

This Master Services Agreement sets out the terms and conditions ("**Conditions**") under which Datcom provides Customers with Services pursuant to any Order.

**1. Interpretation**

The following definitions and rules of interpretation apply to these terms and conditions.

**1.1. Definitions:**

"**Additional Charges**" means any Charges for Additional Services.

"**Additional Services**" means any additional services relating to the Services that are not set out in the Order but which are required to be delivered under the Contract in accordance with clause 4.2 below, including as a result of the findings of any survey or resulting from a lack of information provided by the Customer or for other work outside the Services, including under any Change Request.

"**Business Day**" a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"**Change Request**" is a request as defined in clause 4.3 below

"**Charges**" means the Recurring Fees, the One-Off Fees and any Additional Charges payable by the Customer under the Contract.

"**Commencement Date**" shall be as set out in clause 2.2 below.

"**Contract**" means the contract between Datcom and the Customer for the supply of Services and Additional Services in accordance with the Order and clause 4.2 below, these Conditions and any applicable SLA.

"**Customer**" means the person or firm purchasing Services from Datcom.

"**Customer Materials**" means all materials, equipment and tools, drawings, specifications and data supplied by the Customer to Datcom.

"**Data**" means the Customer's data.

"**Datcom**" means Datcom LLP a limited liability partnership registered in England and Wales with company number OC357115, whose principal place of business is at Lynx House, Elmer Street South, Grantham, Lincolnshire, NG31 6QY.

"**Expert Determination**" means the expert determination procedure set out in clause 12.6.

"**Hardware**" means any physical piece of IT equipment, supported or not, such as a mouse, router or server.

"**Hourly Rate**" means Datcom's base line hourly rates for its personnel to carry out any Additional Services. The Hourly Rate applicable will vary depending on the type of work to be carried out by Datcom and the prevailing Hourly Rates shall be as specified in the applicable Order.

"**Incident**" means an error which has occurred within the Systems which results in the System not operating in accordance with Normal Operation.

"**Intellectual Property Rights**" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"**IT**" means information technology and telecommunications.

"**Normal Operation**" means the Systems are working in all material respects in accordance with the applicable manufacturer's specification

"**One-Off Fees**" means that part of the maintenance and support fees which are to be paid by the Customer to Datcom as they are incurred for those Services which are noted as chargeable in addition to the Recurring Fees.

"**Order**" means the Customer's order for Services including any Quotation as set out in the Order Form together with any order for Additional Services pursuant to clause 4.2.

"**Order Confirmation**" means an email, letter or fax sent by Datcom confirming the Customer's order of Services.

"**Order Form**" means the order form issued by Datcom, including any Quotation and the Specification, by which the Customer orders services.

"**Quotation**" means Datcom's quotation by which the Customer is informed of the cost of Services and the Specification for the Services to be provided

"**Recurring Fees**" means that part of the maintenance and support fees which are recurring and to be paid by the Customer to Datcom each month, quarter or year for those Services included within such fee as set out in the Order or this Contract.

**"Replacement Parts"** means any components or parts of Hardware or software required to bring the System(s) back to Normal Operation

**"Services"** means the IT services as specified in an Order to be provided by Datcom to the Customer in accordance with the terms of the Contract including, without limitation, support and maintenance, cloud, communications, connectivity, security and other IT solutions offered by Datcom from time to time, together with any Additional Services provided pursuant to clause 4 below.

**"Services Start Date"** the day on which Datcom is to start provision of the Services, as set out on the Order Form or as notified by Datcom to the Customer in writing

**"SLA"** means Datcom's service level agreement applicable to the Services set out in the Order.

**"Specification"** means the description or specification of the Services provided in writing by Datcom to the Customer.

**"Support Hours"** means 8am to 6pm on Business Days.

**"Systems"** means the IT systems (networks and software) supported or supplied by Datcom pursuant to the Services.

**"Term"** means the Minimum Term plus any renewal periods as provided for by clause 5.3 below;

**"Viruses"** means any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

**"Work Sheet"** means a form which a Datcom engineer will complete after an on-site visit that lists the work carried out and equipment delivered or removed from site.

1.2. In the Contract, the following rules apply:

- 1.2.1. a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and a reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.2. a reference to a party includes its successors or permitted assigns;
- 1.2.3. a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4. any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.5. clause, schedule and paragraph headings shall not affect the interpretation of the Contract; and
- 1.2.6. a reference to writing or written includes faxes and e-mails.

**2. Basis of Contract**

- 2.1. Each Order, once signed or confirmed in writing (including by email) by the Customer, constitutes an offer by the Customer to purchase Services in accordance with the Order, these Conditions and, where applicable, the SLA.
- 2.2. Each Order shall only be deemed to be accepted when Datcom issues an Order Confirmation at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.3. The Contract constitutes the entire agreement between the parties relating to its subject matter. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Datcom which is not set out in the Contract.
- 2.4. These Conditions apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5. Any Quotation issued with an Order or otherwise shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

**3. Supply of Services**

- 3.1. Subject to any pre-conditions set out in the Order Form, Datcom shall supply the Services to the Customer from the Services Start Date for the Term.
- 3.2. Datcom will provide the Services during the Support Hours.
- 3.3. Any timeframes for the resolution of any Incidents given to the Customer or otherwise set out in the Specification or an SLA will be estimates only. Datcom will endeavour to resolve any Incidents during Support Hours.

- 3.4. Datcom shall not be liable for any delay in performing its obligations if any Hardware or Replacement Parts (as applicable) are not available and shall be entitled to charge the Customer for all additional reasonable expenses and costs directly and necessarily incurred by Datcom as a result of such delay.
- 3.5. Datcom shall ensure that, while on the Customer's premises, Datcom's employees who enter such premises with the authority of Datcom for the purpose of, or in connection with, the Contract or the provision of the Services adhere to the Customer's security procedures and health and safety rules and regulations, as from time to time notified to Datcom. The Customer shall be entitled to remove or to refuse admission to any person who is, or has been, in material breach of such procedures, rules and regulations. However, Datcom shall incur no liability for any delay in performing or failure to perform its obligations under the Contract as a result of the Customer removing or refusing admission to any person under this clause 3.5.
- 3.6. Administrative changes and changes to System configuration shall only be made by Datcom and/or the Customer following consultation and agreement between the parties (such agreement not to be unreasonably withheld or delayed by either party). If the Customer implements or authorises the implementation of administrative or configuration changes without Datcom's agreement and this causes a loss of Normal Operations, any remedial Services required to rectify any problem shall be an Additional Service.

#### **4. Additional Services and Change Requests**

- 4.1. If Datcom recommends or the Customer requests Datcom to perform any Additional Service then Datcom shall use its reasonable endeavours to deliver such Additional Services, but the Customer acknowledges that Datcom's ability to supply such Additional Service shall depend on the availability of appropriate resources at the time in question.
- 4.2. Where Datcom agrees to provide an Additional Service, such agreement shall be embodied in an order for Additional Services. Each order for Additional Services shall be made under, and shall incorporate, the terms of the Contract. Datcom shall unless otherwise agreed charge for the time spent in performing the Additional Services at its Hourly Rate.
- 4.3. Any changes to the Services falling outside the provisions of clauses 4.1 and 4.2 above requested by either party ("**Change**") must be submitted in writing to the other party ("**Change Request**") and any Change shall not be effective until and unless agreed in writing and signed by both parties in the form as notified by Datcom to the Customer from time to time.

#### **5. Duration of Contract**

- 5.1. The Contract will commence on the Commencement Date and shall continue for a minimum term of 36 months (or such other period as may be stated on the Order) from the Commencement Date or if stated otherwise on the Order, from the Services Start Date ("**Minimum Term**").
- 5.2. If the Customer wishes to terminate the Contract at the end of the Minimum Term, the Customer shall serve a written notice to Datcom at least three months' before the end of the Minimum Term.
- 5.3. Unless notice to terminate has been served in accordance to with clause 5.2, on expiry of the Minimum Term this Contract will automatically renew for successive periods of 12 months unless:
  - 5.3.1. either party notifies the other party of termination, in writing, at least three months before the end of each renewal period of 12 months, in which case this Contract shall terminate upon the expiry of the applicable renewal period; or
  - 5.3.2. otherwise terminated in accordance with the provisions of this Contract.
- 5.4. Notwithstanding the provisions of clauses 5.1, 5.2 and 5.3 above, where the Customer seeks to terminate the Contract at any time during the Minimum Term, the Customer shall pay to Datcom on demand a sum equal to the whole of all Charges that would (but for termination) have been payable if the Contract had continued for the Minimum Term. Such sums shall be agreed compensation for Datcom's loss and shall be payable in addition to any Charges due up to the date of such termination.
- 5.5. Without prejudice to Datcom's rights and remedies under the Contract, if the Customer cancels any Service prior to the agreed live date, but after Datcom has committed to an agreed live date and has incurred expenses for any hardware, software, services or labour, Datcom reserves the right to pass on any costs reasonably incurred, including those incurred by any third party supplier to Datcom.

#### **6. Charges**

- 6.1. In consideration for the provision of the Services, the Customer shall pay Datcom the Charges. For the avoidance of doubt, the Charges shall consist of the Recurring Fee, the One-Off Fees and any Additional Charges.

- 6.2. If Datcom determine in their reasonable opinion that any Replacement Parts or additional Hardware or software are needed to bring the Systems back to Normal Operation, the costs of such Replacement Parts, Hardware or software will not be covered by the Contract and will be subject to an Additional Charge.
- 6.3. The Customer shall reimburse any reasonable travel (including mileage) or subsistence expenses incurred by Datcom where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Services to a site not named in the Order Form or not within 30 miles from a Datcom office.
- 6.4. All amounts payable under the Contract shall be exclusive of value added tax (if any) which shall be paid at the rate and in the manner for the time being prescribed by law.
- 6.5. The Supplier shall be entitled to increase the Charges for each Service in its absolute discretion at the end of the Initial Term or any Extended Term. During the Initial Term or any Extended Term, the Supplier shall be entitled to increase the Charges for each Service once in each twelve (12) month period beginning on the first anniversary of the Commencement Date for that Service by an amount reflecting the Retail.
- 6.6. In addition, the Charges for each Service may be increased on reasonable notice to the Customer at any time throughout the Term by an amount to reflect material increases in:
  - 6.6.1. the charges payable by the Supplier to any Third Party Services Provider in respect of any relevant Third Party Services, where the Supplier was unaware of the details of such increases as at the respective Commencement Date; and
  - 6.6.2. other Supplier costs which are outside the Supplier's direct control, including: (i) currency exchange rate fluctuations; or (ii) increased energy costs;

## **7. Payment**

- 7.1. Datcom shall invoice the Customer for the Charges. Invoices for the Recurring Fees shall be issued monthly, quarterly or annually (as specified on the Order Form) in advance of the support period to which any recurring charge relates. Invoices for the One-Off Fees shall be invoiced when applicable works have been completed or such shorter period as may be agreed between the parties. All invoices for Additional Charges shall be invoiced when applicable works have been completed or such shorter period as may be specified in the Quotation or any Change Request. All invoices shall be paid within 30 days of the date of invoice ("**Due Date**"), unless otherwise specified on the Order Form.
- 7.2. If the Customer fails to make any payments relating to the Contract, or any other agreements between the Customer and Datcom, by the Due Date, Datcom shall be entitled at its sole discretion to:-
  - 7.2.1. without notification, suspend the provision of the Services until such time as payment is received; and
  - 7.2.2. charge the Customer interest on the overdue amount, payable by the Customer immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at the rate of 4% per annum above the base rate for the time being of HSBC Bank plc. Such interest shall accrue on a daily basis and be compounded quarterly. Datcom reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## **8. Data protection and security**

- 8.1. We respect our client's expectations and rights to privacy and will collect and process personal data pursuant to local legislation, in particular the Data Protection Act 1998 and when applicable from 25 May 2018 the EU General Data Protection regulation.
- 8.2. We may obtain, use, process and disclose personal data about you in order that we may discharge the services agreed under this engagement letter, and for other related purposes including updating and enhancing client records, analysis for management purposes and statutory returns, crime prevention and legal and regulatory compliance. You have a right of access, under data protection legislation, to the personal data that we hold about you. We confirm that when processing data on your behalf we will comply with the provisions of the Data Protection Act 1998 and when applicable from 25 May 2018 the EU General Data Protection Regulation. You will also ensure that any disclosure of personal data to us complies with the current legislation.
- 8.3. We will notify you within 10 working days if an individual asks for copies of their personal data, makes a complaint about the processing of personal data or serves a notice from a relevant Data Protection Authority. You and we will consult and cooperate with each other when responding to any such request, complaint or notice.
- 8.4. We will answer your reasonable enquiries to enable you to monitor compliance with this clause.
- 8.5. We reserve the right, for the purpose of promotional activity, training or other business purposes, to mention that you are a client. As stated above, we will not disclose any confidential information.
- 8.6. The Customer shall own all right, title and interest in and to all of the Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Data.

- 8.7. Datcom will not notify the Customer when Datcom employees remotely access the Systems in performing the Services, unless the Customer has specifically requested Datcom to do so on the Order Form.
- 8.8. Datcom employees will only access areas of the Systems which are required to be accessed to resolve any Incidents.
- 8.8.1. Datcom employees will only connect to the Customer's Systems with encrypted connections.
- 8.8.2. any Data transferred off the Systems physically or over a public network on to Datcom owned Hardware, such as CD, DVD, USB or email, will be encrypted and password protected.
- 8.8.3. Hardware or Data physical removed from the Customer's premises by Datcom will not be encrypted, unless explicitly requested by the Customer, encrypting data will incur additional charges.
- 8.8.4. equipment and Data stored at Datcom's premises or on Datcom's IT systems will be safely secured and protected.
- 8.9. Removal of any Customer equipment will be signed for by the Customer on a Work Sheet.
- 8.10. Disposal of Customer equipment, in accordance with WEEE, and subsequent Data cleansing shall be an Additional Service.
- 8.11. If Datcom processes any personal data on the Customer's behalf when performing its obligations under this Contract, the parties record their intention that the Customer shall be the data controller and Datcom shall be a data processor and in any such case:
- 8.11.1. the Customer acknowledges and agrees that the personal data may be transferred or stored outside the EEA or the country where the Customer and its authorised users are located in order to carry out the Services and Datcom's other obligations under this Contract;
- 8.11.2. the Customer shall ensure that the Customer is entitled to transfer the relevant personal data to Datcom so that Datcom may lawfully use, process and transfer the personal data in accordance with this Contract on the Customer's behalf;
- 8.11.3. the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- 8.11.4. Datcom shall process the personal data only in accordance with the terms of this Contract and any lawful instructions reasonably given by the Customer from time to time; and
- 8.11.5. each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.
- 8.12. The parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of the Contract.
- 8.13. Datcom will not share the Customer's Data with any third-parties unless explicitly authorised to do so or if equipment or software has to be returned or repaired by the manufacturer or the manufacturer's representative.
- 8.14. Unless the SLA, Order, or Services explicitly state otherwise, Datcom shall not be responsible for the security of the Systems and shall not be liable for any security breaches in respect of the Systems.
- 8.15. Notwithstanding clause 8.9 above, Datcom may from time to time advise on best practices in relation to security and recommend Hardware, software and Service solutions, and save in respect of gross negligence or wilful misconduct Datcom excludes all liability in relation to any such security advice given. The Customer shall have the sole liability for assessing and implementing any such recommendations from time to time.
- 8.16. Training and the actions of the Customer's employees on the Systems are wholly the responsibility of the Customer and Datcom shall not be liable for any security breaches due to their actions.
- 9. Datcom's warranties and limits of liability**
- 9.1. Datcom warrants to the Customer that the Services will be performed:
- 9.1.1. in accordance with all applicable laws and regulations;
- 9.1.2. in all material respects in accordance with the applicable Specification and SLA; and
- 9.1.3. with reasonable skill and care.
- 9.2. If, during the term of the Contract, Datcom receives written notice from the Customer of any breach by Datcom of the warranties contained in clause 9.1, Datcom shall, at its own expense use all reasonable commercial endeavours to remedy that breach (or provide the Customer with an alternative means of accomplishing the desired performance ) within a reasonable period following receipt of such notice. The Customer shall provide all information reasonably necessary to enable Datcom to comply with its obligations under this clause 9.2. This clause sets out the Customer's sole remedy and Datcom's entire liability for breach of clause 9.1.
- 9.3. No representation or warranty is given by Datcom that all Incidents will be resolved or fixed or will be resolved or fixed within a specified period of time. Datcom does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and is not responsible for any delays, delivery failures, or any

other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 9.4 All other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into the Contract or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including, without limitation, the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.
- 9.5 Except as expressly stated in clause 9.6:
- 9.5.1 Datcom shall have no liability for any losses or damages which may be suffered by the Customer (or any person claiming under or through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which fall within any of the following categories:
- (i) special damage, even though Datcom was aware of the circumstances in which such special damage could arise;
  - (ii) loss of profits;
  - (iii) loss of anticipated savings;
  - (iv) loss of business opportunity;
  - (v) loss of goodwill; and
  - (vi) loss of, or damage to, data;
- provided that this clause 9.5 shall not prevent claims for loss of or damage to the Customer's tangible property that fall within the terms of clause 9.5.3 or any other claims for direct financial loss that are not excluded by any of categories (i) to (vi) inclusive of this clause 9.5;
- 9.5.2 the Customer agrees that, in entering into the Contract, either it did not rely on any representations (whether written or oral) of any kind or of any person other than those expressly set out in the Contract or (if it did rely on any representations, whether written or oral, not expressly set out in the Contract) that it shall have no remedy in respect of such representations and (in either case) Datcom shall have no liability other than pursuant to the express terms of the Contract; and
- 9.5.3 the total liability of Datcom, whether in contract, tort (including negligence) or otherwise and whether in connection with the Contract or any collateral contract, shall in no circumstances exceed a sum equal to the Fees payable by the Customer in the 12 month period prior to when the liability arose.
- 9.6 The exclusions in clause 9.5 shall apply to the fullest extent permissible at law but Datcom does not exclude liability for:
- 9.6.1 death or personal injury caused by the negligence of Datcom, its officers, employees, contractors or agents; or
- 9.6.2 fraud or fraudulent misrepresentation; or
- 9.6.3 breach of the obligations implied by Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982; or
- 9.6.4 any other liability which cannot be limited or excluded by law.

## 10. The Customer's responsibilities

- 10.1. The Customer shall provide Datcom's employees and all other persons duly authorised by Datcom with full, safe and uninterrupted access including remote access to the Customer's premises and the Systems, as may reasonably be required for the purpose of performing the Services, such access, except in the case of emergency, to be within the Support Hours.
- 10.2. The Customer shall provide such telecommunication facilities as are reasonably required by Datcom for testing and diagnostic purposes at the Customer's expense. Where the Services are to be performed at any of the Customer's premises the Customer shall provide adequate working space and office facilities for use by Datcom's personnel and take reasonable care to ensure their health and safety.
- 10.3. The Customer shall ensure that appropriate environmental conditions are maintained for the Systems and shall take all reasonable steps to ensure that the Systems are operated in a proper manner and in accordance with good computing practice by the Customer's employees.
- 10.4. The Customer shall nominate a representative ("**Customer Representative**") to be available to liaise with, and respond to queries from, Datcom (for example, as to the resolution of conflicting priorities between two or more Incidents).

- 10.5. The Customer shall:
- 10.5.1. co-operate with Datcom and provide any assistance or information as may reasonably be required by Datcom for the purposes of performing the Services;
  - 10.5.2. report failures of the Systems to operate in accordance with Normal Operations promptly to Datcom;
  - 10.5.3. install and keep up to date anti-virus software on the Systems and install Microsoft Windows updates (if these tasks are not included in the Services);
  - 10.5.4. follow reasonable recommendations in relation to the operation of the Systems made by Datcom in response to a request for advice or assistance from the Customer;
  - 10.5.5. keep full back-up copies of all of its Data;
  - 10.5.6. keep full security copies of its programs and computer records in accordance with best computing practice;
  - 10.5.7. keep support current with third party software vendors; and
  - 10.5.8. monitor and log activity on the System.
- 10.6. The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 10.6.1. is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 10.6.2. facilitates illegal activity;
  - 10.6.3. depicts sexually explicit images;
  - 10.6.4. promotes unlawful violence;
  - 10.6.5. is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 10.6.6. in a manner that is otherwise illegal or causes damage or injury to any person or property; and
- Datcom reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 10.7. The Customer shall procure that each authorised user of the Services keeps any passwords or other methods of accessing the Services secure and shall comply with Datcom's Services use instructions from time to time.
- 10.8. The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and, in the event of any such unauthorised access or use, promptly notify Datcom.
- 10.9. If Datcom considers that the Customer is not, or may not, be complying with any of the Customer's obligations, Datcom shall be relieved of its performance under the Contract for such period of such non-compliance.
- 10.10. The Customer shall:
- 10.10.1. comply with all applicable laws and regulations with respect to its activities under this Contract;
  - 10.10.2. carry out all other Customer responsibilities set out in this Contract in a timely and efficient manner;
  - 10.10.3. ensure that its network and systems comply with the relevant specifications provided by Datcom from time to time; and
  - 10.10.4. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Datcom's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 10.11. The Customer shall indemnify Datcom against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against Datcom as a result of the Customer's breach of the Contract or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents.

**11. Intellectual Property Rights**

- 11.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Datcom. Datcom grants the Customer, a fully paid-up, worldwide, non-exclusive, royalty-free, licence to copy and modify such Intellectual Property Rights for the sole purpose of receiving and using the Services during the term of the Contract.
- 11.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Datcom obtaining a written licence from the relevant licensor on such terms as will entitle Datcom to license such rights to the Customer.
- 11.3 The Customer grants Datcom a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this Contract for the purpose of providing the Services to the Customer in accordance with this Contract.

**12. Dispute resolution**

- 12.1 The parties agree to use their best endeavours to negotiate in good faith and settle any dispute that may arise out of or related to the Contract or any breach of it. If any such dispute cannot be settled amicably through ordinary negotiations either party may propose to the other in writing that structured negotiations be entered into with the assistance of a neutral adviser or mediator ("**Neutral Adviser**") before resorting to litigation.
- 12.2 If the parties are unable to agree on a Neutral Adviser or if the Neutral Adviser agreed upon is unable or unwilling to act, any party may, within 14 days from the date of the proposal to appoint a Neutral Adviser or within 14 days of notice to any party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution ("**CEDR**") in London to appoint a Neutral Adviser.
- 12.3 The parties will within 14 days of the appointment of the Neutral Adviser meet with him in order to agree a programme for the exchange of any relevant information and the structure to be adopted for the negotiation to be held in London.
- 12.4 All negotiations connected with the dispute will be conducted in complete confidence, and the parties undertake not to divulge details of such negotiations except to their professional advisers who will also be subject to such confidentiality, and will be without prejudice to the rights of the parties in any future proceedings.
- 12.5 If the parties accept the Neutral Adviser's recommendations or otherwise reach agreement on the resolution of the dispute, such agreement shall be reduced to writing and once, it is signed by their duly authorised representatives, shall be final and binding on the parties.
- 12.6 Notwithstanding the foregoing, any technical dispute may be referred for final settlement to an expert agreed by the parties or, if not agreed within 14 days of either party's written request to the other, as determined, at the written request of either party, by the President of the British Computer Society. Such expert shall be deemed to act as an expert and not as an arbitrator. The expert's decision shall, in the absence of manifest error, be final and binding on the parties. The parties shall be entitled to make submissions to the expert including oral submissions and will provide (or procure that others provide) the expert with such assistance and documents as the expert reasonably requires for the purpose of reaching a decision. Each party shall bear its own costs in relation to the reference to the expert. The expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the expert) shall be borne by the parties equally or in such other proportions as the expert shall direct
- 12.7 No party may commence any court proceedings in relation to any dispute arising out of the Contract until it has attempted to settle the dispute by one of the procedures set out in this clause 12 and either the procedure has terminated or the other party has failed to participate in the procedure, provided that the right to issue proceedings is not prejudiced by a delay.

**13. Non-solicitation**

The Customer shall not, for the duration of the Contract, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of Datcom who has been engaged in the provision, receipt, review or management of the Services or otherwise in connection with the Contract to leave the employment of Datcom.

**14. Force majeure**

- 14.1 Subject to due compliance with clause 14.2, neither party shall be liable to the other for any delay or non-performance of its obligations under the Contract arising from any cause beyond its reasonable control including, without limitation, act of God, governmental act, war, fire, flood, explosion or civil commotion.



- 14.2 In the event of either party being so delayed or prevented from performing its obligations, such party shall:
- 14.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;
  - 14.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Contract; and
  - 14.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.
- 14.3 In the event that such delay or prevention continues for more than eight weeks, the party whose performance is not delayed or prevented may terminate the Contract on 30 days' written notice to the other party.

**15. Termination and Consequences of termination**

- 15.1 Without prejudice to any other right or remedy available to either party, each party may terminate the Contract or suspend delivery of Services under the Contract without liability to the other party, if:
- 15.1.1 the other party is in material or persistent breach of any of its obligations under the Contract and either that breach is incapable of remedy, or the other party has failed to remedy that breach within 30 days after receiving written notice requiring it to do so; or
  - 15.1.2 an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
  - 15.1.3 an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
  - 15.1.4 a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
  - 15.1.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way, or becomes bankrupt; or
  - 15.1.6 the other party ceases, or threatens to cease, to trade.
- 15.2 On expiry or termination of the Contract:
- 15.2.1 the Customer's right to receive the Services shall cease automatically;
  - 15.2.2 each party shall immediately return to the other all property and materials containing Confidential Information (as defined in clause 17) belonging to the other; and
  - 15.2.3 all amounts due from the Customer to Datcom under the Contract shall be paid immediately.
- 15.3 Any termination of the Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision of the Contract which is expressly, or by implication, intended to come into force or continue in force on or after termination.
- 15.4 Datcom shall, at the request and cost of the Customer, provide assistance reasonably requested by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it.

**16. Assignment and sub-contracting**

- 16.1 Subject to the remaining terms of clause 16, neither party may assign, sub-license, sub-contract, mortgage or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the other, such consent not to be unreasonably withheld or delayed.
- 16.2 Datcom may (with the prior consent of the Customer, such consent not to be unreasonably withheld or delayed) sub-contract any of its obligations under the Contract on notice to the Customer provided that it shall remain liable to the Customer for the performance of all such obligations.
- 16.3 Notwithstanding the foregoing, either party may assign the Contract to any acquirer of all, or substantially all, of such party's assets or business relating to the subject matter of the Contract, or to any entity controlled by, that controls, or is under common control with, a party to the Contract. Any attempted assignment in violation of this clause will be void and without effect.

**17. Confidentiality**

- 17.1 Each party shall, during the term of the Contract and thereafter, keep confidential, and shall not use for any purpose other than to perform its obligations under this Contract, nor without the prior written consent of the other disclose to any third party, any and all information of a confidential nature (including trade secrets and information of commercial value) that may become known to such party from the other party, and which relates to the other party ("**Confidential Information**"), unless such information is public knowledge or already known to such party at the time of disclosure, or subsequently becomes public knowledge other than by breach of the Contract, or subsequently comes lawfully into the possession of such party from a third party.
- 17.2 Each party may disclose the other party's Confidential Information:
- 17.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 17.2.1; and
- 17.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 17.3 The terms of the Contract may not be disclosed by either party (other than to their legal advisers) without the prior written consent of the other.
- 17.4 The provisions of clause 17 shall remain in full force and effect notwithstanding any termination of the Contract.

**18. General**

- 18.1 No forbearance or delay by either party in enforcing its rights shall prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms shall be deemed to be a waiver of any other right or of any later breach.
- 18.2 If any provision of the Contract is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.
- 18.3 Any amendment, waiver or variation of the Contract shall not be binding on the parties unless set out in writing, expressed to amend the Contract and signed by or on behalf of each of the parties.
- 18.4 No term of the Contract is intended to confer a benefit on, or to be enforceable by, any person who is not a party to the Contract.
- 18.5 Any notice required to be given pursuant to the Contract shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in the Contract. Notices may be sent by first-class mail or fax, provided that faxes are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed faxes shall be deemed to have been received instantaneously on transmission, provided that they are confirmed as set out in this contract. Unless stated otherwise, the provisions of this clause 18.5 shall not apply to day-to-day communications between the Customer and Datcom relating to the performance of the Services.
- 18.6 The Contract contains the whole agreement between the parties relating to the subject matter hereof, and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter.
- 18.7 Without prejudice to clause 12, the Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).