

Redefine**IT** Limited

Terms and Conditions

1. **INTRODUCTION**

- 1.1. These Terms and Conditions govern the provision of Services by Redefine IT Limited (Company No. 07321974) of registered office address 140 Bethnal Green Road, London E2 6DG ("the Supplier" or "We") to the person, firm or organisation placing an order for the Services, as set out on the Service Supply Agreement ("The Customer" or "You"). The Customer and Supplier are together referred to as the Parties to these Terms and Conditions.
- 1.2. In these Terms and Conditions, "Services" means collectively:
 - 1.2.1. "IT Support Services" means those services set out in Schedule 1 that the Supplier will provide to the Customer in accordance with the terms of this Agreement; and,
 - 1.2.2. "Additional Services" means the services set out in Schedule 2 that the Supplier may make available to the Customer as requested on the Service Supply Agreement; and,
 - 1.2.3. "Consultancy Services" means the further services that the Supplier may make available to the Customer upon request in accordance with clause 6 and subject to the execution of a separate agreement between the Supplier and the Customer;
 - 1.2.4. selected by the Customer on the Service Supply Agreement(s) which are entered into between the Parties from time to time.
- 1.3. In the event of any conflict between these Terms and Conditions and Schedule 1, these Terms and Conditions will override Schedule 1.
- 1.4. In the event of any conflict between these Terms and Conditions and Schedule 2, these Terms and Conditions will override Schedule 2.

2. **DEFINITIONS**

- 2.1. In these terms and conditions, the following words shall have the following meanings:
- 2.2. "Agreement" means these Terms and Conditions together with the Service Supply Agreement and the Schedules;
- 2.3. "Business Day" means a day other than a Saturday, Sunday or public holiday in England;
- 2.4. "Change Request" means a request in accordance with clause 7.1 below, requesting an addition, deletion or revision in the scope of the provision of the IT Support Services or the Additional Services;
- 2.5. "Charges" means the fees and charges set out in the Service Supply Agreement to be paid by the Customer to the Supplier for the Services in accordance with clause 11;
- 2.6. "Customer Data" means data belonging to the customer which is held either on the Equipment or on a hosted service provided by the Supplier.
- 2.7. "Equipment" means the Customer's IT systems, software and hardware and shall include all updated or replacement parts and any additional servers, workstations and laptops. The equipment is subject to the Supplier's list of unsupported software and hardware, as may be updated from time to time;
- 2.8. "Inappropriate Content" means any content which may infringe any applicable laws, regulations or third party rights (including material which is obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial or religious hatred, menacing, blasphemous or in breach of any third party intellectual property rights);
- 2.9. "Initial Term" means the minimum term of service specified on the Service Supply Agreement for the IT Support Services starting on the IT Support Services Start Date;

- 2.10. "IT Support Services Start Date" means the date shown on the Service Supply Agreement on which the IT Support Services are due to commence, or if such services have already commenced at the date that the Service Supply Agreement is signed by both Parties, the date shown on the Service Supply Agreement at which such services are agreed to have commenced for the purposes of this Agreement;
- 2.11. "Manufacturer" means the original manufacturer or developer of the relevant equipment or software;
- 2.12. "Minimum Term of Service" means the minimum term of service for Additional Services beginning on the Additional Services start date, as specified on the relevant Service Supply Agreement(s);
- 2.13. "On-site Support" means the on-site support provided as part of the IT Support Services which is further described in Schedule 1;
- 2.14. "Regular Hours of Cover" means 9.00am to 5:30pm on a Business Day;
- 2.15. "Regulator" means the Financial Services Authority or any successor to its functions as the UK regulator of investment firms;
- 2.16. "Service Description" means a service description for IT Support Services or any Additional Services, referred to in Schedule 1 for the IT Support Services, or referred to in Schedule 2 for Additional Services, as amended from time to time, as applicable;
- 2.17. "Service Issue" means an individual issue or query relating to the Equipment supported as part of the Services that is reported to the Supplier by the Customer;
- 2.18. "Service Supply Agreement" means the Service Supply Agreement that accompanies these Terms and Conditions (and any subsequent Service Supply Agreements entered into between the Parties for the provision of any Services which the Parties intend shall be governed by these terms and conditions) which sets out information such as the Customer's details, the Charges, the billing frequency, and the Services requested by the Customer;

3. SERVICES PROVIDED

- 3.1. In consideration of the payment of the Charges, the Supplier will provide the IT Support Services, the Additional Services, and any Consultancy Services, as set out in the relevant Service Supply Agreement(s) entered into between the Parties from time to time under this Agreement.
- 3.2. The Supplier will use reasonable endeavours to meet the service levels and response times set out in the applicable Service Descriptions.
- 3.3. The Customer agrees that in using the Services it will be bound by the Suppliers "Acceptable Usage Policy" (can be found at <http://www.redefineit.co.uk/Company-Terms>).
- 3.4. The Customer's attention is drawn to the Limitations section of this Agreement. Further, the Customer agrees that if it does not comply with the assumptions detailed below, the Supplier's ability to provide the relevant Services may be adversely affected and the Supplier shall be released from liability in relation to the relevant Services to the extent it is unable to perform the affected Services due to the Customer's act or default. In particular but without limitation, the Customer must:
- 3.4.1. inform and keep the Supplier updated regarding any of the critical information associated with a Service Issue;
- 3.4.2. provide the Supplier with reasonable and sufficient remote and physical access to the Customer's Equipment, premises and systems at all times in order that the Supplier may provide the IT Support Services and Additional Services on an efficient basis; and

- 3.4.3. keep the Supplier informed of any changes that the Customer proposes to make to its Equipment or systems which could affect the Supplier's provision of the Services in any way.
- 3.5. The Customer must keep a back-up copy of all of its data, unless this obligation is specifically assumed by the Supplier under this Agreement. The Customer should test this back-up on a regular basis.
- 3.6. Subject to the confidentiality terms in this Agreement, the Customer hereby authorises the Supplier to process all information and data transmitted through its network or made available to the Supplier (including, without limitation, information pertaining to the Customer's business affairs).

4. IT SUPPORT SERVICES

- 4.1. The IT Support Services may include, as examples, all or some of desktop support, network and/or communication support, operating software support. These Services are detailed in Schedule 1.
- 4.2. Unless otherwise specified, the IT Support Services do not include the provision by the Supplier of new releases and new versions of software supplied by Manufacturers. All such new releases and new versions will be supplied under the applicable contract between the Customer and its suppliers and Manufacturers.
- 4.3. The Customer may request from time to time that the Supplier provides to it certain equipment and/or software. Such orders for equipment or software shall be invoiced separately to the Services provided under this Agreement, in accordance with clause 11.10. All third party software provided to the Customer shall be licensed to the Customer under the terms of the licensor's end user licence agreement or such other licence terms authorised by the software owner. The Supplier shall pass on to the Customer the benefit of any manufacturer's warranties so far as it is permitted to do so in relation to any equipment and/or software provided to the Customer but the Supplier provides no further warranty in respect of such equipment or software, express or implied.

5. ADDITIONAL SERVICES

- 5.1. Additional Services may comprise, by way of example, hosted virtual servers, hosted exchange servers, on-line back up and cloud based solutions. Typically these Additional Services will be outsourced by the Supplier to third party solution providers.
- 5.2. If the Customer requests Additional Services on a Service Supply Agreement, the Supplier will, subject to payment by the Customer of the applicable Charges for such Additional Services, provide such Additional Services to the Customer in accordance with the terms of this Agreement and the provisions of Schedule 2 applicable to the Additional Services requested.
- 5.3. If the Customer requests Additional Services:
 - 5.3.1. the Customer acknowledges and agrees that any Additional Services provided by the Supplier may be outsourced by the Supplier to a third party supplier. The Supplier will provide these services in accordance with the relevant Service Description, but can only deliver such services to the standard actually provided by its third party supplier; and
 - 5.3.2. then subject to payment of the applicable Charges for the Additional Services by the Customer and subject to the terms and conditions of the Supplier's agreement with the relevant third party supplier, the Supplier will use reasonable endeavours to procure that any third party supplier engaged by it provides the Additional Services to the standard set out in the relevant agreement between the Supplier and its third party supplier: and
 - 5.3.3. the Supplier will use reasonable skill and care in the selection of third party suppliers in respect of the Additional Services, but shall not be liable for any acts or omissions of such suppliers or their subcontractors; and

- 5.3.4. which are provided using a facility provided to the Supplier by a third party and that facility for any reason becomes unavailable or available only on significantly changed terms, the Supplier will use reasonable endeavours to find a similar replacement service in accordance with 5.3.5;
- 5.3.5. the Supplier may at any time during the term of this Agreement change a third party supplier of Additional Services provided that such change shall not adversely disrupt the performance of the Additional Services and that the replacement third party supplier does not offer service levels that are materially lower than the previous third party supplier.
- 5.4. Where the Parties agree that there is to be a change to the Additional Services provided pursuant to this Agreement, the Parties shall agree such change in writing in accordance with the change control procedure provided in clause 7.1.
- 5.5. Where the Customer requires further Additional Services to be provided by the Supplier after completion of the original Service Supply Agreement, the Parties shall execute a new Service Supply Agreement in relation to the same. Each Service Supply Agreement executed by the Parties in relation to the provision of Additional Services shall be supplemental to but will not supersede any earlier Service Supply Agreement unless expressly stated to the contrary, and shall be subject to the terms of this Agreement.

6. CONSULTANCY SERVICES

- 6.1. Upon request, the Supplier may provide Consultancy Services to the Customer, subject to agreement of the Consultancy Services and payment by the Customer of any additional charges at the Supplier's then current rates. These Consultancy Services may include, by way of examples, assistance with IT aspects of office relocation and services for the set up and delivery of new systems or Equipment.
- 6.2. Where the Supplier is to provide Consultancy Services to the Customer, the Parties shall enter into a separate agreement which shall govern the provision of the relevant Consultancy Services.

7. SERVICE AMENDMENTS

- 7.1. Should either party wish to change the scope of the Services provided under the terms of this Agreement (the "Requesting Party"), the Parties agree that they shall follow the procedure set out below:
 - 7.1.1. the Requesting Party shall submit to the other party (the "Receiving Party") a Change Request which shall provide details in writing of the requested change.
 - 7.1.2. following receipt of such Change Request the Receiving Party shall promptly supply to the Requesting Party a statement in writing detailing the likely impact of such change on the provision of the Services (including without limitation any impact on the Charges in relation to the same) and the Parties shall decide whether to implement the requested change. The Receiving Party will not unreasonably withhold or delay its consent to any change requested by the Requesting Party.
 - 7.1.3. Once the Parties have reached agreement in relation to the Change Request, such agreement shall be documented in writing and signed by both Parties. All service amendments provided under these terms shall be incorporated into the Service Description by completion of a new Service Supply Agreement and signed by both Parties and be subject to the terms of this Agreement.

8. CONFIDENTIALITY AND DATA PROTECTION

- 8.1. For purposes of this Agreement, confidential information shall include the terms of this Agreement, Customer Data, and any information that is clearly identified in writing at the time of disclosure as confidential or proprietary together with all information which would in the normal course of

business be regarded as confidential or proprietary (“Confidential Information”). The Supplier aims to keep your data as private as possible. The Customer acknowledges that in certain situations the Supplier’s staff may be in a position to see the contents of files on the Customer’s computers. We will apply safeguards to ensure that our staff do not violate the privacy of your data in any way.

- 8.2. Each party agrees and shall ensure that its employees and subcontractors agree: (a) to keep confidential all Confidential Information disclosed to it by the other party or by a third-party; (b) not to use the Confidential Information of the other party except to the extent necessary to perform its obligations hereunder; and (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information).
- 8.3. The Supplier will restrict its employees’ access to Customer’s Confidential Information to only those employees necessary to successfully provide the Services. The Supplier may disclose Confidential Information on a need-to-know basis to its contractors who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services for the Supplier in connection with the performance of this Agreement.
- 8.4. Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the recipient, subsequent to disclosure by the disclosing party; or (4) the recipient becomes aware of from a third party not bound by non-disclosure obligations to the disclosing party and with the lawful right to disclose such information to the recipient. This Section 8 will not be construed to prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority. The Parties agree to give the other party prompt notice of the receipt of any request for such disclosure.
- 8.5. The obligations set out in this clause 8 shall remain in force throughout the term of this Agreement and for five years after the date of termination of this Agreement.
- 8.6. You understand that you can use encryption and personal security programs to increase the security and privacy of your files. You agree that if any of your files are particularly private then you will use such precautions. You agree that if you are required under any professional or statutory regulations to keep your data confidential or secure then you will encrypt them so that our support staff cannot have access to them when working on your equipment.
- 8.7. Both Parties shall ensure that their employees and agents observe the requirements of the Data Protection Act 2018 and any amendments or revisions thereto and all subordinate Legislation (the DPA) in the provision and use of the Services and shall comply with any request made or direction given by the other which is directly due to the requirements of such Act.
- 8.8. Where the Supplier acts as a data processor on behalf of the Customer, it shall observe and comply with the requirements of the GDPR 2018. The terms "data processor", "process" and “personal data" in this clause 8 shall bear the same meaning in this Agreement as in the DPA, where the context so admits alleged breach of this Agreement where the party not in default is entitled to seek injunctive relief in relation to such breach or where the breach or alleged breach relates to non-payment of the charges.

9. TERM AND TERMINATION

- 9.1. This Agreement will commence and become effective when signed and dated by the Parties.
- 9.2. Subject to earlier termination of this Agreement in accordance with its terms, the IT Support Services shall continue for the Initial Term and thereafter for further periods of 12 months unless terminated by either party giving to the other not less than ninety (90) days written notice. Where the scope of the IT Support Services is extended by the addition of Additional IT Support Services not originally selected, the term of the IT Support Services shall not be extended unless expressly provided for in

the relevant Service Supply Agreement or Change Request entered into under clause 7. and the additional IT Support Services shall be provided and may only be terminated with all the other then current IT Support Services.

- 9.3. Subject to earlier termination of this Agreement or such Services in accordance with its terms. Additional Services shall continue for the Minimum Term of Service and thereafter for further periods of 12 months unless terminated by either party giving to the other not less than ninety (90) days written notice to expire at the end of the Minimum Term of Service or any anniversary of the expiry of the Minimum Term of Service.
- 9.4. If the Customer commits a material breach of this Agreement and (upon receiving written notification from the Supplier of such breach) fails to remedy the breach within 14 days the Supplier shall immediately become entitled (without prejudice to its other rights) to terminate this Agreement at its discretion either as a whole or solely in relation to the Service with which such breach is associated. Examples of material breaches include a failure by the customer to abide by the Supplier's acceptable usage policy (clause 3.3), non-payment of charges (clause 11.1), and a breach of confidentiality (clause 8).
- 9.5. If at any time the Supplier commits a material breach of this Agreement and (upon receiving written notification from the Customer of such breach) fails to remedy the breach within 14 days the Customer shall immediately become entitled (without prejudice to its other rights) to terminate this Agreement solely in relation to the Service with which such breach is associated. Examples of material breaches include a breach of confidentiality (clause 8), material failure to provide an agreed service.
- 9.6. If at any time either party is unable to pay its debts or becomes insolvent or an order or an application is made or a resolution passed for its administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any of its assets or an application or a filing for a moratorium is made in respect of the other party under Schedule A1 Insolvency Act 1986 or it enters into or proposes any composition or arrangement with its creditors generally or anything analogous to the foregoing occurs in any applicable jurisdiction then the other party shall immediately become entitled (without prejudice to its other rights) to terminate this Agreement as a whole forthwith by notice in writing to the other.
- 9.7. Upon termination of this Agreement by the Supplier for whatever reason the Customer shall, without prejudice to the Supplier's other rights and remedies, pay:
 - 9.7.1. the outstanding balance of the Charges due in respect of any works or Services carried out or provided under this Agreement prior to the date of termination; and
 - 9.7.2. the price of equipment or services ordered by the Supplier on behalf of the Customer for which the Supplier has paid or is legally bound to pay.
- 9.8. On termination of this Agreement the Supplier shall deliver any documentation it agrees to provide in relation to the Services subject to payment of all the Supplier's fees for preparation of the same, which fees shall be charged on a time and materials basis at the Supplier's then current fees for such services.
- 9.9. Termination for breach in relation to the Additional Services
 - 9.9.1. If at any time either party commits a material breach of its obligations under this Agreement in relation to the provision of one or more Additional Services and (upon receiving written notification from the other of such breach) fails to remedy the breach within 14 days, then the other party shall immediately become entitled (without prejudice to its other rights) to terminate this Agreement in part, solely in relation to the provision of that or those Additional Services, forthwith by notice in writing to the other.

- 9.9.2. The termination of this Agreement in part pursuant to this clause shall not affect the continuance in force of this Agreement in relation to the remaining Additional Services or the IT Support Services which shall continue to be provided to the Customer by the Supplier under the terms of this Agreement.
- 9.10. Termination of this Agreement for whatever reason shall not bring to an end any provision hereof which expressly or by implication comes into or continues in force after the date of termination.
- 9.11. The Customer acknowledges that in order to deliver the Services the Supplier may enter into contracts with third party suppliers including without limitation providers of hosted and other services. In the event that this Agreement is terminated for any reason other than the Supplier's material breach under clause 9.5 above the Customer shall, without prejudice to the Supplier's other rights and remedies, immediately pay to the Supplier all fees that the Supplier is liable to pay to such Parties to terminate such contracts (as notified to the Customer in writing by the Supplier). The Customer acknowledges that the termination fee(s) may include payment of fees to the third party supplier(s) for the minimum term of such contracts.
- 9.12. The Customer shall indemnify the Supplier against any and all losses, damages, costs (including legal fees) and expenses incurred by or awarded against the Supplier in respect of any claim or action brought against the Supplier by one of the third party suppliers described in clause 9.11 which results from the Customer's material breach of this Agreement causing the Supplier to be in breach of such third party contract.

10. LIMITATIONS AND EXCLUSIONS

- 10.1. We will use all reasonable endeavours to respond to calls for the IT Support Services and provide updates of status and possible remedies promptly.
- 10.2. We shall not be obliged to provide the IT Support Services or any other services in this Agreement in respect of faults or problems directly or indirectly arising from:
- 10.2.1. the neglect, misuse, transportation or improper programming of the Equipment or because the Equipment has been subjected to failure or fluctuation of the electrical power, abnormal electrical stress, abnormal air conditioning or humidity, excessive dust, flood, fire, theft, vandalism, rodents or other pests, acts of God or any other abnormal physical or environment related stress; or
 - 10.2.2. The Equipment is maintained, repaired or altered (or attempts are made to maintain, repair or alter the Equipment) by persons other than Supplier's personnel or Authorised IT Staff without the Supplier's prior written approval; or
 - 10.2.3. The Customer fails to perform any of its obligations under the Agreement; or
 - 10.2.4. The Equipment cannot be repaired so as to put it in such condition as in the reasonable opinion of the Supplier, constitutes a maintainable condition; or
 - 10.2.5. There are any issues arising out of the presence of a 3rd party visitor or 3rd party equipment at the Customer's location; or
 - 10.2.6. In the event of relocation, the Equipment is disconnected and reconnected by anyone other than the Supplier's personnel without the Supplier's prior written consent; or
 - 10.2.7. The Customer no longer retains ownership of the equipment; or
 - 10.2.8. The Equipment is either out of Manufacturers warranty and more than three years old; or
 - 10.2.9. The Customer fails to keep the Accepted Software to the release level recommended by the Supplier; or,
 - 10.2.10. incorrect use of the relevant IT Support Services or Additional Services; or

10.2.11. software products or services not supplied by the Supplier (save to the extent that the Supplier has back-to-back support or the benefit of a guarantee with or from the third party in question).

10.3. We will not support under this Agreement:

10.3.1. any Equipment or other items specifically excluded under this Agreement or notified to the Customer in writing by the Supplier; or

10.3.2. software no longer supported by the Manufacturer; or

10.3.3. defects, or repairs to, or the supply of, consumable items such as discs, tapes accessories or media; or

10.3.4. faults or errors in software or Equipment resulting from;

- changes to the software except for changes implemented with the approval of the Supplier; or
- failure to use software in accordance with licence terms or supplier's instructions; or
- faults in the Equipment on which the software is used, unless such Equipment was supplied or installed by the Supplier; or
- changes to or upgrades to the Equipment on which the software is used except where such changes or upgrades are carried out by the Supplier; or
- compatibility and interface issues between software and Equipment.

10.4. Electrical work external to the Equipment or the making of specification changes to the Equipment.

11. CHARGES

11.1. In consideration of the Supplier providing the Services, the Customer will pay the Charges.

11.2. The Customer will pay the Charges in accordance with the billing frequency specified on the Service Supply Agreement:

11.3. Charges for Services will be invoiced in advance, unless stated to be invoiced in arrears on the Service Supply Agreement.

11.4. Other charges and fees are payable as shown on the Service Supply Agreement, or if no date for payment is stated, as provided in clause 11.3.

11.5. Except as otherwise set out in a Service Supply Agreement in relation to specific Charges, all invoices shall be payable by the Customer within 21 days of the date of the Supplier's invoice.

11.6. The Supplier reserves the right to refuse to commence or continue the IT Support Services or Additional Services until payment is received in full of any Charges.

11.7. The Supplier shall invoice the Customer for the Charges for Additional Services according to the Customer's consumption of or requirements for such Additional Services during the relevant invoice period.

11.8. The Charges are stated exclusive of Value Added Tax, which will be applied in accordance with UK legislation in force at the tax point date and paid by the Supplier.

11.9. The Customer shall notify the Supplier within 14 days after the date of receipt by the Customer of the relevant invoice of any disputed items and shall as soon as reasonably practicable after it has so notified the Supplier describe in reasonable detail the Customer's reasons for disputing each item. If any part of the Charges is subject to a bona fide dispute between the Customer and the Supplier, the Customer shall pay to the Supplier all amounts not disputed in good faith by the Customer in

accordance with the terms of payment and the parties will attempt to settle any dispute in good faith.

- 11.10. If any sum payable under this Agreement becomes overdue, the Supplier reserves the right (without prejudice to its other rights and remedies) to suspend the IT Support Services and/or the Additional Services until the overdue sum is received by the Supplier, provided that (i) any such amount is more than 10 days overdue, and (ii) the Supplier has given the Customer notice that the amounts are overdue, and of its intention to suspend the relevant services if such amounts remain unpaid. The Charges shall remain payable in full throughout any such period of suspension.
- 11.11. Without prejudice to its other rights and remedies, if the Customer is overdue in paying any amount to the Supplier pursuant to this Agreement then the Supplier may charge (and the Customer shall pay) interest, accruing daily from the due date to the date of actual payment, on any amounts not paid on the due date at 4% above the base rate for the time being of National Westminster Bank plc. The Parties agree that the interest payable pursuant to this clause 11.9 represents a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998 and/or the Late Payment of Commercial Debts Regulations 2002.
- 11.12. For the avoidance of doubt, the cost of any equipment or software provided to the Customer is excluded from the Charges. All equipment or software provided by the Supplier shall be supplied on the Supplier's standard terms and conditions for the supply of equipment and in accordance with clause 4.3. All invoices for equipment shall be payable on receipt (see clause 13).

12. ALTERATION OF CHARGES

- 12.1. We shall be entitled, on each anniversary of the IT Support Services Start Date, to increase the Charges for IT Support Services upon written notice to the Customer. Each such increase shall not exceed the percentage increase averaged over the previous 12 months of the Retail Price Index (published by the UK Office for National Statistics) plus 4%. We may notify You in writing of any proposed alteration to the Charges in relation to the Additional Services on each anniversary of the relevant Additional Service Start Date.
- 12.2. In the event that a proposed increase in the Charges in relation to the IT Support Services is greater than the increase detailed in clause 12.1 above, or where the proposed increase relates to the Charges for the Additional Services the Supplier shall give the Customer not less than 30 days notice to that effect. The Customer may, within 14 days of receipt of such notice, appeal in writing against the increase. If no acceptable solution can be found by the Parties following such an appeal, the Customer may terminate this Agreement solely in relation to the affected Service by giving the Supplier not less than 30 days notice in writing. The Charges payable during any such period of notice will be at the previously agreed rate.
- 12.3. Where the Supplier is reselling Services to the Customer that are provided to it by a third party supplier, the Supplier shall be entitled to pass on any increase in the third party's fees to the Customer by increasing the portion of the Charges relating to that Service by the same percentage as the increase. This right shall be independent of the mechanism set out in clauses 12.1 and 12.2, which shall also apply to the Charges.

13. RETENTION OF TITLE

- 13.1. Where the Customer purchases equipment from us, title shall not pass to the Customer until the Supplier has received in full (in cash or cleared funds) all sums due to us in respect of the equipment.
- 13.2. Until ownership of the equipment has passed to the Customer, the Customer must:
- 13.2.1. hold the equipment on a fiduciary basis as our bailee;
 - 13.2.2. store the equipment (at no cost to us) separately from all the Customer's other goods or any third party in such a way that they remain readily identifiable as our property;

- 13.2.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the equipment;
 - 13.2.4. maintain the equipment in satisfactory condition and keep them insured on our behalf for their full price against all risks to our reasonable satisfaction. On request the Customer shall produce the policy of insurance to us; and
 - 13.2.5. hold the proceeds of any insurance claim on trust for us and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 13.3. Until ownership of the equipment has passed to the Customer, the Customer's right to possession of the equipment shall terminate immediately if:
- 13.3.1. The Customer has a bankruptcy order made against the Customer or make an arrangement or composition with the Customers creditors, or otherwise take the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convene a meeting of creditors (whether formal or informal), or enter into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or have a receiver and/or manager, administrator or administrative receiver appointed of the Customer's undertaking or any part thereof, or a resolution is passed or a petition presented to any court for winding up or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the Customer's insolvency or possible insolvency; or
 - 13.3.2. The Customer suffers or allows any execution, whether legal or equitable, to be levied on the Customers property or obtained against the Customer, or fail to observe/perform any of the Customers obligations under this agreement or any other contract between us, or are unable to pay the Customer's debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or the Customer encumbers or in any way charge any of the equipment.
- 13.4. The Supplier shall be entitled to recover payment for the equipment notwithstanding that ownership of any of the equipment has not passed from us.
- 13.5. The Customer grants us, our agents and employees an irrevocable licence at any time to enter any premises where the equipment are or may be stored in order to inspect them, or, where the Customers right to possession has terminated, to recover them.

14. RISK

- 14.1. Risk of damage to or loss of Equipment shall pass to the Customer at the time of delivery or if the Customer unjustifiably fails to take delivery of Equipment the time when the supplier has tendered delivery of the Equipment

15. WARRANTY

- 15.1. We warrant that all services supplied under this Agreement will be carried out with reasonable care and skill to normal professional standards by personnel whose qualifications and experience will be appropriate for the tasks to which they are allocated. We will use reasonable endeavours to diagnose faults, repair Equipment and resolve faults to your reasonable satisfaction.
- 15.2. You acknowledge your responsibility to ensure that the facilities and functions described in the Schedules meet your requirements. You agree that the IT environment at the date of signing this agreement is operating satisfactorily and that you are not aware of any existing or outstanding faults in the Equipment.

- 15.3. You undertake to use reasonable endeavours to disclose to the Supplier any development in your business that may have a material impact on the Supplier's ability to perform the Services effectively in accordance with this Agreement.
- 15.4. Where we sell Equipment to you we warrant that the Equipment will be free from material defects and be of satisfactory quality and that any software provided by the company will substantially meet the specifications set out in any accompanying documentation. Where possible we will transfer to you the benefit of any warranty or guarantee given to us.
- 15.5. We shall have no liability to you for any loss of your original data due to any error or omission by you, or due to any event that takes place at your Premises, unless such event is caused by our negligence. You should where possible obtain your own insurance cover for any equipment or software that has not been supplied by us.
- 15.6. You acknowledge that software can never be guaranteed to be error free. We do not warrant that all errors can and will be corrected. We shall use our reasonable endeavours to correct errors in the Equipment.
- 15.7. You must promptly notify us of any non-conformance to the above warranties in order to benefit from the remedy stated above and in any event within three months.
- 15.8. You acknowledge that it remains your responsibility to ensure data held within your systems remains securely stored and backed up. Where backup systems are provided or configured by us it remains your responsibility to verify their continued successful operation and correct configuration.
- 15.9. Except as expressly provided in this Agreement, no warranty, condition, undertaking or term, express or implied, statutory or otherwise is given or assumed by us, and all such warranties, conditions, undertakings and terms are hereby excluded to the fullest extent permitted by law.
- 15.10. Subject to applicable confidentiality restrictions, We will provide reasonable assistance with the Regulator in relation to any enquiries or requests for information received from it in relation to the Services, but reserve the right to charge additional fees at our then current rates for the provision of such services. Where the Services are performed from the Supplier's premises, the Supplier will permit access by representatives of the Customer and the Regulator to its premises to inspect the Services but only upon reasonable notice and subject to the Customer signing a confidentiality undertaking protecting the Supplier's confidential information. The Customer shall ensure that its representatives and the Regulator shall have access only to such Equipment and records as are strictly necessary for the purpose of the inspection and shall use reasonable endeavours to avoid disruption to the Services and the Supplier's business.
- 15.11. The Customer acknowledges that where Equipment supported or hosted under this Agreement may be networked to or otherwise interfaced with computer systems and software which are outside the scope of this Agreement, the Supplier shall not be liable for the operation or support of such other software and systems save to the extent that it covers any loss or damage to such other systems by its deliberate acts or negligence pursuant to this clause 14.
- 15.12. Where the Supplier provides Additional Services to the Customer, the Customer acknowledges that all data hosted or stored on or passing through the Supplier's infrastructure (including but not limited to the Supplier's servers and systems) shall be the sole responsibility of the Customer and any other person from whom such data originated. The Supplier will not monitor the Customer's data. However, the Customer will at the Supplier's request remove data where the Supplier reasonably suspects such data to be Inappropriate Content. The Customer shall notify the Supplier promptly if it becomes aware of, or suspects that, any data which may be Inappropriate Content. The Customer shall indemnify the Supplier against all damages, losses and expenses arising as a result of any action or claim that the Customer's data constitutes Inappropriate Content.

16. LIABILITY

- 16.1. We do not exclude our liability to you for reasonable direct losses, damages, costs and expenses incurred by the Customer in respect of direct damage to tangible property caused by the negligence of our employees in connection with the performance of their duties under this agreement or by defects in any Equipment supplied pursuant to this Agreement. In respect of the Equipment, liability is limited to the prompt making good by repair or replacement of any Equipment or part thereof damaged or destroyed as a result of such negligence. The Supplier's total liability under this clause for direct damage to property other than the Equipment shall be limited to £25,000 for any one event or series of connected events.
- 16.2. The Customer shall during the term of this Agreement indemnify the Supplier against any and all reasonable direct losses, damages, costs and expenses incurred by the Supplier in respect of direct physical damage to the Supplier's property, which can be established to be the result of negligence by the Customer or its servants and agents. The Customer's liability for direct physical damage is limited to £25,000 in respect of each and every event or series of related events.
- 16.3. Save in respect of claims for death or personal injury arising from our negligence, in no event will the Supplier be liable for lost profits, loss of anticipated savings, goodwill, production, nor for any damages that are an indirect or secondary consequence of any act or omission by us, whether such damages were reasonably foreseeable or actually foreseen.
- 16.4. Except where this Agreement expressly provides otherwise, the Supplier excludes all liabilities, and in particular the Supplier shall have no liability for destruction of or damage to the Customer's data (unless otherwise expressly agreed in writing by the Supplier).
- 16.5. Except as provided above in the case of personal injury, death and damage to tangible property, our maximum liability to you under this Agreement or otherwise for any cause whatsoever (whether in the form of the additional cost of remedial services or otherwise) will be for direct costs and damages only and will be limited to the amount received by us from you in respect of the IT Support Services in the previous 12 months or if arising in the first year from the start date of any of the Services, the total amount received by us between the start date and the date such loss arose.
- 16.6. The Parties hereby acknowledge and agree that the limitations contained in this clause 15 are reasonable in light of all the circumstances.
- 16.7. All liability that is not expressly assumed in this Agreement is hereby excluded to the fullest extent permitted by law. These limitations will apply regardless of the form of action, whether under statute, in contract or tort, including negligence, or any other form of action. Nothing in this Agreement shall exclude or limit liability for fraudulent misrepresentation.
- 16.8. Nothing in this Agreement shall have the effect of limiting or excluding either party's liability for fraud or for death or personal injury caused by its own negligence, or any other liability if and to the extent that the same may not be limited or excluded as a matter of law.

17. NOTICES

- 17.1. Any and all notices, documents and other communications relating to this Agreement must be in writing and either sent by e-mail or delivered personally to, or posted with proof of postage, by pre-paid, registered or recorded delivery post to, the last known address or registered office for the time being of the party to which addressed.
- 17.2. Notice is deemed to have been received:
- in the case of an e-mail at the time of a successful delivery report:
 - in the case of a letter, when delivered personally or 3 days after it has been put into the post with proof of postage as provided in clause 16.1.

18. ASSIGNMENT

- 18.1. You shall not assign, transfer or charge any or all of its rights or obligations under this Agreement without prior written consent of the Supplier which shall not be unreasonably withheld.
- 18.2. We may at any time sub-contract to third parties all or any part of the work to be performed hereunder.

19. AMENDMENTS

- 19.1. Subject to clause 7, no change, alteration or modification of this Agreement shall be valid unless in writing and signed on behalf of the Parties by their respective duly authorised officers.

20. COMPLAINTS

- 20.1. Any complaints about the Services should be made in writing to The Managing Director, Redefine IT Ltd., 140 Bethnal Green Road, London E2 6DG within 28 days.

21. FORCE MAJEURE

- 21.1. If the performance of this Agreement or any obligations hereunder is prevented, restricted or interfered with by reason of fire, flood, earthquake or other catastrophe, labour dispute, inability to procure supplies of power, war or other violence, law, order, regulation, ordinance or requirement of any governmental agency or any other act or condition ("force majeure circumstances") beyond the reasonable control of the Supplier or the Customer ("the affected party") then the affected party upon notice to the other party shall (save as is otherwise contemplated by this Agreement) be excused from such performance to the extent of such prevention, restriction or interference.

22. MISCELLANEOUS

- 22.1. This Agreement constitutes the entire agreement between the Parties to the exclusion of all prior agreements, negotiations and discussions and other items, conditions and warranties unless subsequently thereto agreed in writing between the Supplier and the Customer.
- 22.2. This Agreement binds the Customer and the Supplier and each of their employees, agents and persons associated with either party, including any associated companies and organisations.
- 22.3. All clauses that are either expressed to or can be implied to be intended to will survive termination of this Agreement.
- 22.4. Either you or we can temporarily overlook a breach of a term of this agreement and still have the right to enforce it at a later date. No waiver by either party or any breach by the other party of any obligation contained herein shall constitute a waiver of any other obligation contained herein. Any waiver, to be effective, must be in writing.
- 22.5. It may happen that a part of this Agreement is deemed to be invalid, unenforceable or illegal. In that case, we will modify that part to make it valid, enforceable and legal; we will make the modification in the way that best reflects the original intention of the part. The modified Agreement will then become the agreement between us.
- 22.6. Notwithstanding that the whole or any part of any provision of this Agreement may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall remain in full force and effect.
- 22.7. Nothing herein shall be construed as giving you any rights to use the Services directly or indirectly on behalf of others in any computer service bureau operation or hosted service.
- 22.8. No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

22.9. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. Either party to this Agreement may enter into it by signing any such counterpart.

22.10. This Agreement will be construed in accordance with, and will be governed by, the laws of England and Wales. Each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.