# CJ Systems Master Services Agreement

**1.1** In this Agreement, the following words and phrases shall, unless the context otherwise requires have the following meanings:-

**1.1.1** "Acceptable Use Policy" or "AUP" means CJ Systems' Acceptable Use Policy the current version of which is available at www.cjsystems.co.uk/legal as amended from time to time;

**1.1.2** **"Affiliates"** means, with respect to any entity, any other entity Controlled directly or indirectly, by the entity, any entity that Controls, directly or indirectly, the entity or any entity directly or indirectly under common Control with the entity;

**1.1.3** **"Agreement"** has the meaning set out in Clause 2.1;

**1.1.4** **"CJ Systems"** means CJ Systems Limited (Company No. 7269143) of Unit 4J, Westpark 26 Wellington Somerset TA21 9AD, United Kingdom;

**1.1.5** **"CJ Systems Equipment"** means any hardware, cabling, peripherals, software or any other equipment that CJ Systems shall provide to the Customer as part of the Services, whether owned by CJ Systems or a third party supplier, but specifically excludes any such equipment that has been sold to the Customer;

**1.1.6** **"CJ Systems Website"** means the website operated by CJ Systems currently at URL www.cjsystems.co.uk (such URL's may change from time to time);

**1.1.7** **"Commencement Date"** means the date on which this Master Services Agreement is signed by the parties or when CJ Systems first commences performance of its obligations under this Agreement, whichever is the earlier;

**1.1.8** **"Confidential Information"** means all confidential information disclosed by a party or its employees, officers, representatives or

advisers (together its "**Representatives**") to the other party and that party's Representatives Agreement including any information relating to the business, affairs, customers, clients and suppliers of the disclosing party (or of any Affiliate of the disclosing party) and any information relating to the services, product information, know-how, designs, trade secrets or software of the disclosing party;

**1.1.9** **"Contract Year"** means each successive period of 12 calendar months during the Term commencing on the Commencement Date;

**1.1.10** **"Control"** "means the beneficial ownership of more than fifty per cent (50%) of the issued share capital or the legal power to direct or cause the direction of the general management or affairs of the company, partnership or other entity in question and "Controls", "Controlled" and "Controlling" shall be construed accordingly;

**1.1.11** **"Credits"** means any sums that may be credited to the Customer by CJ Systems under the terms of this Agreement, including the Service Credits;

**1.1.12** **"Customer"** means the person, group of people, company or partnership, that receives the Services from CJ Systems under the terms of this Agreement, as identified in the Order Form;

**1.1.13** **"Customer Data"** means any data provided to CJ Systems by the Customer or on the Customer's behalf;

**1.1.14** **"Customer Equipment"** means any hardware, cabling, peripherals, software or any other equipment other than the CJ Systems Equipment;

**1.1.15** **"Customer Laws"** means all applicable laws, rules, regulations, mandatory guidelines and codes which, in the case of the Customer and its Affiliates, impose legal or regulatory requirements on a recipient of the Services;

**1.1.16** **"Customer Materials"** means the Customer Data, the Customer Materials, documents and any other tangible materials provided to CJ Systems by the Customer or on the Customer's behalf;

**1.1.17** **"Data Protection Legislation"** means in EU countries, the EC Directive on the protection of individuals with regard to the processing of personal data, the free movement of such data (95/46/EC) and all local laws or regulations giving effect to this Directive; the Privacy and Electronic Communications Regulations 2003; and/or in non-EU countries, any similar or equivalent laws, regulations or rules relating to information or data identifying individuals;

**1.1.18** **"Fees"** means the fees and charges payable by the Customer for the Services as described in an Order Form;

**1.1.19** **"Force Majeure Event"** means any circumstances beyond the reasonable control of either party to this Agreement including strikes, lock-outs or other industrial action (other than strikes, lock-outs or other industrial action of any contractors of the party seeking to rely on the Force Majeure Event);civil commotion, riot, invasion, war (whether declared or not) or threat of or preparation for war; fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster; reduction or interruption of any utilities howsoever caused; reduction or interruption of the use of telecommunications, networks, the internet, railways, shipping, aircraft, motor transport or other means of public or private transport; virus and/or hacking attacks or other malicious acts of a third party not under the control of a party; and compliance with any law or governmental order, rule, regulation or direction.

**1.1.20** **"Initial Term"** means in relation to a Service, 12 months from the Service(s) Commencement Date, or such other period as set out in the Order Form;

**1.1.21** **"International Service"** means a Service provided by CJ Systems to a Customer outside of the United Kingdom, as set out in the Order Form, SOW and/or the Service Description;

**1.1.22** **"Laws"** means the Supplier Laws and the Customer Laws;

**1.1.23** "**Master Services Agreement**" or "MSA" means these terms and conditions;

**1.1.24** **"Minimum Written Notice"** means, unless otherwise specified in the Order Form, the period of 90 days;

**1.1.25** **"Order Form"** means the order form(s) provided by CJ Systems to the Customer for the Customer's signature which lists the Services requested by the Customer, the Fees for such Services and which has been accepted by CJ Systems in accordance with this Agreement;

**1.1.26** **"Parties"** means CJ Systems and the Customer and "party" means either of them;

**1.1.27** **"Premises"** means the premises owned and/or operated by the Customer where the Services shall be performed or where any CJ Systems Equipment shall be installed;

**1.1.28** **"Renewal Term"** means the period of 12 months commencing on the expiry of the Initial Term and each successive period of 12 months thereafter (or such other period as is set out in the Order Form) in the event that CJ Systems has not received Minimum Written Notice (each being a "**Renewal Term**");

**1.1.29** **"Replacement Services"** means Services that CJ Systems agrees to provide to the Customer from time to time to replace or supplement the existing Services;

**1.1.30** **"Services"** means such service or services identified in the Order Form and as further described in the Service Description applicable to that Service or the Services identified in an SOW (including, in each case the provision of associated Service Deliverables);

**1.1.31** **"Service Commencement Date"** means the date in respect of each Service on which that Service is made available for use to the Customer in accordance with the provisions of this Agreement;

**1.1.32** **"Service Credits"** means the service credits applied where CJ Systems is in default of the Service Levels;

**1.1.33** **"Service Description"** means the document(s) setting out a description of the Services referred to in the Order Form;

**1.1.34** **"Service Deliverables"** means any materials, equipment, software, deliverables or other items of any type developed, created or supplied (whether alone or jointly) by CJ Systems or any CJ Systems Affiliate in the course of the provision of the Services;

**1.1.35** **"Service Levels"** means the service levels for each Service (where applicable);

**1.1.36** **"Service Term"** means, in relation to each of the Services, the period from the Service Commencement Date to the termination (for any reason) of such Service(s) pursuant to this Agreement;

**1.1.37** **"SOW"** means the Statement of Work, which may be provided by CJ Systems to the Customer, if applicable, along with the confirmation of the Order referred to in Clause 3.1 (c);

**1.1.38** **"Supplier Laws"** means all applicable laws, rules and regulations codes that impose legal or regulatory requirements on CJ Systems and its Affiliates;

**1.1.39** **"Target Installation Date"** means the date agreed between the parties for the installation of a Service(s);

**1.1.40** **"Term"** means the duration of this Agreement;

**1.1.41** **"Trial"** means the trial of a Service by the Customer;

**1.1.42** **"Working Day"** means 09.00 to 17.30, Monday to Friday excluding UK Public Holidays.

**1.2** In this Agreement, unless the context otherwise requires:

(a) clause, schedule and paragraph headings shall not affect the interpretation of this Agreement;

(b) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(c) words in the singular shall include the plural and vice versa;

(d) a reference to one gender shall include a reference to the other gender;

(e) a reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time taking account of any amendment or re-enactment;

(f) a reference to "writing" or "written" includes mail, faxes and e-mail;

(g) any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to what most nearly approximates to the English legal term in that jurisdiction; and

(h) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. THE AGREEMENT

**2.1** This Agreement consists of this Master Services Agreement, the Order Form, SOW (if applicable) and the applicable Service Description(s).

**2.2** This Agreement shall take effect on the Commencement Date and shall continue unless and until terminated in accordance with the provisions of this Agreement.

**2.3** Any conflict or inconsistency between any provisions of the documents referred to in Clause 2.1 shall be resolved in accordance with the following order of precedence:

(a) Order Form;
(b) Master Services Agreement
(c) Service Description;
(d) Statement of Work (SOW).

## 3. ORDERING AND PROVISION OF SERVICES

**3.1** The Customer may order services from CJ Systems in accordance with the following procedure(s):-

(a) In response to a request by the Customer for Services, CJ Systems shall prepare an Order Form and submit the Order Form to the Customer
(b) The Customer shall sign the Order Form and submit it to CJ Systems.
   The Order Form shall constitute a written offer by the Customer to enter into a legally binding contract with CJ Systems for the provision of the Services specified in the Order Form and such offer shall remain open to acceptance by CJ Systems for a period of 14 calendar days from the date that the Order Form is submitted to CJ Systems. If CJ Systems declines to accept any Order Form submitted by the Customer, it shall notify the Customer of its decision after receiving the Order Form as soon as is reasonably practicable thereafter.
(c) If CJ Systems agrees to accept the Order Form, CJ Systems shall send confirmation of acceptance to the Customer.

**3.2** Time for the delivery or provision of the Services is not of the essence and shall not be made so by the service of any notice.

**3.3** If CJ Systems notifies the Customer that a Service is ready for installation but the Customer is not ready to accept such installation for any reason whatsoever, then CJ Systems will invoice the Customer for the Fees for that Service(s). In the event that the Customer or the Customer Affiliates do not fulfil their obligations under this Agreement then (without prejudice to CJ Systems' other rights and remedies) CJ Systems will be relieved of its obligations under this Agreement and CJ Systems shall not be liable for any costs, charges or losses sustained by the Customer arising directly from any failure of the Customer or the Customer Affiliates to fulfil their obligations under this Agreement. CJ Systems shall also be entitled to recover any costs directly incurred by it arising from the Customer and/or the Customer Affiliates not fulfilling their obligations.

**3.4** The provisions of Clause 3.3 shall apply to any re-installation of the Services or Replacement Services and the Service Commencement Date for such Services will be amended accordingly.

**3.5** If the Customer agrees to enter into a Trial of a Service, then notwithstanding any other term of this Agreement, the Customer agrees that such Services shall be provided "as is" without warranty of any kind during the period of the Trial. CJ Systems reserves the right to cancel all Trials upon immediate notice to the Customer without penalty. Upon termination of the Trial, all CJ Systems' obligations and liabilities in relation to the Trial will cease.

**3.6** CJ Systems or its agents may enter the Premises at such times and dates as agreed between the parties to inspect any CJ Systems Equipment that the Customer may have connected to the Service. This permission is to remain in force until CJ Systems or its agents have removed all CJ Systems Equipment from the Premises or the Customer has returned the CJ Systems Equipment notwithstanding termination of this Agreement.

## 4. CANCELLATION AND SUSPENSION OF THE SERVICES

**4.1** In the event that the Customer terminates a Service(s) for convenience before its' Target Installation Date, the Customer shall be obligated to immediately pay all costs directly and indirectly (including third party

costs) incurred by CJ Systems with respect to the cancelled Service. For the avoidance of doubt, this shall include all reasonable out of pocket expenses incurred both precedent and subsequent to the cancellation.

**4.2** From time to time, CJ Systems may find it necessary to discontinue a Service or part of a Service for a number of reasons including product enhancement, upgrade and end of life ("**EOL**"). When a product reaches EOL, CJ Systems will notify the Customer of important milestones throughout the EOL period including the initial EOL notification, the last order date for the Service and the end of support milestone dates as well as other key information pertaining to the affected Service. CJ Systems reserves the right to cancel such affected Services by giving not less than 3 months' prior written notice with such notice to be given at any time during the Service Term.

**4.3** Without prejudice to its other rights and remedies under this Agreement, CJ Systems may suspend its provision of the Services in the following circumstances:

(a) if, in the reasonable opinion of CJ Systems, the Customer is in breach of this Agreement;
(b) CJ Systems is required to do so by operation of law or a governmental authority so requires or
(c) to protect the CJ Systems Equipment or the services that CJ Systems provides to its other customers.

**4.4** CJ Systems shall provide the Customer with not less than 48 hours advance notice of its intention to suspend the Services under Clause 4.3 unless CJ Systems has reasonable grounds not to do so.

## 5. CUSTOMER OBLIGATIONS

**5.1** It is a condition of this Agreement that the Customer shall at all times use the Services in accordance with the Acceptable Use Policy and the Customer acknowledges that CJ Systems shall be entitled to monitor and audit the Customer's use of the Services to ascertain the Customer's compliance with the Acceptable Use Policy and this Agreement.

**5.2** The Customer shall use appropriate security precautions in connection with its use of the Services and shall comply with the Customer Laws. The Customer shall provide such Customer Materials, information, resources and assistance in a timely manner as CJ Systems shall reasonably require including providing CJ Systems with reasonable assistance in investigating the cause of Service outages, security problems and any suspected breach of this Agreement.

**5.3** If required by CJ Systems, the Customer shall prepare the Premises in accordance with CJ Systems' reasonable instructions and provide CJ Systems (or its' third party suppliers) with reasonable access to the Premises at times to be agreed. In the event that CJ Systems has ordered third party equipment and/or assistance on behalf of the Customer as a result of the Services ordered by the Customer, then the Customer will be responsible for the reasonable costs arising from the Customer's failure to provide access to the Premises on the dates and at the times agreed by the parties.

**5.4** CJ Systems may give directions about the use of the Services to the Customer which CJ Systems thinks is reasonably necessary in the interests of safety or the quality of service to CJ Systems' other customers. The Customer shall comply with all such reasonable directions.

**5.5** CJ Systems may have to move the location of certain CJ Systems Equipment and/or Customer Equipment subject to reasonable prior written notice to Customer. The Customer agrees that upon receipt of such notice from CJ Systems, CJ Systems shall be free to move any such equipment as it sees fit and wherever reasonable CJ Systems will endeavour to minimise any adverse impact on the Services to the Customer associated with relocation. There shall be no additional cost to "in contract" Customer arising from such relocation.

## 6. CHANGE PROCESS

**6.1** CJ Systems may make any changes to this Agreement (including to this MSA, Acceptable Use Policy, Service Description or SLA) as it deems necessary from time to time to take into account operational, legal and technical matters [including the terms on which its third party providers provide CJ Systems with services]). CJ Systems' rights under this Clause shall not extend to changes to the Fees which shall be governed by the remaining terms of this Agreement.

**6.2** Notwithstanding the provisions of Clause 6.1 CJ Systems will ensure that any change(s) applied to a Service Description provide functionality and/or features equivalent to or exceeding the functionality and/or features for that Service prior to the change(s).

**6.3** Changes made pursuant to Clause 6.1 shall be notified to the Customer by posting the changes to the CJ Systems Website and shall be deemed to be incorporated into this Agreement and be legally binding on the parties with effect from the date such posting is made. CJ Systems will endeavour to give 30 days' notice of any such changes but any failure to give such notice shall not act to prevent such changes having full contractual effect.

**6.4** Notwithstanding any other provision of this Agreement, in the event that Service(s) is/are changed due to:

(a) the Customer's or CJ Systems' decision to terminate a Service(s) in accordance with this Agreement;
(b) CJ Systems' suspension of a Service(s) under Clause 4.3;
(c) an event where CJ Systems is required to amend a Service(s) due to the act or omission of the Customer or
(d) any regrade, replacement order, renewal or any material change to the commercial and/or operational nature of the Service whatsoever

any Credits or Service Credits that have then accrued to the Customer in respect of the affected Service(s), CJ Systems shall no longer have any liability to the Customer in respect of such Credits.

## 7. FEES FOR THE SERVICES

**7.1** CJ Systems shall provide a valid VAT invoice to the Customer for the Fees.
The Customer shall pay to CJ Systems the Fees for the Services calculated and payable as specified in the Order Form(s). Where more than one Service is included on any Order Form(s), CJ Systems may invoice the Fees for each of the Services separately.

**7.2** The provision of the Services may be subject to the completion of an installation site survey which may result in the Customer incurring additional charges. Such charges shall be mutually agreed by the parties. CJ Systems shall not be obliged to conduct such site surveys until the charges for such surveys have been agreed by the parties.

**7.3** CJ Systems may alter the amount of, or payment terms relating to the Fees at any time during the Term for the following reasons:

(a) to take account of any increase in the costs incurred by CJ Systems in the implementation or delivery of the Services (including any increase in the costs or charges of any third party supplier or licensor to CJ Systems);
(b) to pass on any increase in data centre and/or power charges imposed by any third party supplier to CJ Systems at any time or
(c) to pass on any increase in charges imposed by any telecommunications supplier to CJ Systems at any time.

CJ Systems shall notify the Customer through the CJ Systems Website of any such increase and shall endeavour to give the Customer not less than 30 days' prior notice of such charges.

**7.4** Fees may be increased by CJ Systems once at any time in each Contract Year by the rate of increase in the Retail Prices Index during the preceding 12 month period or 3% whichever is the higher.

**7.5** Fees paid are non-refundable in any circumstances except where expressly stated otherwise in this Agreement. If the Customer terminates the Services, CJ Systems will not refund Fees paid in advance by the Customer save where this Agreement or a Service is terminated by the Customer pursuant to Clause 10.4 or Clause 10.5.

**7.6** All Fees are stated exclusive of Value Added Tax which shall be paid by the Customer at the rate prevailing from time to time.

**7.7** Fees do not include charges for any third party communications services required by the Customer to connect the Customer to the Services unless otherwise stated in the Order Form.

**7.8** Where CJ Systems provides advanced support, custom programming, configuration or software set up which is not referred to in an Order
Form or a SOW, then it may charge the Customer additional Fees which will be calculated on a time and materials basis at CJ Systems' standard consultancy rates in place from time to time. No such work will be undertaken or Fees incurred without the prior written approval of the Customer.

**7.9** If a Customer reports a Service issue which results in either CJ Systems or a CJ Systems third party engineer attending the Premises and the Customer has not followed the CJ Systems support team's procedure for trouble-shooting a Service issue as set out in this Agreement or otherwise notified to the Customer by CJ Systems in advance in writing and it is determined that the issue is due to an act or omission of the Customer or a third party acting on its behalf, CJ Systems may charge the Customer for the engineer's time ("Engineer Fees"). Engineer Fees will be calculated on a time and materials basis at CJ Systems' standard rates in place from time to time for each site visit provided that CJ Systems has notified the Customer of such rates in advance.

**7.10** Where CJ Systems is providing the Customer with International Services and the applicable exchange rate for that country against Sterling appreciates by more than 5% calculated from the Service Commencement Date for such International Services then CJ Systems may increase the Fees for such International Services by the same percentage as the total appreciation in the exchange rate by giving not less than 30 days' notice in writing to the Customer.

**7.11** If payment of any Fees is not made in full by the Customer by the due date for payment under the terms of this Agreement, CJ Systems may at its discretion and without prejudice to its other rights and remedies:

(a) suspend the provision of the Services to the Customer until such time as all overdue amounts (including any interest due which shall be charged on any overdue amounts at the rate of 2% per annum above Barclays Bank plc. base rate for the time being, calculated from the date of the invoice to the date actual payment is received, whether before or after judgment) are paid in full; and/or
(b) set-off such sums against any sums due to the Customer.

**7.12** CJ Systems may charge the Customer an administration fee in respect of any cheques and direct debits returned unpaid by the Customer's bank and any credit card payments returned unpaid.

**7.13** In the event of the replacement, upgrading, reconnection or other amendment of the Services, CJ Systems reserves the right to issue parallel billing to facilitate the transition between the existing Services and the new Services. Any derogation from the provisions in this clause is at the sole and exclusive discretion of CJ Systems and includes any "overlap" derogation between the Fees for existing Services and newly added Services.

**7.14** All Fees due under this Agreement shall be paid in full without any deduction or withholding of, or in respect of, any tax unless required by law. If any such withholding or deduction is required, the Customer shall, when making the payment to which the withholding or deduction relates, pay to CJ Systems such additional amount as will ensure that CJ Systems receives the same total amount that it would have received if no such withholding or deduction had been required.

## 8. CONFIDENTIALITY

**8.1** Each party (the "receiving party") shall hold and keep confidential all Confidential Information of the other party (the "disclosing party") during the Term and thereafter shall not directly or indirectly disclose any such Confidential Information to any third party without the express written permission of the disclosing party.

**8.2** Nothing in this Clause 8 shall prevent the receiving party from disclosing:-

(a) any Confidential Information of the disclosing party to any Affiliate, consultant, subcontractor or other person provided that such disclosure is reasonably necessary for the purposes of this Agreement and that the receiving party has ensured that the recipients are made aware of and agree to provisions no less onerous than this Clause 8 in relation to such Confidential Information;

(b) any Confidential Information which is or becomes public knowledge other than by a breach of this Clause 8;

(c) any Confidential Information which must be disclosed (as required by law, regulation or order of a competent authority) to any governmental or regulatory body or for any legal or judicial proceedings provided always that the receiving party shall notify the disclosing party of such disclosure in advance (where permitted by law) and shall follow such reasonable instructions of the disclosing party where permissible by law.

**8.3** Each party acknowledges that any Confidential Information obtained from or relating to the other party or any of its Affiliates in the course of negotiating or in the performance of this Agreement is and shall remain the property of the other party or the relevant Affiliate as applicable.

**8.4** Notwithstanding the provisions of this Clause 8, CJ Systems may refer to the Customer by company or trading name and to the existence of this Agreement in any marketing or promotional materials of CJ Systems or any CJ Systems Affiliate (including the CJ Systems website).

## 9. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

**9.1** All right, title and interest to and all Intellectual Property Rights in the Service Deliverables shall remain vested in CJ Systems, the CJ Systems Affiliates and/or CJ Systems' suppliers and licensors as applicable. The Customer shall not do, or omit to do, anything which may jeopardise, limit or interfere in any manner with CJ Systems' rights (or the rights of its Affiliates, suppliers and/or licensors) in the Service Deliverables.

**9.2** Without prejudice to Clause 9.1, where in the course of the provision of the Services, CJ Systems provides any Service Deliverables which are owned or licensed by any third party (which shall include any CJ Systems Affiliate) or in which any Intellectual Property Rights are vested in a third party, the Customer shall comply in full with all licence or other agreements applicable to the use of such third party Service Deliverables (as may be amended from time to time) and as notified to Customer.

**9.3** CJ Systems acknowledges and agrees that all property and other Intellectual Property Rights wherever in the world enforceable, including all rights, title and interest in and to the Customer Materials and all documents, data and other materials or items relating thereto including all modifications and derivative works thereto, and any and all accrued rights of action therein shall immediately upon creation or performance vest in and shall be and remain the sole and exclusive property of the Customer.

**9.4** The Customer acknowledges and agrees that it will not, whether during the Term or at any time after termination of this Agreement, in any way question or dispute the legal and beneficial ownership by CJ Systems of the Intellectual Property Rights in the Services or the Service Deliverables (or any part thereof).

**9.5** In the event that new inventions, designs, processes or Intellectual Property Rights are created by CJ Systems during its provision of the Services, the Customer acknowledges and agrees that the same shall be the sole property of CJ Systems absolutely.

## 10. TERM AND TERMINATION

**10.1** Subject to this Clause 10, each of the Services will commence on the applicable Service Commencement Date and shall continue for the Initial Term. If the Services are specified within the Order Form as being Replacement Services, then a new Initial Term shall apply for the Replacement Services. At the end of the Initial Term, each Service will be automatically renewed for the Renewal Term and thereafter for consecutive Renewal Terms unless or until such Services are terminated pursuant to this Agreement.

**10.2** Both CJ Systems and the Customer may terminate the provision of any of the Services at the end of the Initial Term or any Renewal Term for such Services by providing not less than the Minimum Written Notice to the other party prior to the expiry of the Initial Term or the relevant Renewal Term (as the case may be). If Minimum Written Notice is not provided by the Customer to CJ Systems, a Renewal Term will commence on expiry of the then current term.

**10.3** CJ Systems may terminate this Agreement and/or the provision of any of the Services at any time immediately upon written notice to the Customer if:

(a) the Customer is in material breach of this Agreement which is capable of remedy and has failed to remedy such breach within 30 days of a written request from CJ Systems to do so. Any failure by the Customer to pay any sum due under this Agreement by the due date for payment shall, without limitation, be a material breach of this Agreement which is capable of remedy for the purposes of this Clause 10.3 (a);

(b) the Customer is in material breach of this Agreement which is incapable of remedy. A breach of Clauses 5.1, 5.2, 8 or 9.5 by the Customer shall, without limitation, be a material breach of this Agreement which is incapable of remedy for the purposes of this Clause 10.3 (b);

(c) it becomes unlawful for CJ Systems (or any other third party supporting the Services) to continue to provide the Services or CJ Systems or any other third party supporting the Services is required to cease the Services by a competent regulatory authority; or

(d) any other third party supporting the Services ceases to provide its services to CJ Systems or otherwise materially changes the terms on which it provides its services to CJ Systems beyond the reasonable control of CJ Systems.

**10.4** The Customer may terminate this Agreement at any time immediately upon written notice to CJ Systems if:

(a) CJ Systems is in material breach of this Agreement which is capable of remedy, and has failed to take steps to remedy such breach within 30 days of a written request from the Customer to do so; or

(b) CJ Systems is in material breach of this Agreement which is incapable of remedy.

**10.5** Notwithstanding the provisions of Clauses 10.3 and 10.4, either party may terminate this Agreement and/or the provision of Services immediately upon written notice to the other in the event of:

(a) the other party becoming insolvent, entering into liquidation, whether voluntary or compulsory, passing a resolution for its winding up, having a receiver or administrator appointed over the whole or any part of its assets, making any composition or arrangement with its creditors or taking or suffering any similar action in consequence of its debt; or

(b) Clause 15.2.

**10.6** Termination of a Service shall not affect other contracted Services which shall continue subject to the remaining terms of this Agreement.

**10.7** Subject to earlier termination in accordance with its terms, this Agreement shall continue in force so long as the Services remain in force.

**10.8** Upon termination of this Agreement or the provision of any of the Services:

(a) the Customer shall immediately stop using the affected Services and the Customer's right to use the affected Services shall immediately cease;

(b) any licences granted by CJ Systems under this Agreement in respect of the affected Services shall terminate; and

(c) the Customer shall remain liable for all outstanding Fees for Services duly performed including any termination or cancellation fees referred to in this Agreement.

(d) all CJ Systems Equipment used by the Customer in respect of the affected Services shall be returned to CJ Systems by the Customer. If all such CJ Systems Equipment is not returned to CJ Systems within 5 Working Days after termination of this Agreement or the applicable Service(s) then CJ Systems may invoice and be paid by the Customer for the full replacement value of the CJ Systems Equipment.

(e) Upon termination, CJ Systems will upon the Customer's request and in CJ Systems' reasonable discretion provide reasonable assistance to facilitate the migration of the Services to the Customer or a replacement supplier. Such assistance is subject always to:

(i) payment by the Customer of CJ Systems' then prevailing charges for such assistance; and

(ii) full co-operation from the Customer and/or the new supplier; and

(iii) agreement between the parties of a fully scoped and mutually agreed migration plan.

(f) On Customer's request, CJ Systems will deliver to the Customer all Customer data and Materials in the Supplier's (or any of its subcontractors) possession.

**10.9** The following Clauses shall survive the termination or expiry of this Agreement: 1, 2.2, 3.3, 7, 8, 9, 11, 12, 13.5, 16 and 17.10.

## 11. WARRANTIES

**11.1** Each party warrants that it has full capacity and authority, all necessary licences, permits and consents to enter into and perform its obligations under this Agreement.

**11.2** CJ Systems warrants that:

(a) it shall provide the Services using reasonable care and skill in accordance with the standards prevailing in the industry for similar services to the Services.

(b) the Services shall be provided in compliance with the Supplier Laws.

**11.3** CJ Systems does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements.

**11.4** Save as expressly set out in this Agreement, all conditions, warranties, representations, express or implied, statutory or otherwise (including the fitness of the Services for a particular purpose) are hereby excluded to the fullest extent permissible by law.

## 12. LIABILITY

**12.1** The Customer shall indemnify and keep CJ Systems indemnified against any and all costs, claims, losses, liabilities, proceedings and expenses (including legal fees) which are brought or threatened against CJ Systems or a CJ Systems Affiliate by any person arising out of or in connection with the Customer's breach of the Acceptable Use Policy.

**12.2** In relation to the indemnity under Clause 12.1 CJ Systems shall

(a) notify the Customer in writing of any claim or potential claim brought by a third party falling within the scope of the indemnity (a "Claim");

(b) make no admission of liability or settlement in respect of the Claim without the Customer's prior written consent, such consent not to be unreasonably withheld or delayed;

(c) provide the Customer with all information and assistance that the Customer may reasonably require in relation to the Claim (at the Customer's sole expense); and

(d) allow the Customer control over the litigation and settlement of the Claim provided that the Customer keeps CJ Systems fully and regularly informed as to the progress of the Claim and that the Customer conducts such Claim with all due attention and skill. In the event that CJ Systems is not satisfied with the Customer's conduct of the Claim at any time, CJ Systems may take over the conduct of the Claim and may settle or defend any such Claim as it thinks fit without requiring the consent of the Customer.

**12.3** Nothing in this Agreement shall exclude or limit either party's liability for

(a) death or personal injury resulting from its negligence or that of its employees, agents or subcontractors;

(b) fraud or fraudulent misrepresentation;

(c) wilful or deliberate default; or

(d) any other matter for which liability cannot be excluded or limited as a matter of law.

**12.4** Subject to Clause 12.3, neither party shall be liable in contract and tort (including negligence) howsoever arising out of or in connection with this Agreement (including any collateral contract) for any:-

(a) indirect, special or consequential loss of damage; or

(b) loss of profits, business opportunities, revenue, anticipated savings; wasted expenditure, goodwill or for any loss or corruption or destruction of data.

**12.5** Subject to clause 12.3, Customer's exclusive remedy for breach of the Service Levels shall be the applicable Service Credits payable by CJ Systems for such breach.

**12.6** Subject to Clauses 12.3, 12.4 and 12.5, each party's liability in contract, tort or otherwise (including negligence) howsoever arising out of or in connection with this Agreement (including any collateral contract) shall, in respect of any one incident or any connected incidents, not exceed the total Fees payable by the Customer in the calendar year in which the incident (or series of connected incidents) giving rise to the liability occurs or £500,000, whichever is the lower. Notwithstanding the previous provisions of this Clause, each Party's total aggregate liability under or in connection with this Agreement shall not exceed £500,000.

**12.7** Subject to Clause 12.3, CJ Systems is not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communications networks and facilities including the internet not under the control of CJ Systems or its contractors. The Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

**12.8** The Customer accepts that CJ Systems has no control over the information transmitted to or from the Services and that CJ Systems does not ordinarily examine the use to which customers put the Services or the nature of the information they are sending or receiving. The Customer agrees that CJ Systems is a mere conduit in accordance with the Electronic Commerce (EC Directive) Regulations (2002). CJ Systems hereby excludes all liability of any kind arising from the transmission or reception of information of whatever nature through the Services to the fullest extent permissible by law.

## 13. CUSTOMER DATA AND PROTECTION

**13.1** As between the parties the Customer shall own all Intellectual Property Rights in the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

**13.2** Subject to the remaining provisions of this Clause 13, in the event of any loss or damage to Customer Data by CJ Systems, the Customer's sole and exclusive remedy shall be for CJ Systems to use reasonable endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by CJ Systems where the Customer has elected to purchase such data back-up services. CJ Systems shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party not under its direct control.

**13.3** If CJ Systems processes any Personal Data (as defined in Data Protection Legislation) on the Customer's behalf when performing its obligations under this Agreement, the parties record their intention that the Customer shall be the Data Controller and CJ Systems shall be a Data Processor of such Personal Data and in any such case:

(a) each party shall comply with its respective obligations under Data Protection Legislation in respect of any Personal Data related to either party's employees, customers and agents which comes into the receiving party's possession;

(b) CJ Systems shall process the Personal Data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the Customer from time to time;

(c) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage;

(d) CJ Systems shall promptly notify the Customer of any unauthorised or unlawful disclosure or use of Personal Data of which it becomes aware and shall promptly provide all related information to the Customer;

(e) CJ Systems shall not transfer Personal Data outside the European Economic Area without the Customer's prior written approval;

(f) the Customer shall ensure that the Customer is entitled to transfer the relevant Personal Data to CJ Systems so that CJ Systems may lawfully process the Personal Data in accordance with this Agreement on the Customer's behalf;

(g) CJ Systems shall assist the Customer at the Customer's sole cost to comply with any valid requests for access to Personal Data received by the Customer; and

(h) CJ Systems will notify the Customer if it receives any requests for access to Personal Data and shall comply with the Customer's reasonable instructions in this regard at the Customer's sole cost.

**13.4** Defined terms used in this Clause 13 shall bear the same meaning as those terms are defined in Data Protection Legislation.

**13.5** The Customer acknowledges that CJ Systems may use Customer Data in an anonymised format for CJ Systems' own purposes, including the production of aggregated reports for the purposes of marketing the Services and other commercial purposes.

**13.6** Title to the Customer Data and all Intellectual Property Rights in it shall remain the property of the Customer.

## 14. NOTICES

**14.1** Any notice required to be given under or in connection with this Agreement shall be in writing and shall be served by delivering it personally or by sending it by pre-paid first-class post, recorded delivery or registered post, or by fax or email by the Customer to CJ Systems at: CJ Systems Limited, Unit 4J, Westpark 26, Wellington, Somerset TA21 9AD, fax: +44 (0) 1823 478516; email info@cjsystems.co.uk and by CJ Systems to the Customer to the address, fax number and/or email address set out on the Order Form (or to such other address as either party may have notified to the other party in accordance with this Clause 14.1)

**14.2** A notice shall be deemed to have been received:

(a) if delivered personally at the time of delivery;
(b) if delivered by post, 3 Working Days from the date of posting;
(c) if sent by fax or email, the same Working Day of sending.

## 15. FORCE MAJEURE

**15.1** Neither party to this Agreement shall be liable to the other for any delay or non-performance of its obligations under this Agreement to the extent that such delay or non-performance is due to a Force Majeure Event. The Customer may not rely on a Force Majeure Event for any delay or non-performance of any obligation to pay CJ Systems the Fees under this Agreement.

**15.2** Either party may, during the continuance of any Force Majeure Event, terminate this Agreement by written notice to the other party if a Force Majeure Event occurs that affects all or a substantial part of the Services and which continues for more than 30 Working Days.

## 16. NON SOLICITATION

**16.1** Each party agrees during the term of this Agreement and for a period of 1 year following its termination not to solicit or induce any officer, employee, agent or contractor of the other party involved with the provision of the Services or the management of this Agreement or any significant part thereof to terminate their employment or engagement with the other.

**16.2** If a party is found to be in breach of the above mentioned non-solicitation Clause, then that party agrees to compensate the other with a one-off payment of whichever is the lesser of (a) £100,000 or (b) the gross annual salary of the officer, employee, agent or contractor of the other party so solicited or induced.

## 17. GENERAL

**17.1** This Agreement constitutes the entire agreement and understanding between the parties in respect of the matters set out in the Agreement and supersedes any previous agreement between the parties in relation to such matters.

**17.2** The Customer acknowledges that, in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) except as expressly provided in this Agreement. The only remedy available to the Customer in respect of any such statement, representation, warranty or undertaking shall be for breach of contract under the terms of this Agreement. Nothing in this Clause 17.2 shall operate to exclude any liability for fraud.

**17.3** CJ Systems may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under this Agreement and may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party. The Customer shall not, without the prior written consent of CJ Systems, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under this Agreement.

**17.4** A person who is not party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act (1999) to enforce any term of this Agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

**17.5** A waiver of any right under this Agreement is only effective if it is in writing and signed by the waiving party, and it applies only to the person to whom the waiver is addressed and the circumstances for which it is given.

**17.6** The relationship of the parties is that of independent contractors dealing at arm's length. Except as otherwise stated in this Agreement, nothing in this Agreement shall constitute the parties as partners, joint venturers or co-owners, or constitute either party as the agent, employee or representative of the other, or empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other, and neither party shall hold itself out as having authority to do the same.

**17.7** No modification or variation of this Agreement (or any document entered into pursuant to or in connection with this Agreement) shall be valid unless it is in writing and signed by or on behalf of each of the parties to this Agreement. Unless expressly set out herein, no modification or variation of this Agreement shall: (i) be valid if made by e-mail; (ii) constitute or be construed as a general waiver of any provisions of this Agreement; and (iii) affect any rights, obligations or liabilities under this Agreement which have already accrued up to the date of such modification or waiver. The rights and obligations of the parties under

this Agreement shall remain in full force and effect, except and only to the extent that they are so modified or varied.

**17.8** All disputes between the parties arising out of or relating to this Agreement or the breach, termination or validity thereof will be referred by either party in writing, first to each party's authorised representative. The authorised representatives will meet and attempt to resolve the dispute within a period of 30 Working Days of the date of the referral of the dispute to them.

**17.9** By entering into this Agreement the Customer is warranting and representing that it does so in the course of its business and not as a consumer.

**17.10** This Agreement is subject to the laws of England and Wales and both parties hereby submit to the exclusive jurisdiction of the English Courts in respect of any dispute arising under or in connection with this Agreement.