

SERVO LIMITED t/a ICM - GENERAL TERMS AND CONDITIONS

This agreement is between Servo Limited trading as ICM (registered no. 01983540) whose registered office is at ICM House, Oakwell Way, Oakwell Business Park, Birstall, West Yorkshire, WF17 9LU ("ICM"); and the Customer detailed in the schedule A hereto ("the Customer").

These General Terms and Conditions sets out the terms and conditions applicable to the Services which ICM provides to the Customer. Services will be provided under these General Terms and Conditions together with one or more Service Modules, a Schedule A, one or more Schedules and Service Delivery Documents and identified as such, all of which will be regulated by these General Terms and Conditions.

1. DEFINITIONS

The definitions in this clause 1 apply except where an alternative definition is given in an applicable section of a Service Module in which case the definition in the Service Module shall take precedence for purposes of the Services specific to the said Service Module:

"Acquired Rights Directive" means the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended and replaced from time to time.

"Additional Charge" means charges stipulated in these General Terms and Conditions, a Service Module or a Service Delivery Document as being payable in addition to the annual charges stipulated in Schedule A.

"Agreement" means such Service Modules, Schedule A, Schedules and Service Delivery Documents pertaining to specific Services read together with these General Terms and Conditions.

"Charges" means any and all charges payable by the Customer to ICM in respect of the Service(s).

"Commencement Date of Services" means the date specified in Schedule A for the start of the Service(s).

"Confidential Information" has the meaning given to it in clause 14.

"Customer Premises" means the address(es) listed in the Schedule(s) where the Equipment are operated and/or the Services are rendered, and in the event of sale of Goods for which ICM has undertaken delivery, the address where the Customer has requested ICM to deliver the Goods to.

"Delivery Date" means the agreed date for delivery of the Goods, where ICM has undertaken delivery of the Goods.

"Equipment" means equipment as defined in the individual Service Modules.

"Effective Date" means the date upon which any subsequent amendments to the Agreement shall commence.

"General Terms and Conditions" means the terms and conditions set out in this document.

"Goods" means software and hardware purchased by the Customer from ICM.

"Minimum Term" means the term specified as such in Schedule A.

"Personnel" means the individual employed or otherwise engaged by ICM in compliance with its obligations in terms of these General Terms and Conditions and any Agreement, who may or may not be an employee of ICM.

"Prescribed Rate" means rate of interest of four (4) per cent per annum above the base rate from time to time of the Royal Bank of Scotland or such other clearing bank as ICM may from time to time specify or (in the event of base rates being no longer published or used) such other comparable rate of interest as ICM may from time to time specify.

"Public Electronic Communications Network" means a public communications network as set out in Clause 151 of the Communications Act 2003 and includes an Electronic Communications Network falling within Clause 32(1) of the Communications Act 2003 as amended and/or replaced from time to time.

"Purchase Price" means the charges payable by the Customer for the purchase of Goods.

"Relevant Policies" means ICM's Anti-bribery and Anti-Corruption Policies available on ICM's website which ICM may update them from time to time.

"Relevant Requirements" means all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010.

"Schedule" means the Schedules other than Schedule A included in this Agreement stipulating inter alia the Service elected and such other service specific details as may be provided for in a Service Module.

"Schedule A" means a schedule to be provided by ICM stipulating inter alia, the Minimum Term and annual Charges payable.

"Service(s)" means the service(s) which are specified in the applicable Schedule as services to be provided by ICM under this Agreement and described in the attached Service Module(s).

"Service Module(s)" means service specific terms issued as part of the Agreement containing additional terms and conditions that apply to the Services described in the said Service Module.

"Service Delivery Document" means a document and subsequent amendments thereof that ICM may issue at its sole discretion in conjunction with a Service Module as part of the Agreement providing additional information regarding the Services specific to the said Service Module pertains.

"TUPE" means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981/1794) as amended and/or replaced or any other regulations or UK legislation implementing the Acquired Rights Directive.

2. THE AGREEMENT

2.1. An Agreement will only become binding and effective once ICM has received a duly signed copy of the Agreement back from the Customer.

2.2. The Customer will include a valid purchase order for the Services stipulated in the Agreement with every signed Agreement returned to ICM and ICM reserve the right to suspend the Agreement without notice until such time as it has received a valid purchase order.

3. PRECEDENCE

3.1. In the event and to the extent only of any ambiguity between these General Terms and Conditions, a Service Delivery Document, any Service Module, Schedule A and Schedules the order of precedence shall be:

- 3.1.1. these General Terms and Conditions;
- 3.1.2. the Service Module(s);
- 3.1.3. Schedule A;
- 3.1.4. Schedules; and
- 3.1.5. the Service Delivery Document(s).

3.2. Any additional terms and conditions included within any ancillary document of the Customer (including without limitation the Customer's purchase order terms and conditions or the Customer's order number) shall not be incorporated within the Agreement.

4. ICM WARRANTIES

4.1. The Service will be performed by Personnel who have the appropriate experience, qualifications and training.

4.2. The Personnel will use reasonable care and skill in the provision of the Service.

5. TERM

5.1. This Agreement shall commence on the Commencement Date of Services and continue (unless Schedule A stipulates the Minimum Term as "Fixed Term" in which event the Agreement will terminate automatically at the end of the Minimum Term) subject to the provisions of this Agreement for the Minimum Term stipulated in Schedule A following which it shall continue for subsequent 12 (twelve) month periods unless terminated by either party serving 6 (six) months written notice to expire either:

- 5.1.1. on the end of the Minimum Term; or
- 5.1.2. after the end of the Minimum Term but on a subsequent anniversary of the Commencement Date of Service.

5.2. A notice of termination under clause 5.1 will only be effective if sent by means of registered post to the recipient's address stipulated on Schedule A and only after it has been received by the recipient.

6. PURCHASE ORDER

6.1. ICM has agreed to render the Services and deliver the purchased Goods, subject to clause 6.2 and only once this Agreement has been signed by a duly authorised representative of both ICM and the Customer.

6.2.

6.2.1. The Customer will provide ICM with a valid customer purchase order for the purchase of all Services (at least for the first annual Charges) and Goods, in the case of Services, prior to signature of this Agreement, and in the case of purchase of Goods, at the stage when the order for the Goods is placed with ICM.

6.2.2. All purchase orders are subject to acceptance and availability of Goods.

6.2.3. For the avoidance of doubt, ICM shall be entitled to refuse any purchase order for any reason whatsoever.

6.2.4. No purchase order for Goods shall become binding upon ICM until such time as ICM has provided the Customer with an order

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- number.
- 7. CHARGES, PURCHASE PRICE AND PAYMENT**
- 7.1. The Customer shall pay:
- 7.1.1. the Charges specified in Schedule A (which will be invoiced in advance of the Services being rendered) and subject to clause 7.8, annually in advance and within the time period stipulated in clause 7.3 unless a different payment interval is stated Schedule A;
- 7.1.2. the Additional Charges which will be invoiced at the end of the month during which the Additional Charges were accrued and will be payable within the time period stipulated in clause 7.3; and
- 7.1.3. subject to clause 7.2, the Purchase Price for Goods (which will be invoiced on receipt of Goods) within the time period stated in clause 7.3.
- 7.2.
- 7.2.1. The Purchase Price will change and the changed price will apply to any purchase for Goods if, prior to delivery of the Goods, ICM discovers an error in the price of the Goods ordered or the price changes as a result of circumstances beyond ICM's control.
- 7.2.2. If ICM is delayed in or prevented from delivering or installing the Goods, where such delivery and installation has been agreed to by ICM, by the date agreed to, due to any delay or default on the part of the Customer and/or its employees, agents or representative, ICM may, in addition to any other remedies it may have, make a reasonable charge in respect of any additional costs thereby incurred. These additional costs will be invoiced and paid as stipulated in clause 7.1.2.
- 7.3. All Charges, including Additional Charges and the Purchase Price are payable in full and cleared funds and within 30 (thirty) days of invoice.
- 7.4. At the end of the Minimum Term and where the Agreement continues as provided for in clause 5.1, ICM will increase the annual Charges effective from the beginning of the subsequent period immediately following the Minimum Term:
- 7.4.1. where the Minimum Term was for a period of 3 (three) years or less, with 10% (ten percent) unless the parties agree otherwise in writing; and
- 7.4.2. where the Minimum Term was for a period of more than 3 (three) years, with 20% (twenty percent) unless the parties agree otherwise in writing.
- 7.5. Where the Customer has failed to pay undisputed Charges within the time period stipulated in this Agreement and such undisputed Charges remain unpaid for a period of 15 (fifteen) days after the Customer has received a written notice from ICM demanding payment, all Charges for the remainder of the Minimum Term or, where applicable any extension thereof, will forthwith become immediately payable and ICM will be entitled to proceed with legal proceedings for the recovery of all such Charges.
- 7.6. All Charges are expressed exclusive of, and the Customer shall be responsible for and pay all applicable levies and taxes including value added tax in respect of the use and maintenance of the Services at the time when payment for the Charges is due.
- 7.7. ICM may charge interest on any overdue amounts at the Prescribed Rate.
- 7.8. ICM will increase the Charges with effect from each anniversary of the Commencement Date of Services. Such increased charges shall not exceed the percentage change(s) in the official United Kingdom Retail Price Index in the calendar year(s) immediately preceding that anniversary.
- 7.9. ICM in calculating the Charges has relied on the financial, commercial, technical and operational information provided by the Customer. Should this information prove to be inaccurate either by error, omission or misrepresentation then ICM reserves the right to review the annual Charges as detailed in this Agreement and increase as appropriate.
- 8. CUSTOMER OBLIGATIONS**
- 8.1. The Customer undertakes to ICM throughout the term of this Agreement to:
- 8.1.1. procure and provide such access to the Customer Premises as ICM shall require to discharge its obligations;
- 8.1.2. be responsible for the health and safety of the Personnel at the Customer Premises and will ensure that written notice of all health and safety policies and procedures pertaining to the applicable Customer Premises is provided to all Personnel attending the Customer Premises;
- 8.1.3. procure and provide all precautions to protect the health & safety of the Personnel while at the Customer Premises, including where practical the presence of a Customer representative in the area where ICM will be rendering the Services;
- 8.1.4. procure and provide a suitable and safe environment and such facilities at the Customer Premises as ICM shall require to discharge its operations (including without limitation adequate workspace, storage, electrical supplies, environmental conditions, cabling, office furniture and equipment);
- 8.1.5. at the request of ICM make available for the assistance of ICM in undertaking the Services all necessary documentation, information, system data and necessary assistance relating to the Services or required to perform the Services and provide staff familiar with the Customer's programs and/or applications and/or requirements of the Services, which staff will fully co-operate with the Personnel to enable the Services to be performed.
- 8.2. The Customer will be responsible for ensuring that the Services and Goods are suitable for their required purposes and capable of performing the functions and use to which it is intended to put them and for ensuring that the Services are suitable to fulfil the requirements of the Customer.
- 8.3. The Customer warrants that it has full capacity and all the necessary consents (including but not limited to, where it's procedures so require, the consent of its parent company) to enter into and to perform the Agreement and that this Agreement will be executed by a duly authorised representative of the Customer.
- 8.4. Where Goods are sold by ICM to the Customer the Customer shall at its own expense and prior to the delivery of the Goods:
- 8.4.1. obtain all necessary consent for the installation and use of the Goods, including consent for any necessary alterations to buildings;
- 8.4.2. ensure that any floor loading limits will not be exceeded;
- 8.4.3. provide suitable accommodation, foundations and environment for the Goods, including all necessary structural alterations, to permit installation, trunking, conduits and cable trays in accordance with all applicable installation standards unless such services are specifically contracted for under this Agreement;
- 8.4.4. provide electric power required for the installation, operation, test and maintenance of the Goods;
- 8.4.5. take up and remove in time to allow ICM to carry out any agreed installation all and any fitted or fixed floor coverings, ceiling tiles, suspended ceilings and partition covers and all other fittings that may prevent ICM from carrying out the agreed installation, and be responsible after completion of the agreed installation, any making good and decorators work required.
- 8.5. Where ICM has undertaken installation of the Goods:
- 8.5.1. the Customer shall at its own expense make available to ICM such items of magnetic media and consumable materials that may reasonably be requested by ICM in order to undertake the test as contemplated in clause 9.5; and
- 8.5.2. ICM will commence with installation of the Goods as soon as reasonably practicable after the actual delivery.
- 8.6. The Customer will ensure that all the Customer's employees, customers, representatives and visitors that may attend ICM and/or ICM sub-contractor premises comply with the policies and procedures, including health and safety and security policies and procedures that apply at the said premises.
- 9. DELIVERY, INSTALLATION AND RETURN OF GOODS**
- 9.1. Delivery charges are payable in addition to the Purchase Price and will be invoiced and payable in accordance with clause 7.1.2.
- 9.2. Where ICM has undertaken delivery of the Goods, the Goods may be delivered in advance of the Delivery Date upon the giving of reasonable notice to the Customer. The Customer shall make all arrangements to take delivery of the Goods whenever they are tendered for delivery.
- 9.3. The Delivery Date or any other agreed date when the Goods must be ready for service is an estimate only. ICM does not guarantee that the Goods will be delivered or ready for service on such date, nor will ICM be liable for failure to meet such date.
- 9.4. Where ICM has undertaken delivery, ICM shall deliver the Goods to the Customer Premises but ICM shall not be responsible for moving the Goods to its location at the Customer Premises unless ICM has agreed to undertake installation of the Goods.
- 9.5. Where ICM has undertaken installation of the Goods, ICM will carry out any tests necessary to ensure that the Goods are in working order. If it appears that the Goods or any part thereof are not in working order, ICM shall in its sole discretion adjust, repair or replace the Goods in order to ensure that the it is in working order within a reasonable time.
- 9.6. Return of goods can only take place:
- 9.6.1. once ICM has agreed thereto in writing in its sole discretion; and
- 9.6.2. if the request for return has been made within 14 days from date of invoice and the Goods has in fact been return to ICM within 14 days from date of ICM's written agreement referred to in 9.6.1; and
- 9.6.3. if the Goods are free of any damage of whatsoever nature and in a fully working and useable condition; and
- 9.6.4. if the Goods are properly packed and in a saleable condition; and
- 9.6.5. if the Goods are still covered by the warranty.

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- 9.7. ICM has the right to reject any return of Goods which does not comply with clauses 9.6.1 to 9.6.5 above.
- 9.8. ICM reserves the right to charge the Customer an administration charge for all Goods returned, to be invoiced by ICM and paid by the Customer as stipulated in clause 7.1.2.
- 9.9. If ICM accepts the return of Goods that are not in a saleable condition ICM will charge the Customer the costs of bringing the Goods into a saleable condition, to be invoiced by ICM and paid by the Customer as stipulated in clause 7.1.2.
- 10. OWNERSHIP, RISK AND WARRANTY**
- 10.1. Any Goods delivered to the Customer's Premises shall from the time of delivery be at the Customer's risk, whether or not installed, except as regards loss or damages caused by the negligence of ICM. Where ICM does not deliver the Goods, risk passes to the Customer when the Customer or its agent and/or representative take possession of the Goods.
- 10.2. Notwithstanding that Goods have been handed over and stand at the Customer's risk, ownership of the Goods shall not pass to the Customer until payment of the Purchase Price in full. At all times before payment of the Purchase Price in full:
- 10.2.1. the Goods shall stand in the Customer's books in the name of ICM;
- 10.2.2. the Customer shall take appropriate steps to notify third parties of ICM's interest in the Goods; and
- 10.2.3. and in the event of a threatened seizure of the Goods, or if appointment of a receiver or liquidator takes place, or any other event entitling ICM to terminate the Agreement materialises, the Customer shall immediately notify ICM and ICM shall be entitled to enter the Customer's Premises and reposes the Goods.
- 10.3. All Goods are sold subject to the applicable manufacturer provided warrantee and licensing agreements.
- 10.4. If ICM is notified of a fault in the Goods, during the period of warranty, if any, which is due to faulty design, manufacture or materials, of the negligence of ICM, ICM will at its sole discretion replace the Goods or repair the fault free of charge provided that:
- 10.4.1. the Goods have been properly kept, used and maintained in strict compliance with the applicable manufacturer and ICM's instruction, and has not been modified except with ICM's written consent;
- 10.4.2. the fault is not due to accidental or wilful damage (including lighting and electrical damage) interference with or maintenance of the Goods by persons other than ICM Personnel;
- 10.4.3. if the Goods has been manufactured, specified or configured according to the Customer's design, the fault is not due to faulty design by the Customer;
- 10.4.4. the fault is not due to fair wear and tear.
- 10.5. In the case of Goods that are capable of being installed by the Customer, the Customer will be required to return the faulty Goods to ICM unless ICM agrees otherwise.
- 10.6. ICM may make a reasonable charge, to be invoiced and paid as stipulated in clause 7.1.2, in respect of any visit to the Customer Premises at the Customer's request to repair Goods where either no fault is found to exist or if the fault is not covered by this guarantee.
- 11. CHANGE TO SERVICES**
- 11.1. Unless stated otherwise in a Service Module no change will be of force and effect until such time as any change is formally agreed in a written amendment and processed, and ICM shall continue to perform and to be paid in accordance with these General Terms and Conditions as if such change has not been requested or recommended.
- 11.2. Any agreement to a requested or recommended change shall become valid as an amendment to the applicable Agreement only when recorded in writing and signed by authorised representative of both parties and all changes agreed to by the parties will become effective on the Effective Date.
- 11.3. For the avoidance of doubt, a change of the Services within this Agreement shall be deemed to be a variation of this Agreement and shall not be deemed to be the creation of a new Agreement.
- 11.4. Any variation in the Charges arising due to a change in the Services shall be invoiced or credited pro rata from the Effective Date up to the date that the next invoice is due. Thereafter the revised Charges shall be consolidated within the main invoice.
- 11.5. The Customer will not be entitled to withhold payment of invoiced Charges as a result of requests, notices and/or negotiations for change to the Services.
- 11.6. Where a Service Module provides for the variation of Services, no such variation can take place when undisputed Charges, Purchase Price and Additional Charges invoices are outstanding and payable.
- 12. TERMINATION**
- 12.1. Without prejudice to clause 12.2, either party may terminate this Agreement forthwith by notice in writing if the other of them is in breach of this Agreement and shall have failed to remedy the breach within 30 (thirty) days of the receipt of a request in writing from the party not in breach to remedy the breach, such request indicating that failure to remedy the breach may result in termination of this Agreement.
- 12.2. Either party may without prejudice to any other rights terminate this Agreement with immediate effect by notice in writing to the other party if the other party becomes bankrupt, insolvent, or goes into liquidation (other than for the purpose of amalgamation or reconstruction) or makes any composition with its creditors or has a receiver or administrator appointed of the whole or any part of its assets or is subject to any similar or analogous event in any part of the world.
- 12.3. Without prejudice to any other right ICM may have, ICM may suspend and/or terminate this Agreement forthwith if payment of any sum due hereunder from the Customer is overdue by more than thirty days.
- 12.4. Termination of this Agreement howsoever arising shall not affect any accrued rights or liabilities of either party (including the right of ICM to payment for the notice period) arising up to and including the date of termination.
- 12.5. Where this Agreement is terminated by ICM under this clause 12, the Customer agrees that ICM will retain all Charges paid in advance by the Customer as part payment of the losses and damages that ICM will suffer as a result of the termination in addition to any other rights to recover losses and damages that ICM may have.
- 13. DATA PROTECTION**
- 13.1. The Customer may transfer personal data to ICM for ICM to process on the Customer's behalf. It is the joint intention of the parties that the Customer will be the data controller and ICM will be a data processor.
- 13.2. The Customer will ensure that the Customer is entitled to transfer the relevant personal data to ICM so as lawfully to allow ICM to process the personal data in accordance with the Agreement on the Customer's behalf. In addition, subject to ICM's compliance with its obligations under the Agreement, the Customer will be responsible for ensuring that the processing of the personal data complies with the Data Protection Act 1998 as amended and/or substituted from time to time.
- 13.3. ICM will process the personal data only in accordance with the terms of the Agreement and any lawful instructions given by the Customer from time to time.
- 13.4. Each party will take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or accidental loss or destruction of, or damage to, the personal data so that, having regard to the state of technological development and the cost of implementing any measures, the measures taken ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage in relation to the personal data and the nature of the personal data to be protected.
- 13.5. Each party will take reasonable steps to ensure the reliability of any of its own employees who have access to the personal data.
- 14. CONFIDENTIALITY**
- 14.1. Either party (the "Disclosing Party") may disclose to the other party (the "Receiving Party") confidential information of the Disclosing Party. Subject to clause 14.2, any information that is identified in the Agreement or at the time of disclosure by the Disclosing Party to the Receiving Party as confidential information or which ought reasonably to be regarded as confidential is "Confidential Information".
- 14.2. Confidential Information shall not include, or (as the case may be) shall no longer include, information that:
- 14.2.1. was in the public domain at the time of disclosure;
- 14.2.2. enters into the public domain through no fault of the Receiving Party;
- 14.2.3. was in the Receiving Party's possession free of any obligation of confidence at the time of disclosure;
- 14.2.4. is received from the Receiving Party from a third party under no obligation of confidence;
- 14.2.5. is developed by the Receiving Party independently of and without reference to the Confidential Information of the Disclosing Party; or
- 14.2.6. is identified in writing by the Disclosing Party as no longer being Confidential Information.
- 14.3. The Receiving Party shall:
- 14.3.1. use Confidential Information of the Disclosing Party only for the purposes of the Service;
- 14.3.2. not disclose such Confidential Information to others for any

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- purpose without the prior written consent of the Disclosing Party (unless such disclosure is required by law as confirmed by written legal advice);
- 14.3.3. limit dissemination of such Confidential Information to such of the Receiving Party's personnel as have a need to know it; and
- 14.3.4. protect such Confidential Information in the same manner as it protects its own confidential information and in any event in a reasonable manner.
- 14.4. The rights and obligations regarding disclosure and use of Confidential Information shall survive the expiry or earlier termination of the Agreement and the provision of the Services under it and endure for a period of three years after such expiry or termination.
- 15. EXCLUSION AND LIMITATION OF LIABILITY**
- 15.1. This clause sets out the entire financial liability of ICM (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:
- 15.1.1. any breach of the terms and conditions of the Agreement;
- 15.1.2. any use made by the Customer of the Services; and
- 15.1.3. any representations, statements or acts or omissions (including negligence) arising under or in connection with the Agreement in contract or tort.
- 15.2. The Customer acknowledges that:
- 15.2.1. given the nature of computer systems, ICM cannot warrant nor is it a condition of this Agreement that the operation of any hardware, software or firmware will always be uninterrupted or free from error. Subject to specific service levels contained in any Service Module, in the event of any failure of any hardware, software or firmware of ICM used by the Customer, the Customer shall in all such cases notify ICM where after ICM shall remedy any defect or cause it to be remedied within a reasonable time period, during which time no claim of whatsoever nature will be made against ICM;
- 15.2.2. even though ICM is providing Services and that these may (subject to the terms of the Agreement) be used by the Customer to assist in circumstances that would otherwise cause an interruption to the Customer's business, it is not intended that ICM will or should undertake liability for any loss of business or other similar losses that may arise due to any interruption to business (regardless of how such liability might otherwise arise); and
- 15.2.3. ICM will not be liable to the Customer for any loss or damages or breach where such loss or damages or breach is as a result of a failure of the Customer to comply with its obligations under this Agreement.
- 15.3. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Agreement.
- 15.4. Nothing in this Agreement shall exclude or limit either party's liability for:
- 15.4.1. death or personal injury resulting from negligence; or
- 15.4.2. any damage or liability incurred by either party as a result of fraud or fraudulent misrepresentation by the other party or its representatives; or
- 15.4.3. breach of any condition as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 as amended and/or substituted from time to time.
- 15.5. Subject to clause 15.4 ICM shall not under any circumstances be liable to the Customer for any of the following losses or damages and even if such losses and/or damages were foreseeable or in ICM's reasonable contemplation or ICM was advised of the possibility of them in advance:
- 15.5.1. loss of profits; loss of business; depletion of goodwill and/or similar losses; loss of anticipated savings; loss of goods; loss of use; loss of contract; or
- 15.5.2. any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; or
- 15.5.3. any loss to or interference with or corruption of any programs, information or data be it during the delivery or transmission of the same or otherwise, unless such liability has been expressly and specifically accepted in a Service Module;
- 15.5.4. any costs, damages, claims, penalties or proceedings whatsoever threatened or brought against the Customer as a result of the use of any programs or data which are supplied by the Customer for use on ICM equipment. The Customer will indemnify and keep indemnified ICM in respect of any costs, damages, expenses, claims, penalties or liabilities whatsoever incurred by ICM as a result of the programs or data, supplied by the Customer for use on ICM equipment, infringing any patent, copyright, database right, right of confidentiality or other intellectual property right or causes ICM to be held in breach of the law;
- 15.5.5. any loss or damage to or for the security of personal property and personal effects of the Customer's employees, customers, subcontractors, representatives and visitors except to the extent that it arises from the negligence of ICM and subject to the limitations contained in clause 15.
- 15.6. ICM's liability for loss of or damage to tangible property caused by its negligence or that of its employees, agents or subcontractors shall not exceed £2,000,000 (two million pounds) in respect of any one event or series of connected events.
- 15.7. Subject to clause 15.4, 15.5 and 15.6 ICM's total liability in contract, tort (including negligence), misrepresentation, or otherwise arising in connection with the performance or non-performance of this Agreement, or supply, non-supply or delay in supplying the Services, is limited in aggregate to twice the annual value of the Agreement, up to a maximum limit of £1,000,000 (one million pounds). For the avoidance of doubt the annual value shall be calculated as the Charges paid by the Customer for the first 12 (twelve) months of the Agreement.
- 15.8. In no event shall ICM be liable to the Customer for failure or delay in providing the Services or Goods caused by or resulting from an act or omission of the Customer.
- 15.9. The exclusions from and limitations of liability set out in this clause 15 shall be considered severally. The validity or unenforceability of any one clause, sub-clause, paragraph or sub-paragraph of this clause 15 shall not affect the validity or enforceability of any other part of this clause 15.
- 15.10. The provisions of this clause 15 shall survive the termination of this Agreement.
- 16. FORCE MAJEURE**
- 16.1. Neither party shall be liable for any breach of its obligations resulting from causes beyond its reasonable control including but not limited to any Act of God, strike, lock-out, or other industrial disturbance, utility outage, acts of public enemies, war, blockade, riot, lightning, fire, storm, flood, explosion, embargo, pandemic, or regulation(s) of any civil or military authority.
- 17. ENGAGEMENT OF STAFF & TUPE**
- 17.1. ICM will normally carry out work and render SERVICES during ICM's normal working hours, unless agreed otherwise in the Agreement pertaining to the applicable Services. ICM may agree to work outside ICM's normal working hours. All work rendered outside ICM's normal working hours will be subject to reasonable Additional Charges calculated by ICM on a time and material basis at its then prevailing rates.
- 17.2. ICM's Personnel engaged in the provision of the Services will remain under the management and control of ICM whatever degree of supervision may be exercised by the Customer over those Personnel and in no circumstances will the Customer become the employer of those Personnel.
- 17.3. Neither party shall directly or indirectly, during the duration of these General Terms and Conditions or at any time within twelve (12) months after the termination of these General Terms and Conditions:
- 17.3.1. solicit or entice away or employ or attempt to solicit or entice away or employ any of the other party's employees (other than as a result of a response to an advertisement as part of a bona fide recruitment process) who is directly associated with the performance of these General Terms and Conditions and/or an Agreement.
- 17.3.2. retain, engage or in any other way whatsoever (other than as a result of bona fide employment as referred to in clause 17.3.1) have the benefit of the services of the other party's employee who is directly associated with the performance of these General Terms and Conditions and/or an Agreement other than pursuant to the terms of these General Terms and Conditions and/or an Agreement.
- 17.4. The Customer warrants that the commencement of the provision of the ordered Services by ICM under an Agreement will not be a relevant transfer to which TUPE will apply in relation to any employees of the Customer or its suppliers. In the circumstances, the Customer warrants that no employees of the Customer will transfer to ICM by virtue of the operation of TUPE or the Acquired Rights Directive.
- 17.5. If any employee of the Customer or its suppliers claims or it is determined that his contract of employment has been transferred to ICM pursuant to TUPE or the Acquired Rights Directive then:
- 17.5.1. ICM will, within 20 (twenty) days of becoming aware of that fact, give notice in writing to the Customer;
- 17.5.2. the Customer may offer employment to such person within 21 (twenty one) days of the notification by ICM or take such other steps as it considers appropriate to deal with the matter;

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- 17.5.3. if such offer is accepted (or if the situation has otherwise been resolved by the Customer), ICM shall immediately release the person from his employment;
- 17.5.4. if after the 21 (twenty-one) day period has elapsed, no such offer of employment has been made or such offer has been made but not accepted, or the situation has not otherwise been resolved, ICM may within 7 (seven) days give notice to terminate the employment of such person; and
- 17.5.5. subject to ICM acting in the way set out in this clause 17.5, the Customer will indemnify ICM against all employee liabilities arising out of such termination.
- 18. BRIBERY AND CORRUPTION**
- 18.1. Both parties shall:
- 18.1.1. comply with the Relevant Requirements;
- 18.1.2. not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 18.1.3. comply with the Relevant Policies;
- 18.1.4. have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 18.1.2, and will enforce them where appropriate;
- 18.1.5. promptly report to the other any offer, request or demand for any undue financial or other advantage of any kind received from the other's employees, agents, representatives, consultants, subcontractors or associated persons;
- 18.1.6. immediately notify the other (in writing) if a foreign public official becomes an officer or employee of the notifying party or acquires a direct or indirect interest in the notifying party;
- 18.1.7. within 1 month after being requested to do so and not more than once in every 12 month period, certify to the other in writing signed by an officer of the certifying party, compliance with this clause 18. Supporting evidence of compliance as may reasonably be requested must be provided.
- 18.2. For the purpose of this clause 18:
- 18.2.1. the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively; and
- 18.2.2. a person associated with a party includes but is not limited to any agent, subcontractor or employee of that party.
- 19. GENERAL**
- 19.1. This Agreement sets forth the entire agreement between the parties with respect to the subject matter herein and supersedes and replaces all prior communications, representations, warranties, stipulations, undertakings and agreements whether oral or written between the parties. The Customer agrees that it will have no claim for any statement or claim made during the negotiations, or for misrepresentation be it negligent or otherwise, provided that nothing herein will exclude either parties' liability for fraud.
- 19.2. No variation to this Agreement shall be effective unless in writing signed by an authorised signatory of the parties hereto.
- 19.3. The Customer will not be entitled to assign or otherwise transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of ICM.
- 19.4. ICM will be entitled to assign and/or novate this Agreement to any member company in the group of companies to which ICM belongs, on written notice to the Customer.
- 19.5. Failure to exercise or delay in exercising on the part of either party any right power or privilege of that party under this Agreement shall not in any circumstances operate as a waiver thereof nor shall any single or partial exercise of any right power or privilege in any circumstances preclude any other or further exercise thereof or the exercise of any other right power or privilege. Any waiver of a breach of any of the terms hereof or of any default hereunder shall not be deemed a waiver of any subsequent breach or default and shall not affect the other terms of this Agreement.
- 19.6. If a party hereto is more than one person all covenants, agreements, undertakings, representations and warranties on the part of such party contained herein shall be joint and several.
- 19.7. Save as specified in clauses 5.2 or in a Service Module, all notices (including notice and service of legal proceedings) under or relating to this Agreement shall be in writing and shall be delivered or sent to the recipient at its office address as supplied in Schedule A, or such other address as may be notified from time to time by either party to the other in writing.
- 19.8. ICM will be entitled not to provide the Service if the provision of the Services would in the reasonable opinion of ICM involve a safety and/or health hazard.
- 19.9. In this Agreement, except where the context otherwise requires or unless otherwise specified, words denoting the singular include the plural and vice-versa.
- 19.10. The Customer may not rely on any representations or statements made by ICM or its representatives which has not been expressly included in the Agreement. Nothing in this clause shall, however, operate to limit or exclude any liability for fraud.
- 19.11. The titles of the Clauses of this Agreement are for convenience only and shall not in any way affect the interpretation of this Agreement.
- 19.12. Nothing in this Agreement is intended or shall be construed to create a relationship of agency, partnership, or a fiduciary relationship between the parties. Except as expressly authorised herein, neither party shall have authority to act or make representations on behalf of the other party.
- 19.13. The formation, construction, performance, validity and all aspects whatsoever of this Agreement shall be governed by English law and the parties hereby agree to submit to the exclusive jurisdiction of the English Courts.
- 19.14. ICM reserves the right to sub-contract the whole or part of any of its obligations under this Agreement.