by the Customer or any of the Customer’s group companies at any time during the provisions of the Services whether on a permanent or temporary basis, whether under a contract of service or for services, under an agency, licence, franchise or partnership agreement, or any other engagement, and whether directly or through any organisation or a limited company (excluding Part Four) of which the person employed or engaged by Part Four becomes an officer, employee, consultant or partner;
- “Equipment” means items of hardware (with associated software) requested by the Customer for purchase and provided or agreed to be provided by Part Four to the Customer on an ad hoc basis in accordance with an Order Form;
- “Force Majeure Event” means an event beyond the reasonable control of Part Four including, but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, an act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, or default of suppliers or subcontractors, and any defect, error, fault or deficiency in the Supported Systems or the Supported Products;
- “Help Desk Support” means support via Part Four help desk, upon request of the Customer by telephone, e-mail or web form, as more particularly described at Clause 2 below;
- “Infrastructure Services” means any of the IT support services supplied by Part Four from time to time which involve a material investment by Part Four in infrastructure dedicated to the Customer’s use and which have been designated by Part Four as such services;
- “Intellectual Property Rights”; means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- “Loaned Equipment” means those items of hardware to be provided by Part Four to the Customer on loan;
- “Order Form” means an order form sent by Part Four to the Customer setting out the Services to be supplied;
- “Parties” means both Part Four and the Customer and “Party” means either Part Four or the Customer;
- “Personal Data” has the meaning set out in the Data Protection Act 1998;
- “Proposal Document” means a proposal document sent by Part Four to the Customer describing the Services to be supplied;
- “Rates” means Part Four daily and hourly charge rates prevailing from time to time, and available on request from Part Four;
- “Remuneration” includes base salary or fees, car allowances or company car, guaranteed bonus and commission earnings, allowances, inducement payments and other payments and taxable (and, where applicable, non-taxable) emoluments payable to or receivable by such person employed or engaged by Part Four during the provision of the Services to the Customer, for services rendered to or on behalf of the Customer;
- “Part Four” is a trading name used by Swan Network Solutions Ltd (company number 05066355) and Tectrix Ltd (company number 03946367);
- “Service Level Agreement” means an agreement between Part Four and the Customer in which Part Four commits to meet specified service times and as expressly set out or referred to in any Proposal Document(s);
- “Services” means the Infrastructure Services, the Specified Services or the Ad Hoc Work being provided by Part Four to the Customer under an Agreement together with any other technical support services being provided by Part Four to the Customer;
- “Specified Services” means the range of IT support services from time to time provided by Part Four and specified as such by Part Four, being those which do not require material hardware investment by Part Four;
- “Start Date” the date specified as such in the Proposal Document(s) or as otherwise agreed in writing between the Parties within 3 months of the Effective Date; “Support Hours” means 8am to 6pm (London time) on Business Days unless the Proposal Document(s) specify a 24/7 support service in which case the hours and days are as stated in that Proposal Document(s);
- “Supported Location” means the location at which the Supported Systems are located as identified in the Proposal Document(s), or such other location as may be agreed in writing by the Parties;
- “Supported Products” means those items of hardware and software as set out in the Proposal Document(s) or otherwise agreed to be added (less any agreed deletions) by the Parties;

“Supported Systems” means the computer and information technology systems belonging to or dedicated to the use of the Customer to be supported by Part Four through the provision of the Services and as set out in the Proposal Document(s);

- “Supported Users”; means the persons working from the Supported Location and/or using Supported Products in the course of the Customer’s business.

Provision Of Services & Equipment

2.1 Any and all provisions of Services, Dedicated Equipment, Equipment and/or Loaned Equipment made by Part Four to the Customer shall be in accordance with these Terms and Conditions of Business.

2.2 Part Four shall use its reasonable endeavours to provide the Services to the Customer with reasonable skill and care in relation to the Supported Systems as from the Start Date and in accordance with the Agreement. Part Four further agrees to use reasonable skill and care in the selection of third party sub-contractors for the Services.

2.3 Part Four shall use its reasonable endeavours to meet any service times in relation to the Services as specified in the Order Form(s), Proposal Document(s) and/or the welcome pack of materials sent to the Customer on or shortly after the Effective Date. However, such service times shall be estimates only and shall not be of the essence for performance of the Services unless a Service Level Agreement has been agreed in which case such agreed service times and levels shall apply as stated therein.

2.4 Part Four shall use its reasonable endeavours to provide any Dedicated Equipment, Equipment and/or Loaned Equipment to the Customer where agreed and as set out in the relevant Customer Order Form(s) and the Proposal Document(s).

2.5 Part Four shall deliver any Equipment and/or Loaned Equipment to the location set out in the Order Form(s) or such other location as the Parties may agree. Any dates quoted for delivery are approximate only and time shall not be of the essence in relation to such delivery dates.

2.6 The risk in any Equipment and/or Loaned Equipment (but not in any Dedicated Equipment) shall pass to the Customer on completion of delivery. Title to the Equipment shall not pass to the Customer until Part Four has received payment in full for the Equipment.

2.7 If, before title to the Equipment passes to the Customer, the Customer becomes subject to any of the termination events listed in clause 8 then, without limiting any other right or remedy Part Four may have Part Four may require the Customer to deliver up all such Equipment, and if the Customer fails to do so, Part Four may at any time enter any premises of the Customer or of any third party where the Equipment is stored to recover it.

2.8 If the Customer contacts Part Four help desk by telephone during the Support Hours or by e-mail at any time, Part Four shall provide (during the Support Hours) the Services set out in the signed agreement or order form. The amount of Help Desk Support mentioned in this Clause 2 includes all time spent by Part Four working on the Customer’s technical problems in the course of Help Desk Support, and is not limited to time devoted to communication with the Customer.

2.9 Nothing in the Agreement shall oblige Part Four to do anything which in its reasonable opinion may infringe the Intellectual Property Rights of any third party.

Charges & Payment

3.1 Where Part Four is providing Services (but not Ad Hoc Work), Loaned Equipment and/or Dedicated Equipment to the Customer under an Agreement, then the applicable fees set out in the Proposal Document(s) shall be invoiced by Part Four monthly in advance.

3.2 Where Part Four is providing to the Customer Ad Hoc Work and/or Equipment, charges will be made (including time spent in the provision of telephone advice, remote access support and support at the Supported Location) in accordance with the Rates and/or the Proposal Document(s).

3.3 The Customer shall reimburse Part Four for all travel, subsistence or other expenses incurred by Part Four in connection with the provision of any Services, Dedicated Equipment, Loaned Equipment and/or Equipment including, without limitation, those expenses incurred in complying with Customer requests.

3.4 Part Four is not obliged to carry out any work except as specifically set out in the Agreement, but if it does so, such work shall be subject to the terms of the Agreement, and the Customer will pay for that work at the Rates.

3.5 Part Four may invoice the charges referred to at clauses 3.2 and 3.3 above at any time or times after the Effective Date.

3.6 All charges payable under the Agreement are quoted exclusive of value added tax, sales tax or similar taxes which shall be paid at the rate and in the manner from time to time prescribed by law.

3.7 The Customer shall pay the amount of each invoice issued pursuant to the Agreement within 30 days of the date of issue thereof, by either cheque, direct bank transfer or direct debit, and time for payment shall be of the essence of this Agreement.

3.8 If any amount payable by the Customer under any term of the Agreement is not paid in accordance with this Agreement then, without prejudice to its other rights and remedies, Part Four may charge interest on the amount outstanding (as well after as before any judgment), from the due date for payment of that amount to the actual date of payment (both dates inclusive), at the rate prescribed from time to time by the Late Payment of Commercial Debts (Interest) Act 1998.

3.9 Part Four reserves the right to increase the charges payable hereunder and shall provide the Customer with no less than 90 days’ written notice of such an increase. Any such increase will be limited to either an additional 5% of the amount invoiced monthly to the Customer or an increase in accordance with the Consumer Prices Index, whichever is the higher.

3.10 Part Four reserves the right to increase its charges and fees for any of the Services in line with increases in the number of, or changes to, the Customer’s Supported Users, Supported Products, Supported System and/or Supported Location and as further set out in the Proposal Document(s).

Equipment & Equipment Warranties

4.1 Part Four shall use its reasonable endeavours to source Equipment, Loan Equipment and/or Dedicated Equipment from reputable third parties.

4.2 Part Four warrants that it will pass good title to any Equipment supplied to the Customer.

4.3 Part Four undertakes to hold on trust for the benefit of the Customer, in relation to the Equipment (and Dedicated Equipment used in relation to the Infrastructure Services exclusively for the Customer) the following:

4.3.1 all manufacturer's warranties; and

4.3.2 all statutory warranties implied under the Sale of Goods Act 1979.

4.3.3 Because of the nature of the Supported Products, no representation or warranty is given that it can rectify or accommodate any defect or deficiency in or problem with the Supported Products or that its liaison with the manufacturers, maintainers or suppliers of the Supported Products will result in the resolution of the Customer's problems or the correction of any defect or deficiency.

Limitation Of Liability

5.1 The following provisions set out Part Four entire liability (including any liability for the acts and omissions of its employee's agents and sub-contractors) to the Customer in respect of:

5.1.1 any breach of its contractual obligations under the Agreement; and

5.1.2 any representation, statement, breach of statutory duty or tortious act or omission including negligence (but excluding any of the same made fraudulently) arising under or in connection with the Agreement

AND THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 5

5.2 Any act or omission on the part of Part Four or its employees, agents or sub-contractors falling within clause 5.1 above shall for the purposes of this clause 5 be known as an "Event of Default".

5.3 Nothing in the Agreement shall limit or exclude Part Four liability to the Customer for:

5.3.1 death or personal injury resulting from its own or that of its employees' agents' or sub-contractors' (as applicable) negligence;

5.3.2 fraud or fraudulent misrepresentation; or

5.3.3 damage suffered by the Customer as a result of any breach of Part Four obligations implied by, as applicable, section 12 of the Sale of Goods Act 1979, section 2 of the Supply of Goods and Services Act 1982 or section 8 of the Supply of Goods (Implied Terms Act) 1973.

5.4 Subject to clause 5.3 above and clause 5.5 below, Part Four shall not be liable to the Customer in respect of any Event of Default for loss of profits, anticipated savings, goodwill or any type of special indirect or consequential loss (including loss or damage suffered by the Customer as a result of an action brought by a third party) even if such loss was reasonably foreseeable or Part Four had been advised of the possibility of the Customer incurring the same.

5.5 Clause 5.4 above shall not exclude the following types of loss or damage which shall be regarded as direct: additional, operational and/or administrative costs or expenses arising from the Event of Default and any regulatory losses, fines, expenses or other losses arising from a breach by Part Four of any laws. However, Part Four liability for such direct losses shall be limited in accordance with the remaining provisions of this clause 5.

5.6 Where Part Four liability under clause 5.5 above extends to a Customer's loss of data or damage to data Part Four shall only be liable to the extent that the Customer backed-up its data in accordance with clause 6.1.5.

5.7 Subject to the remaining provisions of this clause 5, Part Four accepts liability to the Customer in accordance with clause 5.5 in respect of damage to the tangible property of the Customer resulting from the negligence of Part Four or its employees, agents or sub-contractors up to the sum of £5million.

5.8 Subject to the remaining provisions of this clause 5, Part Four entire liability in accordance with clause 5.5 in respect of any other Event of Default shall be limited to damages of an amount not exceeding £50,000.

5.9 If a number of Events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this agreement.

5.10 Except in the case of an Event of Default arising under clause 5.3 above Part Four shall have no liability to the Customer in respect of any Event of Default unless the customer shall have served notice of the same upon Part Four within 12 months of the date it became aware of the circumstances giving rise to the Event of Default or the date when it ought reasonably to have become so aware.

5.11 The Customer hereby agrees to afford Part Four not less than 30 days in which to remedy any Event of Default hereunder, following written notification thereof by the Customer and Part Four hereby agrees that it shall use its reasonable endeavours to remedy such Event of Default within that 30-day period.

5.12 Nothing in this clause shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.

5.13 All of Part Four liabilities and obligations under the Agreement are subject to the Customer having complied with its obligations under the Agreement.

5.14 The express warranties and undertakings given by Part Four in the Agreement are in lieu of all other warranties, conditions, terms, undertakings and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law. No term in the Agreement attempts to exclude liability for fraud.

5.15 The Customer warrants that it has not been induced to enter into the Agreement by any representation or by any warranty, whether oral or in writing, except those specifically contained in the Agreement as warranties, and waives all claims for breach of any warranty and all claims for any misrepresentation, (whether negligent or otherwise, unless made fraudulently) which is not specifically contained in the Agreement as a warranty.

Customer Obligations

6.1 The Customer shall:

6.1.1 before the Start Date, set up all communications and other arrangements necessary to allow Part Four to have remote access to the Supported Systems and maintain those arrangements so as to enable Part Four to perform the Services;

6.1.2 provide Part Four, free of charge, with access to the Customer's premises and with access to all information, materials, documentation, resources and facilities including, without limitation, computer, communications (including internet services), office facilities and Customer personnel, reasonably requested by it to enable it to provide the Services. The Customer shall take reasonable steps to ensure that its staff, contractors and other suppliers co-

operate fully with Part Four and cause no delay. Where Part Four needs the Customer to provide information or take a decision the Customer shall do so promptly and so as not to delay the work in hand;

6.1.3 use, provide and install if necessary, a broadband internet connection at the Supported Location with sufficient speed for use in the Customer's business as recommended by Part Four;

6.1.4 keep Part Four informed of any changes to the Supported System, the Customer's business, the number of Supported Users, the number of Supported Products and the Support Location(s);

6.1.5 unless Part Four are providing back-up services to the Customer, back up its data regularly and correctly and in accordance with Part Four instructions and advice;

6.1.6 indemnify Part Four against all losses, damages and expenses incurred or suffered by it in connection with any and all claims made in respect of any injury, death or loss suffered by employees and consultants of Part Four whilst on Customer premises where the same arise wholly or partly as a result of the Customer's negligence, provided always that where such injury, death or loss arises only partly as a result of such negligence, then such indemnity shall operate proportionately;

6.1.7 use all reasonable endeavours to comply with manufacturers' warranty conditions in respect all equipment (except in relation to Dedicated Equipment used in relation to the Infrastructure Services) within the Supported Systems;

6.1.8 take good care of, and insure the replacement value of, all Loaned Equipment in its possession.

6.2 If Part Four performance of any of its obligations under the Agreement is prevented or delayed by any act or omission by the Customer, or failure by the Customer to perform any relevant obligation:

6.2.1 Part Four shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Customer's failure or delay to perform any of its obligations as set out in this clause 6; and

6.2.2 the Customer shall reimburse Part Four on written demand for any costs or losses sustained or incurred by Part Four arising directly or indirectly from the Customer's default.

Proprietary Rights

7.1 The Intellectual Property Rights in all software, documentation and other materials prepared by Part Four in the course of rendering, or arising out of or in connection with, the Services, Equipment or Loaned Equipment shall be owned by Part Four.

7.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional upon Part Four obtaining a licence for the Customer either direct from the relevant licensor for the Customer or on such terms as will entitle Part Four to license such rights to the Customer. By entering into this Agreement, the Customer agrees that it shall comply with the terms of all such licences and that it shall not contravene any third party Intellectual Property Rights.

7.3 The Customer shall indemnify the Licensor against all liabilities, costs, expenses, damages and losses (including any direct or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity bases) and all other reasonable professional costs and expenses suffered or incurred by Part Four arising out of or in connection with the Customer's breach of any of Part Four Intellectual Property Rights or of any third party Intellectual Property Rights.

7.4 All data and information created by the Customer remains the exclusive property of the Customer and shall not be used by Part Four for any purpose other than provision of the Services, Equipment, Loaned Equipment and/or Dedicated Hardware.

Duration & Termination

8.1 An Agreement for Services shall continue indefinitely until terminated in accordance with the provisions below.

8.2 Where the Agreement is for Infrastructure Services, the Agreement shall be terminable on three months' written notice from either Party with such notice to take effect either on the third, or any subsequent, anniversary of the Effective Date.

8.3 Where the Agreement is for Specified Services the Agreement shall be terminable on three months' written notice from either Party with such notice to take effect either on the first, or any subsequent, anniversary of the Effective Date.

8.4 Without limiting any of its other rights or remedies, Part Four may, at its option, suspend performance of or terminate the Agreement, or any other Agreement between Part Four and the Customer, immediately on giving notice in writing to the Customer if:

8.4.1 the Customer fails to pay any amount due under the terms of the Agreement on the due date for payment and fails to pay all sums outstanding within 7 days after the giving of written notice that that amount has not been paid; or

8.4.2 the Customer commits a material breach of any term of the Agreement (apart from that set out at 8.4.1 above) and (in the case of a breach which is not persistent and which is capable of being remedied) fails to remedy that breach within 7 days after the giving of written notice by Part Four to remedy the breach; or

8.4.3 the Customer defaults on any other Agreement made between Part Four and the Customer where such default allows Part Four to terminate that Agreement in accordance with the terms therein; or

8.4.4 the Customer has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or passes a resolution for winding-up (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if it becomes subject to an administration order, or enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun, or if the Customer ceases or threatens to cease to carry on business, or if Part Four reasonably believes that the Customer is about to become subject to any of these circumstances.

8.5 The Customer may, at its option, terminate the Agreement, or any other Agreement between the Customer and Part Four, immediately on giving notice in writing to Part Four if:

8.5.1 Part Four commits a material breach of any term of the Agreement and (in the case of a breach which is not persistent and which is capable of being remedied) fails to remedy that breach within 7 days after the giving of written notice by the Customer to remedy the breach; or

8.5.2 Part Four defaults on any other Agreement made between the Customer and Part Four where such default allows the Customer to terminate that Agreement in accordance with the terms therein.

8.6 Within 30 days of termination the Customer shall:

8.6.1 pay Part Four for all work done before termination and for all expenses incurred in connection with any work done or to be done for the Customer, subject to clause 8.8; and

8.6.2 return all Loaned Equipment to Part Four in good and proper working order, and if the Customer fails to do so, Part Four may at any time enter any premises of the Customer or of any third party where the Loaned Equipment is stored in order to do so.

8.7 Following termination Part Four shall make available or, at the customer's election, transfer all information and data it holds concerning the Customer's computer systems to such alternative service provider as may be nominated in writing by the Customer within 14 days of termination. However, Part Four shall be under no obligation to effect such nominated transfer until all sums owed to Part Four have been paid in full, and the Customer has paid in advance all fees and expenses to be incurred by Part Four in effecting such transfer and until all Loaned Equipment has been returned to Part Four in accordance with clause 8.6.2.

8.8 Where no such nomination is made by the Customer in accordance with clause 8.8, or where the Customer fails to pay any sums due, or return Loaned Equipment, to Part Four in accordance with clause 8.6, all such data and information shall be made available for three months following termination for the Customer's collection but Part Four shall be under no obligation to deliver such data and information to the Customer.

8.9 Following the end of the period referred to in clause 8.8, Part Four may delete all and any information and data that it holds concerning the Customer and/or its computer systems.

Solicitation Of Employees

9.1 The Customer agrees that it shall:

9.1.1 notify Part Four immediately of any offer of Engagement that it makes to anyone who is employed or engaged by Part Four;

9.1.2 notify Part Four immediately that its offer of Engagement to such person employed or engaged by Part Four has been accepted and to provide details of the Remuneration to Part Four; and

9.1.3 pay Part Four fee in accordance with clauses 9.2, 9.3 and 3.7.

9.2 The fee payable to Part Four by the Customer on acceptance of an Engagement shall be 20% of the gross Remuneration applicable during the first 12 months of the Engagement. VAT will be charged in addition of this fee where applicable.

9.3 In the event that the Engagement is for a fixed term of less than 12 months the fee will apply pro-rata.

Data Protection

10.1 The following definitions set out in this clause are defined as below:

10.1.1 Data Controller: shall have the meaning of 'data controller' set out in section 1(1) of the Data Protection Act 1998 and, from the time of its implementation into law in England and Wales the meaning set out in Article 4(7) of the GDPR.

10.1.2 the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined by Union or Member State law, the controller or the specific criteria for its nomination may be provided for by Union or Member State law

10.1.3 Data Processor: shall have the meaning of 'data processor' set out in section 1(1) of the Data Protection Act 1998 and, from the time of its implementation into law in England and Wales the meaning of 'processor' set out in Article 4(8) of the GDPR 'processor' means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;

10.1.4 Data Protection Legislation: means, for as long as they are in force in England and Wales: the DPA, the GDPR, the PECR and all related legislation which may supplement, amend or replace them and which relates to the protection of individual's rights in their personal data and the protection of their privacy.

10.1.5 Data Subject: an individual to whom personal data relates. 10.1.6 DPA: means the Data Protection Act 1998.

10.1.7 GDPR: means Regulation (EU) 2016/679 (which may be referred to as the 'General Data Protection Regulation') and/or such legislation as may give effect to its terms in England and Wales.

10.1.8 PECR: means the Privacy and Electronic Communications Regulations which give specific privacy rights in relation to electronic communications.

10.1.9 Personal Data: has the meaning set out in section 1(1) of the Data Protection Act 1998 and, from the time of its implementation into law in England and Wales the meaning set out in Article 4(1) of the GDPR: any information relating to an identified or identifiable data subject. Identifiers include name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person; and for the purposes of this Agreement means Personal Data provided by one party to this agreement to the other.

10.1.10 Processing and process: have the meaning set out in Article 4 of the GDPR as: any operation or set of operations which is performed on personal data or on sets of personal data, if by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction

10.2 Part Four and the Client agree that for the Purposes of Data Protection Legislation that the Client shall be the Data Controller and that Part Four shall be a Data Processor in respect of any Personal Data which is transferred from the Client to Part Four under the terms of this Agreement.

10.3 As a Data Processor, Part Four shall process the Personal Data only to the extent necessary to perform its obligations pursuant to this Agreement and/or in accordance with the Client's instructions from time to time.

10.4 Where a party is a Data Processor pursuant to this Agreement, it shall take steps to ensure that its employees are informed of their obligations in relation to Personal Data that they process during their employment.

Data Protection Warranties

10.5 Each Party warrants to the other that it will process the other's Personal Data in compliance with all applicable Data Protection laws.

10.6 Where a party to this Agreement becomes a Data Processor pursuant to it, it warrants that:

10.6.1 the Data Processor shall take appropriate technical and organisational measures to secure relevant Personal Data against unauthorised or unlawful processing, and against accidental loss or destruction when having regard to the state of the art of technological development, the commercial availability of such technology, the nature of the processing in question, the cost of implementation, and the material risk to the rights of affected Data Subjects;

10.6.2 it has lawful authority to provide all relevant Personal Data to the other, and that processing by the recipient for the purposes and in the fashion directed shall not represent a breach of Data Protection Legislation;

10.6.3 it will not transfer any Personal Data outside of the European Economic Area (or such jurisdictions as may be subject to adequacy decisions which deem them to have appropriate levels of data protection legislation in place to permit such transfers) without the prior authorisation of the Data Controller or as is necessary for the performance of its obligations hereunder;

10.6.4 it will assist the Data Controller, insofar as reasonably possible in responding to any requests made by any relevant Data Subject which concern the exercise of that Data Subjects rights under the GDPR, subject to the Client reimbursing it for the cost of the same;

10.6.5 it shall report to the Data Controller any suspected data breach concerning the Personal Data which comes to its attention, and shall provide reasonable assistance to the Data Controller in informing the relevant regulator and/or affected Data Subjects, always subject to the Client reimbursing it for the cost of the same;

10.6.6 it shall, on request, take reasonable steps to demonstrate to the Data Controller, to the extent that is reasonable given the nature of the processing in question and the administrative burden of demonstrating such compliance, that it complies with Data Protection Laws; and

10.6.7 it shall delete or return all relevant Personal Data at the request of the Client.

Indemnity

10.7 Each Party agrees to indemnify and keep indemnified (and defend at its own expense) the other Party against all costs, claims, damages or expenses incurred by the other Party, or for which the other Party may become liable due to any failure by the first Party or its employees or agents to comply with any of its obligations pursuant to this Clause 14. To avail itself of this indemnity, the claiming party must:

10.7.1 promptly notify the indemnifier of any relevant claim of which the indemnified party becomes aware;

10.7.2 not make any admission of liability or offer to settle in respect of any relevant claim without the prior written permission of the indemnifier;

10.7.3 grant the indemnifier full control of all relevant proceedings on request;

10.7.4 provide the indemnifier with such assistance in dealing with such claims as it may reasonably request.

10.8 The Parties acknowledge that to the extent that either Party is a Data Processor pursuant to this Agreement, it will be reliant on the other, the Data Controller, for direction as to the extent to which the Data Processor is entitled to use and process the relevant Personal Data. Consequently, the Data Processor will not be liable to the Data Controller for any claim brought by a Data Subject arising from any action or omission by the Data Processor, to the extent that such action or omission resulted directly from the Data Controller's instructions or the quality of those instructions.

Appointment of sub-contractors

10.9 The Data Processor may not authorise any third party to process Personal Data provided by the Data Controller without first obliging that processor to treat that Personal Data to the same standard as it is obliged to do pursuant to this Agreement. Where the appointment of any such third party is made in specific furtherance of an objective specified by the Client, Part Four shall endeavour to inform the Client of the identity of the third-party controller.

On the Effective Date, each Party shall appoint a person who shall act as its representative for the purposes of the Agreement, who will be responsible for providing any information which may be required by the other Party to perform its obligations hereunder. The Customer's appointee will be responsible for meeting Part Four appointee and any other Part Four personnel visiting the Supported Location and for providing to Part Four any assistance reasonably required by it in performing its obligations under the Agreement. Each Party shall promptly notify the other of the name, telephone number, and e-mail address of its appointee and of any change in the identity or the contact details of that appointee in accordance with clause 18.

Representatives

12.1 Each Party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party except as permitted by clause 12.3 and that no Party shall use any other Party's confidential information for any purpose other than to perform its obligations under this Agreement.

12.2 Part Four will establish and maintain such security measures and procedures as are reasonably practicable to provide for the safe custody of the Customer's confidential information which is in Part Four possession, and to prevent unauthorised access to that information.

12.3 Each Party may disclose the other party's confidential information:

12.3.1 to its own employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Party's obligations under the Agreement. Each Party shall procure that its own employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 12;

12.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; or

12.3.3 in accordance with the prior written consent of the other Party.

12.4 This clause 12 shall survive termination of the Agreement.

Force Majeure

13 Part Four shall not be liable to the Customer as a result of any delay or failure to perform its obligations under the Agreement as a result of a Force Majeure Event and, in those such circumstances, the Customer shall grant a reasonable extension of time for the performance of such obligations.

Variation

14 No variation of any material term of the Agreement shall be effective unless it is made in accordance with clause 3.9 or 3.10 or is agreed in writing and signed by both Part Four and the Customer or otherwise agreed in accordance with such electronic means as Part Four shall propose and the Customer shall accept. Part Four may also vary any non-material term of this Agreement on 3 months' notice in writing to the Customer. Only variations to the Agreement made in accordance with this clause shall be effective.

Waiver Of Remedies

15 No forbearance or delay by either party in enforcing its rights will prejudice or restrict those rights. No waiver of any right will operate as a waiver of any subsequent breach. No right, power or remedy conferred by the Agreement or by the law on, or reserved to, either Party is exclusive of any other right, power or remedy available to either party, and each of those rights, powers and remedies is cumulative

Entire Agreement

16 The Agreement supersedes all prior agreements, arrangements and understandings between the parties in respect of its subject matter, and constitutes the entire agreement between them relating to the subject matter of the Agreement.

Assignment

17.1 The Customer may not assign, transfer, sub-contract, mortgage, charge or deal in any other manner with all or any of its rights or obligations under the Agreement, whether in whole or in part, without first obtaining Part Four written consent.

17.2 Part Four may assign and transfer all or any of its rights and obligations under the Agreement to any person to which it transfers all or any of its business to which the Agreement relates.

Notices

18.1 Subject to clause 18.2 below, all notices to be given under the Agreement for the Services must be in writing, and sent for the attention of the representative appointed under clause 11, and sent to the address of the receiving Party as set out in the Agreement or any other address in England which the receiving Party may have designated by notice given in accordance with the provisions of this Clause. Any notice may be delivered personally, or by first class pre-paid letter, or by email, and will be deemed to have been served: if by hand, when delivered; if by first class post, 48 hours after posting; and if by email, within 24 hours of sending, provided the receiving Party's email address is correct and current and provided no automatic error message is received in response.

18.2 Any notice of termination to be given under clause 8 of the Agreement shall be sent not just to the Party's representative in accordance with the above, but also for the attention of any director or principal contact as set out in the Proposal Document(s). A notice of termination shall only be delivered by hand or by first class post.

Headlings

19 The headings to these General Terms of Business are for ease of reference only, and do not affect the interpretation or construction hereof.

Partnership & Staff

20.1 Nothing in the Agreement creates, evidences or implies any partnership or joint venture between the Parties, or the relationship of principal and agent.

20.2 Part Four has the discretion to allocate such staff as it from time to time sees fit to fulfil its obligations under clause 2 above.

21.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Agreement.

21.2 If any provision or part-provision of the Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

Third Party Rights

22 A person who is not a party to the Agreement shall not have any rights to enforce its terms.

Third Party Services

23 Where Part Four resell a disclosed third party supplied service; where terms and conditions not covered by this document or the service's sub-terms and conditions; The terms and conditions provided by the third-party supplier will apply.

Sub Terms & Conditions

24.1 The Client may elect to purchase other optional services offered by Part Four. Those services terms and conditions are considered sub-terms and conditions to this document and are bound to it.

24.2 Sub-terms and conditions may override and/or further refine portions of this document. Where a sub-terms and conditions and this document may differ, the sub-terms and conditions shall control.

Governing Law & Jurisdiction

25.1 The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

25.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).