

1. DEFINITIONS AND INTERPRETATION

1.1. In these terms and conditions (**Conditions**), the following terms shall have the following meanings:

Charges means the price of the Products and Services as set out in the Purchase Order;

Commercial Proposal means the proposal and / or quote provided by MSite in advance of receiving the Purchase Order which details the Products, Charges and additional terms applicable to the Contract;

Contract means the agreement between MSite and the Customer for the supply of Products and Services comprising of the Master Agreement (if one exists), these Conditions, the Commercial Proposal, and the Purchase Order;

Customer means the Customer specified in the Purchase Order;

Confidential Information means any information that is directly or indirectly disclosed (however conveyed) by one Party to the other Party which would appear to a reasonable person to be confidential and which relates to the business and affairs of that Party including (in the case of MSite) the Products and Services and information relating to such Products and Services, and (in the case of either party) operations, processes, plans or intentions, developments, trade secrets, know how, design rights, market opportunities, personnel, customers and suppliers and all information derived from the above other than information:

- that was in the public domain at the time it was disclosed or becomes available in the public domain without breach of any obligation of confidentiality;
- that is given to the recipient by a third party who is lawfully entitled to disclose it; or
- that was already known or independently generated by the recipient;

Data Protection Legislation means all applicable data protection and privacy legislation including where processing within the EU is applicable, the General Data Protection Regulation (EU) 2016/679; where processing within the United Kingdom is applicable, the Data Protection Act 2018 and the UK GDPR as defined in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; the Privacy and Electronic Communications (EC Directive) Regulations 2003; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data;

Deposit means the deposit amount set out in the Contract;

Hardware means the MSite hardware and equipment agreed to be provided to the Customer by MSite. Hardware supplied by the Customer or any other third party is deemed outside the scope of this Contract;

Hire Period means the period of hire of the Products as stated in the Purchase Order which may be extended or shortened from time to time in accordance with clause 3;

Intellectual Property Rights means patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue

for passing off or unfair competition, rights in designs, computer software, data base rights, rights to use and protect the confidentiality of Confidential Information including know how and trade secrets, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extension of, and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Master Agreement means the agreement between MSite and the Customer (if one exists);

Minimum Term means:

- 26 weeks for a Hire Period of up to 78 weeks;
- 53 weeks for a Hire Period between 79 weeks and over;

Monthly Average Spend means the total Charges divided by the Hire Period measured in months;

MSite means the trading name of Human Recognitions Systems Ltd, a company registered in England and Wales with a company number 04363275;

Normal working hours means 9am to 5pm Monday to Friday (excluding bank holidays);

Parties means MSite and the Customer (and **Party** shall mean either of them as applicable);

Products means the Software and Hardware agreed to be supplied to the Customer by MSite pursuant to the Contract;

Purchase Order means an order provided by the Customer to MSite and accepted by MSite in writing confirming the Commercial Proposal;

Representatives means a Party's employees, officers, sub-contractors and representatives;

SaaS Terms means the terms which apply to the provision of the Software, which are available on request;

Services means the installation, provision of the Software and Hardware, support and maintenance services agreed to be supplied to the Customer by MSite pursuant to the Contract;

Software means the MSite software agreed to be licensed to the Customer in accordance with the SaaS Terms;

Site means the location to which the Products will be delivered as specified by the Customer in the Purchase Order;

Unavailable has the meaning given in clause 10.2 and **Unavailability** shall be construed accordingly.

Warranty Period - a period of 12 months following delivery of purchase Hardware and any extended period thereafter provided at the discretion of MSite.

1.2. In these Conditions:

1.2.1. unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;

- 1.2.2. the headings are for ease of reference only and shall not affect construction or interpretation;
- 1.2.3. any phrase introduced by the terms **including**, **include** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.4. reference to in **writing** and **written** shall include by email.

2. BASIS OF CONTRACT

- 2.1. These Conditions apply to the supply of Products (on a hire or purchase basis as set out in the Purchase Order) and Services by MSite to the Customer.
- 2.2. Any quotation or proposal document provided by MSite shall not constitute an offer and is only valid for a period of 30 days, or such other period as may be specified therein.
- 2.3. No Purchase Order shall be deemed to be accepted by MSite until it has been accepted in writing by MSite.
- 2.4. The Contract shall be formed once MSite has confirmed acceptance of a Purchase Order in writing and once formed, the Contract shall be binding on the Customer.
- 2.5. These Conditions apply to and form part of the Contract to the exclusion of all other terms and conditions including any terms and conditions which the Customer seeks to impose or incorporate, or which are howsoever implied including by trade, customer practice or course of dealing. In the event of any conflict or inconsistency between the documents forming part of the Contract the order in which they are listed in the definition of "Contract" shall be the order of precedence that applies.
- 2.6. All descriptions or illustrations contained in MSite's brochures or other documents are issued or published for the sole purpose of giving an approximate idea of the Products and Services described in them. They shall not form part of the Contract and MSite shall not be held liable for any inaccuracy in any such document or for the suitability of the Products and Services to the Customer.

3. HIRE PERIOD

- 3.1. Where the Products are being hired, the Hire Period shall commence on the earlier of the date of delivery of the Products or the date on which the Products were scheduled to be delivered where such delivery is delayed or refused due to any act or omission of the Customer as set out in the Purchase Order and, unless terminated earlier in accordance with the Contract (including clause 14 of these Conditions) or otherwise by operation of law, shall continue in force for an initial fixed term which shall be as stated in the Commercial Proposal (**Initial Term**) and in relation to Contracts for Products supplied on a hire basis, for no less than the Minimum Term.
- 3.2. The Customer shall have the right to extend the Hire Period beyond the Initial Term or, if already extended, the extended period (**Extended Term**) by a minimum of 4 weeks by providing no less than 4 weeks' written notice prior to the date of expiry of the Initial or Extended Term. The Charges payable during any Extended Period shall be charged at MSite' then current standard list price.

- 3.3. The Customer must provide a minimum of 4 weeks' written notice for the collection of any Product. Failure to provide the required notice will result in an initial charge of 4 weeks' hire and thereafter blocks of 4 week hire charges until the required notice has been received.

4. PROVISION OF SERVICES

- 4.1. MSite shall carry out its obligations under the Contract using all the reasonable skill and care expected of a supplier of products and services similar to the Products and Services.
- 4.2. Except where otherwise specified in a Purchase Order MSite shall deliver the Products to the Site during normal working hours and in accordance with any delivery restrictions made known to MSite by the Customer in the Purchase Order. When installation outside normal working hours is required, agreement on any additional, reasonable charges are to be agreed in advance by both Parties.
- 4.3. MSite shall use reasonable endeavours to meet any performance dates specified in a Purchase Order, subject to site readiness, but time for performance by MSite shall not be of the essence of the Contract.
- 4.4. If the Customer wishes to delay or rearrange the date for delivery of the Products or commencement of the Services, it must make such request in writing and all such requests shall be subject to the written approval of MSite. MSite will have the right to invoice the Customer for Services based on ongoing delays to the delivery dates caused by the Customer.
- 4.5. In any event, if delivery of the Products or commencement of the Services is delayed or rearranged by the Customer with less than 72 hours' notice prior to the due delivery date or otherwise prevented or delayed by any act or omission of the Customer, its agents, sub-contractors, consultants or employees then, without prejudice to any other right or remedy it may have, the Customer shall be liable for a minimum administration charge of £1,000 and any other associated costs incurred including but not limited to haulage costs.
- 4.6. The SAAS Terms shall apply to any Unavailability of the Software.
- 4.7. If the Hardware is Unavailable for consecutive periods, the Customer may be eligible to receive the relevant credit as described within the Service Level Agreement.

5. CHARGES AND PAYMENT TERMS

- 5.1. The Charges for the Products and Services shall be as set out in the Purchase Order and in line with the Commercial Proposal provided by MSite. Unless stated otherwise in the Purchase Order, the Charges are exclusive of value added tax chargeable from time to time (VAT) and any other duties, costs of carriage and insurance which shall be paid by the Customer when it pays for the Products and Services or at such other time as may be indicated in the Purchase Order or agreed by the Parties in writing or in the case of VAT, subject to receipt of a valid VAT invoice from MSite.
- 5.2. MSite shall invoice the Customer for the total Charges indicated in the Purchase Order and Commercial Proposal on delivery of the Products and Services.
- 5.3. The Customer shall pay each invoice submitted by MSite in accordance with clause 5.2 by BACS to MSite within 30 days of the date of the invoice.

- 5.4. If the Purchase Order includes any commitment upon the Customer to order any minimum volume or value of Products and Services from MSite or make any minimum amount of payment to MSite during any specified period, the Customer shall comply with such commitment and MSite may invoice the Customer at the end of the period to which the minimum volume/value relates for any shortfall in the amounts received by MSite from the Customer in the event that the Customer fails to comply with any such commitments.
- 5.5. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 5.6. If the Customer fails to make any payment due to MSite under the Contract by the due date for payment, then, without limiting MSite's other rights and remedies:
 - 5.6.1. the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England base rate from time to time which shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement; and/or
 - 5.6.2. MSite may suspend the supply of Services or further deliveries of Products under the Contract or any other contract between the Parties until such time as payment of the overdue amount together with any interest payable in accordance with clause 5.6.1 is received in full.
- 5.7. In the event of dispute with regard to an invoice, the undisputed portion shall be paid by the Customer in accordance with clause 5.3. Upon resolution of the disputed portion, any amounts owed to MSite shall be paid with interest at the rate set out in clause 5.6.1 above accruing from the date such amounts were originally due.
- 5.8. Cancelled orders prior to delivery will be subject to a 20% fee of the agreed contract value.
- 5.9. Where the Customer terminates the Hire Period early, the Customer shall be liable for the Charges for the applicable Minimum Term. If the early termination takes effect at any time other than the end of a complete week, the number of whole weeks of the Hire Period completed shall be deemed to be the Hire Period for the purpose of calculating the Charges and any credits due. If the early termination shortens the Hire Period such that a higher charge is applicable for the Hire Period, the Charges for the Hire Period at such higher rate as is applicable shall be payable by the Customer to MSite. MSite may at any time set off any credit owed to the Customer against any liability owed by the Customer to MSite.
- 5.10. Where a failed delivery or additional collection is applicable through no fault of MSite, MSite may invoice the Customer its reasonable cost for the re delivery or re collection.
- 5.11. The Deposit is a deposit against default by the Customer of payment of any Charges or any loss of or damage caused to the Products whilst on Site. Where a Deposit is set out in the Contract, the Customer shall pay the Deposit to MSite on delivery of the Products. If the Customer fails to pay any Charges due in accordance with the Contract, or causes any loss or damage to the Products including as identified under clause 9.6, MSite shall be entitled to apply the Deposit against such default, loss or damage. The Deposit (or balance of the Deposit) shall be refundable within [14] days of the end of the Hire Period.

6. CUSTOMER RESPONSIBILITIES

- 6.1. The Customer shall provide to MSite all reasonable information, including all necessary contact information, cooperation, facilities and access to enable MSite to perform its obligations under the Contract. In the event information changes during the period of the Contract, the Customer shall inform MSite of such changes.
- 6.2. The Customer is responsible for providing adequate and unrestricted access to the Site for delivery, unloading, activation, and collection of the Products and such access as is required for the ongoing performance of the Services by MSite.
- 6.3. The Customer shall provide suitable foundations as per "POD Specification" for the Products at the Site and shall provide no less than 7 days' prior notice of the position for the Products at the Site. MSite shall not be obliged to inspect or approve or to take any responsibility for the foundations or position of the Products.
- 6.4. Unless otherwise stated in the Purchase Order, the Customer is solely responsible for providing power, telecommunication lines, and other facilities and utilities as the Customer may require or as may otherwise be necessary for the activation and proper operation of the Products and Services.
- 6.5. The Customer shall inspect per the contents of MSite Engineers Electronic Job Sheet the condition and suitability of the Products upon delivery but such acceptance of delivery does not relieve MSite of its obligations under the Contract.
- 6.6. Where the Products are on hire from MSite, the Customer shall not make any modification to the Product or its packaging, nor alter or remove or tamper with any trademarks, trade names, markings or names affixed to or used in relation to the Product.
- 6.7. The Customer shall ensure that SIM cards provided are used only to transmit data used by the Product. If SIM cards are transferred to other equipment or used outside of the terms of the Contract any costs associated including applicable administration fee will be invoiced to the Customer.

7. INSURANCE – THIS CLAUSE 7 APPLIES TO PRODUCTS PROVIDED ON A HIRE BASIS ONLY

- 7.1. The Customer shall throughout the Hire Period insure the Products against loss or damage including by fire, theft and other risks usually covered by comprehensive insurance and against all risks and liability imposed upon the Customer under the Contract, such insurance to be for the full replacement value of the Product.
- 7.2. The Customer shall on demand provide MSite with a copy of its current insurance policy and a receipt for the last premium paid and all such insurances shall be placed with a reputable insurance company and if MSite so requests in writing, MSite's interest shall be noted on the policy.
- 7.3. If the Customer fails to comply with its obligations under clauses 7.1 and 7.2, MSite shall be entitled to obtain suitable insurance for the Products and invoice the Customer for the costs including applicable administration fee of such insurance.

8. RISK AND TITLE

- 8.1. As between MSite and the Customer, title to the Products that are on-hire from MSite shall remain with MSite at all times throughout the Hire Period and such other period in which the Products remain in the Customer's custody, control or possession.

- 8.2. In relation to Products that are not on-hire from MSite, title to the Products shall remain with MSite until payment of the Charges relating to the Products has been received in full by MSite from the Customer when title to the Products will pass to the Customer.
- 8.3. Nothing in the Contract shall be deemed to transfer title in the Software to the Customer which shall be licenced to the Customer in accordance with the SaaS Terms.
- 8.4. The risk of loss of or damage to the Products shall pass to the Customer on delivery and from that date for the duration of the Hire Period or where the Products are not on-hire, until such time as the title in the Products passes to the Customer in accordance with clause 8.1. The Customer shall, and shall ensure that its Representatives shall:
 - 8.4.1. ensure that the Products shall not be or become affixed to any land or building;
 - 8.4.2. not remove, deface, or obscure any identifying mark relating to it;
 - 8.4.3. not cause or permit the Products to be removed from the Site without MSite's prior written consent;
 - 8.4.4. not remove anything from or modify or attempt to modify the Products, including signage, without MSite's prior written agreement;
 - 8.4.5. take reasonable measures to take care of the Products and protect them from theft and/or damage and only use them for their proper purpose in a safe and correct manner;
 - 8.4.6. not do or permit to be done anything which may prejudice or jeopardise the title, rights and/or interest of MSite in the Products;
 - 8.4.7. for the purposes of collection of the Products upon termination of the Hire Period, grant access to MSite to the Site and make the Products available to MSite in the same condition and meeting the same specification as when delivered (fair wear and tear excepted, reference Schedule 6 - Wear and Tear - MSite Biometric Unit and Schedule 7 - Wear and Tear Document – MSite Unit);
 - 8.4.8. ensure that the Products shall be capable of being removed without damage or injury to any land, building or person; and
 - 8.4.9. not at any time, sub-let, part with possession of, re-hire, sell, assign, or otherwise transfer the Products nor create any mortgage, charge, lien or other security over the Products.
- 8.5. The Customer shall immediately notify MSite in writing upon the occurrence of any loss of or damage to the Products during the Hire Period.

9. PRODUCT WARRANTY – APPLICABLE TO PURCHASE PRODUCTS ONLY

- 9.1. MSite warrants that on delivery of the Products and for the Warranty Period the Products shall be free from material defects in design, material and workmanship.

- 9.2. If at any time during the Warranty Period, the Products or any part thereof is in need of adjustment, repair or replacement (“**Unavailable**”), then the Customer shall notify MSite of the issue via the helpdesk and MSite shall at its discretion:
- 9.2.1. carry out the necessary adjustment or repair at the Site; or
 - 9.2.2. replace the Products or part thereof.
- 9.3. If in MSite’s reasonable opinion, the cause of the adjustment, repair or replacement of the Products arises in whole or in part from any cause other than a material defect or fair wear and tear then (except to the extent the Parties have agreed otherwise in writing) the Customer shall be liable for all additional costs of inspection, loading, unloading and transport in connection with the carrying out of the adjustment, repairs, or replacement, together with the costs of the adjustment, repair or replacement of the Products (as applicable) and no credits shall be payable under clause 4.7.
- 9.4. If in MSite’s reasonable opinion, the cause of the adjustment, repair or replacement is solely attributable to a material defect or fair wear and tear in the Product then MSite shall be liable for all such costs as are mentioned in clause 9.3 and the provisions of clause 4.7 shall apply.
- 9.5. The Customer shall at all reasonable times permit MSite and its Representatives access to the Site and to the Products to inspect, test, adjust, repair or replace the Products, such work to be carried out during normal working hours.
- 9.5.1. If MSite is not permitted access in a reasonable time, this time will be deducted from any “Unavailable” period.
- 9.6. MSite shall not be liable for the Products failure to comply with the warranty given in clause 9.1 if:
- 9.6.1. the defect arises because of improper storage, accident, misuse, abuse, wilful damage or negligence; or
 - 9.6.2. the Customer alters or repairs or attempts to modify the Product; or
 - 9.6.3. the Customer has not paid all sums due to MSite in full by the due date.
- 9.7. Except as provided in this clause 9 [and clause 4.6 and 4.7], MSite shall have no liability to the Customer in respect of the Product’s failure to comply with the warranty set out in clause 9.

10. INSPECTION, SERVICING AND REPAIRS DURING THE HIRE PERIOD

- 10.1. The Customer shall at all reasonable times permit MSite and its Representatives access to the Site and to the Products to inspect, test, adjust, repair, alter or replace the Products, such work to be carried out during normal working hours.
- 10.2. If at any time during the Hire Period, the Products or any part thereof is in need of adjustment, repair or replacement (“**Unavailable**”), then the Customer shall notify MSite of the issue via the helpdesk and MSite shall at its discretion:
- 10.2.1. carry out the necessary adjustment or repair at the Site; or
 - 10.2.2. replace the Products or part thereof.

- 10.3. Notwithstanding clause 10.1 the Contract shall continue unamended except that if the Products have been replaced, MSite may at its option from the date of delivery of the replacement Products, apply MSite's hire rates current at the date of substitution in place of those set out in the Purchase Order in respect of the substituted Products.
- 10.4. If, in MSite's reasonable opinion, the cause of the adjustment, repair or replacement of the Products arises in whole or in part from any cause other than solely fair wear and tear then (except to the extent the Parties have agreed otherwise in writing) the Customer shall (in addition to its liability under 10.3) be liable for all additional costs of inspection, loading, unloading and transport in connection with the carrying out of the adjustment, repairs, or replacement, together with the costs of the adjustment, repair or replacement of the Products (as applicable) and no credits shall be payable under clause 4.7.
- 10.5. If in MSite's reasonable opinion, the cause of the adjustment, repair or replacement is solely attributable to fair wear and tear then MSite shall be liable for all such costs as are mentioned in clause 10.4 and the provisions of clause 4.7 shall apply.
- 10.5.1. If MSite is not permitted access in a reasonable time, this time will be deducted from any "Unavailable" period.
- 10.6. Except as provided in this clause 10 [and clause 4.6 and 4.7], MSite shall have no liability to the Customer in respect of the Unavailability of the Products.
- 10.7. If at the end of the Hire Period, the Products are returned without being cleaned and/or emptied, including the removal of Customer materials, MSite shall arrange for them to be cleaned by a specialist contractor, the cost, including applicable administration fee, of which shall be recharged to the Customer and payable on demand.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1. All Intellectual Property Rights in any proposal document, specifications, drawings, and literature relating to the Products and Services and/or arising out of or in connection with the Products and Services including any software developed or modified by the Supplier specifically for the Customer or to the Customer's specification or instructions shall be owned by MSite.
- 11.2. MSite grants to the Customer a non-transferable, non-exclusive, royalty-free licence in accordance with the SaaS Terms to use the Software (during the Hire Period only in relation to Products that are hired) for the purpose of using the Products and Services in its business.
- 11.3. The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 11.2.
- 11.4. The Customer grants to MSite a non-transferable, non-exclusive licence to host, copy, transmit, display and use data and materials provided by the Customer, for the purpose of providing the Products and Services. The Customer grants to MSite a non-exclusive royalty free licence to use, display and reproduce the trade marks, service marks and logos of the Customer for the purpose of marketing MSite's products and services. Usage is to be agreed in writing by both parties prior to use but not unnecessarily withheld.

12. DATA PROTECTION

- 12.1. Each of the parties shall comply with the Data Protection Legislation in the performance of their obligations or use of the Products and Services under the Contract.

- 12.2. Where either party processes or shares personal data on behalf of or with the other party pursuant to the Contract, the provisions of the data processing agreement or data sharing agreement (as applicable) shall apply.

13. LIMITATION OF LIABILITY

- 13.1. Nothing in the Contract shall limit or exclude either Party's liability for death or personal injury caused by its negligence or the negligence of its Representatives or for fraud or fraudulent misrepresentation or any other liability which cannot be limited or excluded by applicable law.

- 13.2. Subject to clause 13.1:

13.2.1. MSite shall not be liable to the Customer whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for: loss of profit, loss of contracts or business, loss of anticipated savings, loss of or damage to goodwill, or any indirect or consequential loss or damages; and

13.2.2. MSite's total liability to the Customer and the Customer's total liability to MSite in respect of all losses arising under or in connection with the Contract, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, shall be limited to 6 (six) times the Monthly Average Spend; and

13.2.3. The Customer shall not be liable to MSite whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for loss of profit or any indirect or consequential loss.

- 13.3. Each Party acknowledges that it has not relied on, and subject to clause 13.1 will have no remedies (whether in equity, contract, tort (including negligence), for breach of statutory duty, for misrepresentation (including negligent misstatement), or in any other way) for any warranty, assurance, guarantee or representation which is not expressly set out in the Contract.

14. TERMINATION

- 14.1. Without affecting any other right or remedy available to it, either Party may terminate the Contract with immediate effect by giving written notice to the other Party if:

14.1.1. the other Party commits a material breach of any term of the Contract and such breach is irremediable or if such breach is remediable, fails to remedy that breach within a period of 30 days after being notified in writing to do so; or

14.1.2. the other Party makes any voluntary arrangement with its creditors or becomes subject to an administration order or goes into liquidation or has a receiver, administrative receiver or administrator appointed or otherwise suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

- 14.2. For the purposes of this clause 14, a breach by the Customer of clause 11 or clause 16 shall be deemed to be an irremediable material breach.

- 14.3. Without affecting any other right or remedy available to it, MSite may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract within 30 days of the due date for payment.
- 14.4. On termination or expiry of the Contract:
- 14.4.1. (where applicable) the Hire Period shall automatically terminate and the Customer shall, on demand, make available the Products for collection by MSite and MSite may, without prejudice to its other rights or remedies and without any further notice or other act on the part of MSite, enter the Site and take possession of the relevant Products (and more immediately remove Services and withhold Software functionality). MSite shall not be liable for any damage caused by the removal of the Products other than as a result of MSite's negligence. The Customer shall be solely responsible for the safe keeping of the Products until such time as they are collected by MSite and shall remain subject to all applicable obligations and restrictions in respect thereof under the Contract and will cease use them;
 - 14.4.2. the Customer shall be liable for any loss or damage to Products that have been supplied on a hire basis (other than any loss or damage caused, in MSite opinion, by a material defect or fair wear and tear);
 - 14.4.3. the Customer (or where the Customer is not a corporate entity or has been wound up or otherwise ceases to operate as a corporate entity, the corporate entity or person who has the power to direct or cause the direction of the management and/or policies of the Customer) shall immediately pay to MSite all of MSite's outstanding unpaid invoices and, in respect of Services supplied or costs incurred by MSite or any loss or damage to Products under clause 14.3.2 for which no invoice has yet been submitted, MSite shall submit an invoice, which shall be payable by the Customer immediately on receipt; and
 - 14.4.4. if termination is due to Customer's non-payment of invoices relating to the Products, MSite may, without prejudice to its other rights or remedies and without any further notice or other act on the part of MSite, enter the Site and take possession of the relevant Products (and more immediately remove Services and withhold Software functionality). MSite shall not be liable for any damage caused by the removal of the Products other than as a result of MSite's negligence. The Customer shall be solely responsible for the safe keeping of the Products until such time as they are collected by MSite and shall remain subject to all applicable obligations and restrictions in respect thereof under the Contract and will cease use them.
 - 14.4.5. Customer data shall continue to be accessible online to the Customer for 12 months from the end of the period during which Software is provided. At the expiry of the 12 month period, Customer data shall be taken offline and shall only be made available to the Customer upon request. MSite reserves the right to charge an administration fee for responding to such request.
- 14.5. Termination of the Contract shall not prejudice or affect any, rights, remedies or liabilities of the Parties that have accrued up to the date of termination including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination and such termination shall not affect the coming into or continuance in force of any provisions of the Contract which are expressly or by reasonable interpretation intended to come into or continue in force on or after termination (including all indemnity provisions in these Conditions).

15. FORCE MAJEURE

- 15.1. MSite shall not be in breach of the Contract, nor liable for any failure to perform or any delay in the performance of any of its obligations under the Contract if and to the extent that such failure or delay arises from or is attributable to acts, events, omissions or accidents beyond its reasonable control (including acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, pandemic, lock-outs, strikes or other labour dispute (except where relating only to MSite's workforce), restraints or delays affecting carriers or suppliers) (each a **Force Majeure Event**).
- 15.2. If a Force Majeure Event prevents MSite from providing any of the Products and Services for more than 60 days in aggregate, the Customer shall have the right to terminate the Contract immediately by giving notice to MSite.

16. CONFIDENTIAL INFORMATION

- 16.1. Each Party undertakes that it shall not at any time during the term of the Contract, and for a period of 5 (five) years thereafter, disclose to any person any Confidential Information of the other Party, except as permitted by clause 16.2.
- 16.2. Each Party may disclose the other Party's Confidential Information:
- 16.2.1. to its Representatives or advisers who need to know such Confidential Information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with the Contract. Each Party shall ensure that its Representatives or advisers to whom it discloses the other Party's Confidential Information comply with this clause 16; and
- 16.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3. No Party shall use the other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

17. GENERAL

- 17.1. Each of the Parties agrees to comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption (including the Bribery Act 2010). The Customer shall not engage in any activity, practice or conduct which constitutes an offence under the Bribery Act 2010 or which would do if such activity practice or conduct had been carried out in the United Kingdom.
- 17.2. Neither Party shall assign or otherwise transfer all, or any of its rights, obligations or liabilities under or in connection with the Contract unless it is to an assignee to whom such Party has assigned the Master Agreement in accordance with its terms.
- 17.3. Any notice given to a Party under or in connection with the Contract shall be in writing, addressed to that Party at its registered office or its principal place of business or such other address as that Party may have specified to the other Party in writing in accordance with this clause. For the purposes of this clause, 'in writing' shall not include email.
- 17.4. No variation of the Contract or any Purchase Order shall be valid unless it is in writing and agreed by both Parties.
- 17.5. No failure or delay by either Party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict the further exercise of that or any other right or

remedy. A waiver of any right or remedy shall only be effective if it is in writing and signed by the party giving the waiver.

- 17.6. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 17.7. The Contract constitutes the entire agreement and understanding between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 17.8. Nothing in the Contract shall be construed as creating a partnership, a joint venture, or the relationship of principal and agent between the Parties and neither Party shall have authority to act as agent for, or to bind the other Party in any way.
- 17.9. No person who is not a Party to the Contract shall have any rights to enforce any of its terms.
- 17.10. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.
- 17.11. Each Party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.