

# General Terms and Conditions

## A1 Definitions

A.1.1 The definitions in this clause A1 apply except where an alternative definition is given in an applicable section of the Special Terms and Conditions in which case the definition in the Special Terms and Conditions shall take precedence:

**"Medhurst"** means Medhurst Communications Ltd of 17 Brunel Way, Segensworth, Fareham, Hampshire PO15 5TX United Kingdom and/or any other group member of Medhurst Communications Ltd which shall supply services to You.

**"The Customer"** means the customer and any other authorised group member of your organisation who will receive or use the goods and services supplied by MCL.

**"Acceptable Use Policy"** means Medhurst's current policy for appropriate use of the Medhurst Website and the Services, as published on the Medhurst Website at the relevant time.

**"Additional Charges"** means charges calculated by Medhurst on a time and materials basis at its then prevailing rates for providing Additional Services.

**"Additional Services"** means a Service not specified as included within the Service Order.

**"Agreement"** means the contract between Medhurst and The Customer for the provision of Services, comprising the Statement of Work (if any), the Service Order, the Special Terms and Conditions, these General Terms and Conditions and the Sales Quotation.

**"Commencement Date"** means the start date for the provision of Services as stated in the Service Order.

**"Default"** means any material breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement and in respect of which such party is liable to the other.

**"Effective Date"** means the date of this Agreement, as specified in the Service Order.

**"Equipment"** means the computing hardware from or upon or in relation to which the Services are to be performed.

**"Medhurst Website"** means the website located at <http://www.medhurst-it.com> or such other internet address as may be adopted or used by Medhurst from time to time.

**"Hours of Cover"** means the times, detailed in the Service Order to a Service Schedule, that Medhurst will provide Services.

**"Inappropriate Materials"** means Material that under the laws of any jurisdiction where the material can be accessed is or may be any of the following: unlawful, threatening, abusive, harmful, obscene, pornographic, malicious, profane, libellous, defamatory, infringing of any Intellectual Property Rights, constituting or encouraging a criminal offence or containing a virus, worm, Trojan horse or other harmful code or corrupt data, spam or unsolicited commercial emails and any other material defined as Inappropriate Material in the Acceptable Use Policy.

**"Intellectual Property Rights"** means patents, trade marks, service marks, designs, design rights, copyright (including all copyright in any designs and computer software and any databases), database rights, inventions, trade secrets, know-how, confidential information, registrable business names and all other intellectual property rights and rights of a similar character in any part of the world (whether or not the same are registered or capable of registration) and all applications and rights to apply for protection of any of the same.

**"Material"** means text, graphics, images, sound, video or any combination thereof.

**"Personnel"** means any engineer or consultant provided by Medhurst, whether an employee or subcontractor of Medhurst to perform Services on behalf of Medhurst.

**"Place of Use"** means the location at and from which the Equipment is installed and operated and all access (either physical or remote) required to that part.

**"Product"** means the Equipment, software and/ or Services set out on a Service Order, Statement of Work or Sales Quotation.

**"Product Description"** means the latest product or service description, either in a Service Order, Statement of Work or Sales Quotation.

**“Sales Quotation”** means a document, including a page on the Medhurst Website, detailing the prices of Product(s) and/or Services that Medhurst provide to customers.

**“Services”** means the work referred to in a Service Order or a Statement of Work which Medhurst will perform.

**“Services Charges”** means charges for Services performed.

**“Service Misuse”** means any use of the Services in breach of clause A.6.

**“Service Order”** means the document covered by this Agreement detailing the Services and including site addresses, duration, equipment listing, hours of cover, service level and contract price.

**“Special Terms and Conditions”** means the Special Terms and Conditions applicable to the Services provided under this Agreement which shall be attached to each Service Order.

**“Statement of Work”** means a document prepared by Medhurst providing additional information regarding Services.

**“TCP/IP address”** means a transmission control protocol or internet protocol address, as such terms are commonly understood by users of the Internet.

**“Website”** means any site or page on the world-wide web.

**“Writing”** means any method of permanently reproducing words in legible form, including without limitation facsimile transmission and electronic mail and **“Written”** shall be construed accordingly.

## **A2. Services**

A.2.1 Subject to these General Terms and Conditions, Medhurst will provide The Customer with the Services set out in the Service Order and/ or Statement of Work.

A.2.2 Service Charges include travel (mainland UK only), accommodation and subsistence expenses of Personnel (including cost of time spent travelling) incurred in the provision of the Services. These Service Charges will be added as an additional expense where applicable.

## **A3. General Provisions**

A.3.1 If and to the extent only of any direct conflict between these General Terms and Conditions, the Special Terms and Conditions, the Statement of Work, the Sales Quotation, the Acceptable Use Policy and the Service Order the order of precedence shall be:

- Acceptable Use Policy
- Statement of Work
- Service Order
- Special Terms and Conditions
- General Terms and Conditions
- Sales Quotation.

A.3.2 Nothing in this Agreement is intended or shall be construed to create a relationship of agency, partnership, or a fiduciary relationship between the parties. Accordingly, except as expressly authorised herein, neither party shall have the authority to act or make representations on behalf of the other party.

A.3.3 Headings to clauses are for the purpose of information and identification only and shall not be construed as forming part of this Agreement.

A.3.4 In this Agreement, the masculine includes the feminine and the neuter and the singular includes the plural and vice versa.

## **A4. Price and Payment**

A.4.1 The Service Charge shall be as specified in the Service Order. Medhurst reserves the right to review the Service Charges as shown in the Service Order at approximately each anniversary of each Service to reflect the effects of inflation

and market changes. Any changes to the Service Charges will take effect thirty (30) days after written notice of the change is given to The Customer.

A.4.2 Service Charges do not include the cost of any Additional Services which are subject to Additional Charges.

A.4.3 Service Charges will be invoiced in advance of the Commencement Date unless otherwise specified in the Service Order. Additional Charges will be invoiced as and when incurred.

A.4.4 Service Charges and Additional Charges shall be due and payable by The Customer within thirty (30) days of the date of invoice (without any withholding, deduction, set-off, counterclaim or cross demand on any account whatsoever other than in respect of a bona fide dispute under this Agreement, details of which have been provided to Medhurst in writing (in which case the Customer shall pay the full amount not in dispute) and clause A25 shall apply.

A.4.5 Time of payment shall be of the essence and without limiting Medhurst's remedies, if payment is overdue The Customer shall indemnify Medhurst against any legal fees and other costs of collection and shall pay to Medhurst a sum equal to any loss suffered by it arising from exchange rate fluctuations and Medhurst shall have the right to charge interest for late payment of invoices at the same rate which would apply were the qualifying debt under The Late Payment of Commercial Debts (Interest) Act 1998 from the due date until payment, whether before or after judgment and Medhurst may suspend performance of any Services pending payment in full.

A.4.6 Any payment which falls due later than it would have done because of delay caused by The Customer shall be deemed to fall due when, but for The Customer's delay, it might reasonably be expected to have fallen due. Medhurst may delay or withhold performance under this Agreement (including suspending Services without notice) until The Customer has made any payment or opened any letter of credit or established any other payment arrangements which are due to be made, opened or established and its time for performance shall be extended accordingly.

A.4.7 In calculating the Service Charges, Medhurst has relied on the financial, commercial, technical and operational information provided by The Customer. If such information is inaccurate either by error, omission or misrepresentation then Medhurst reserves the right to review and increase as appropriate the Service Charges as detailed in the Service Order.

A.4.8 All Service Charges are expressed exclusive of Value Added Tax which shall be paid by The Customer following receipt of a valid tax invoice, in accordance with clause A.4.4.

A.4.9 Notwithstanding the provisions of clause A4.8 all payments shall be made free of any tax withholding. If any tax withholding is due on payments under the Agreement such tax shall be an additional cost for The Customer who shall promptly provide Medhurst with a certificate of all tax paid.

A.4.10 If the payment of any amount is disputed then any undisputed element of that amount shall be paid and the disputed amount shall be dealt with in accordance with clause A25.

A.4.11 Until payment of all sums due under any contract have been received in full and cleared funds, Medhurst shall have a right of lien over any goods or materials belonging to The Customer which are in Medhurst's possession or control.

## **A5. Customer's Obligations**

A.5.1 The Customer undertakes to Medhurst throughout the term of this Agreement to:

A.5.1.1 provide Medhurst with accurate and up to date details of its e-mail, mobile telephone numbers and physical addresses and promptly to notify Medhurst in writing of any alterations thereto from time to time;

A.5.1.2 obtain the consent of all individuals whose personal data are to be held on a domain name register or are otherwise provided to Medhurst for the purposes of this Agreement;

A.5.1.3 ensure that all passwords and user IDs provided to The Customer are kept secure and confidential and are used only by authorised members of The Customer's staff;

A.5.1.4 if the Place of Use is a site, system or network owned or controlled by The Customer, provide such access to the Place of Use as Medhurst shall require to discharge its obligations;

A.5.1.5 if the Place of Use is a site owned or controlled by The Customer, provide such facilities at the Place of Use as Medhurst shall require to discharge its operations (including without limitation adequate and appropriate workspace and environmental conditions for Personnel and Equipment, use of telephone and facsimile machines, storage, electrical supplies, cabling and office furniture and equipment);

A.5.1.6 grant all reasonable access to its premises and equipment to enable Medhurst to perform the Services during all normal working hours and upon reasonable notice from Medhurst at any other time;

A.5.1.7 take all reasonable precautions to protect the health & safety of The Personnel while on The Customer's premises and/ or Place of Use;

A.5.1.8 ensure that any premises and/ or Place or Use of The Customer to which Personnel have access for performance of Services fully comply with health and safety regulations and The Customer will not expose Personnel to unnecessary risk or danger to personal safety;

A.5.1.9 ensure that Personnel are made aware of all relevant safety procedures and regulations at the Premises and/ or Place of Use, if the Place of Use is a site owned or controlled by The Customer;

A.5.1.10 ensure that its employees and agents comply with all reasonable instructions made by Personnel in the course of performance of the Services or to enable Medhurst to limit any damage to either party, including without limitation complying with safety procedures;

A.5.1.11 take all precautions to protect its data and ensure that a daily back-up arrangement is implemented before and during this Agreement and maintain disks or tapes containing back-ups unless Medhurst is providing this Service.

A.5.1.12 at the request of Medhurst make available for the assistance of Medhurst in undertaking the Services all necessary documentation, information and system data relating to the Services or required to perform the Services and make available staff familiar with The Customer's programs and/or applications and/or requirements of the Services, which staff will fully co-operate with Personnel to enable the Services to be performed;

A.5.1.13 comply at all times and in all respects with the Acceptable Use Policy; and

A.5.1.14 indemnify Medhurst against any liability, loss, damage or expense (including legal fees and disbursements) incurred by it or arising in connection with The Customer's failure to comply with its obligations under this Agreement.

A.5.2 The Customer will exercise due care in respect of the Equipment and in particular, if the Equipment is under The Customer's control, insure and maintain the Equipment in suitable premises and under suitable conditions as recommended by the Equipment manufacturer.

A.5.3 Medhurst reserves the right to make a charge for any work carried out by Medhurst which is attributable to The Customer's failure to observe (or delay in observing) its obligations under this Agreement.

A.5.4 The Services include support only insofar as specified in the relevant Special Terms and Conditions. We will use reasonable endeavors to meet any specified response times and to rectify specified faults or problems but do not guarantee that response times or rectification will be achieved.

A.5.4.1 We shall not in any event be obliged to supply support:

- a) in respect of faults or problems directly or indirectly arising from:
  - i) incorrect use of the Services;
  - ii) products or services not supplied by us; or
  - iii) any cause external to the Services;
- b) where you are using anything other than the most recent version of any relevant software
- c) where you or any third party not authorised by us has modified the relevant software or attempted to resolve the problem; or
- d) if any fees due to us are unpaid.

A.5.4.2 Any support which we agree to supply in addition to that covered by this agreement shall be charged at our then current standard rates.

## **A.6 Acceptable Use**

A.6.1 The provision by Medhurst of Services is conditional upon The Customer's compliance at all times with the Acceptable Use Policy and any breach of the Acceptable Use Policy by The Customer or its employees or agents shall entitle Medhurst, without limiting any other rights or remedies, to suspend or terminate the Services forthwith without notice.

A.6.2 Without limiting clause A.6.1, Medhurst's network and Service(s) may only be used in accordance with this Agreement. The Customer shall comply at all times with all applicable laws and regulations, Medhurst's operating procedures, and the Acceptable Use Policy. The Customer shall not use or permit the use of the Service(s), the Customer's servers or Medhurst's networks or servers in a fraudulent manner or in a manner that violates the Acceptable Use Policy or

any applicable law or regulation, to communicate or publish inappropriate Materials or in a manner which may expose Medhurst to legal liability.

A.6.3 The Customer shall fully indemnify, Medhurst against any and all claims, losses, damages, liabilities and expenses including, without limitation, reasonable legal fees, arising from or related to (i) Service Misuse or a breach of any other provision of this Agreement; (ii) any claim of infringement of any Intellectual Property Rights or other proprietary interest based on the possession or use of any Service(s), software or equipment furnished to The Customer or The Customer's end-user(s) and/or customer(s); (iii) any claim that any Material of The Customer, or the manner in which The Customer or The Customer's customers and/or end users make use of the Services or any Material, constitutes an infringement of any Intellectual Property Rights of any third party; (iv) any acts, omissions or Defaults of The Customer, its employees, agents or representatives.

## **A.7 Medhurst's Warranty**

A.7.1 Medhurst warrants to The Customer that:

A.7.1.1 it will perform the Services and any Additional Services with reasonable care and skill;

A.7.1.2 it will perform any Additional Services it agrees to provide within a reasonable time of being so instructed in writing by The Customer;

A.7.1.3 it will use reasonable endeavours to attain any service levels or project specifications which are agreed with The Customer; and

A.7.1.4 that any Personnel required to visit The Customer's Place of Use for the provision of Services will comply with The Customer's health and safety procedures, such procedures to have been notified to Medhurst in writing prior to the Commencement Date.

A.7.2 Medhurst does not warrant that any system, server, network or website of The Customer will operate without interruption.

## **A.8 Sale of Equipment**

A.8.1 The provisions of this clause 8 shall apply if and to the extent that Medhurst agrees to supply goods of any kind, including software ("Goods") to The Customer.

A.8.2 Risk of damage to or loss of the Goods shall pass to the Customer upon delivery.

A.8.3 Notwithstanding delivery and the passing of risk in the Goods and any other provision of this Agreement, title to and ownership of the Goods shall not pass to The Customer until Medhurst has received the price therefor (as quoted by Medhurst) in full in cash or cleared funds.

A.8.4 If at the date that payment in full for the Goods is made any other monies then due for payment by the Customer to Medhurst on any account have not been paid, title to the Goods shall not in any event pass to The Customer until Medhurst has received in cash or cleared funds payment in full of the monies overdue.

A.8.5 Until such time as property in the Goods passes to The Customer, The Customer shall:

A.8.5.1 hold the Goods as Medhurst's fiduciary agent and bailee;

A.8.5.2 keep the Goods properly stored, insured and identified as Medhurst's property; and

A.8.5.3 Medhurst shall, unless and to the extent prohibited by law, have a lien over any of the Customer's assets in its possession or control.

A.8.6 A quotation for Goods is not an offer: it may be withdrawn or modified at any time prior to acceptance by Medhurst of an order and will in any event lapse thirty (30) days after its date of issue.

A.8.7 Medhurst shall effect delivery of the Goods by informing The Customer that the Goods are ready for delivery and depositing them at the place for delivery stated in the order.

A.8.8 Delivery times are approximate. Medhurst will not deliver goods in advance of the quoted delivery date other than with The Customer's agreement.



A.8.9 If The Customer agrees that Goods may be delivered in instalments, each such instalment shall constitute a separate contract which may be separately invoiced. Any delay in delivery or termination of any instalment will not entitle the Customer to terminate the Contract as a whole, nor permit the set off of any payments in respect of one delivery against any claim in respect of any other delivery.

A.8.10 Where Goods are expressly sold on an “as is”, “as seen”, “in existing condition” or “ex-rental” or similar basis, Medhurst shall have no liability for defects, other than latent defects which could not have been apparent from a physical inspection of the Goods.

A.8.11 Where the Goods are supplied by Medhurst for export from the United Kingdom, The Customer shall comply with all applicable legislation and regulations and payment of any duties, import taxes or other costs of import.

A.8.12 The Customer shall obtain all licences, authorisations and approvals required for export of Goods from the UK or import into any other country and shall indemnify Medhurst against any liability in relation to The Customer’s breach of any of the provisions of this clause.

A.8.13 It is agreed that, insofar as it supplies Goods to The Customer, Medhurst is trading as a reseller only and is not in any way the author, writer, manufacturer or any other developing party to any software or hardware supplied by it.

A.8.14 At the request and expense of The Customer, subject to Medhurst first being indemnified and secured to its reasonable satisfaction by The Customer against any costs, liabilities and expenses which it thereby incurs, Medhurst will on The Customer’s behalf enforce all warranties, conditions or other rights granted in its favour by the manufacturer of the Goods.

## **A.9 Limitation of Liability**

A.9.1 Neither party excludes or limits liability to the other party for death or personal injury resulting from its own or that of its employees’, agents’ or sub-contractors’ negligence or for fraudulent misrepresentation. Neither party excludes or limits liability to the other party for breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982 or for any other liability which may not be limited or excluded by law.

A.9.2 All clauses in this agreement which exclude or limit Medhurst’s liability apply to and may be enforced by Medhurst’s directors, officers, employees, subcontractors, agents and affiliated companies as well as to/by us and those parties shall all have the benefit of the Limits in terms of the Contracts (Rights of Third Parties) Act 1999.

A.9.3 Subject to clauses A.9.1 and A.9.2, the liability of Medhurst for Defaults shall be subject to the financial limits set out in this clause A.9.3 as follows:

A.9.3.1 the aggregate liability of Medhurst for each Default or set of connected Defaults of Medhurst or its Personnel resulting in direct loss of or damage to the tangible property of The Customer shall in no event exceed fifty thousand pounds (£50,000.00) in any twelve (12) month period;

A.9.3.2 save for liability for Defaults which cause direct loss of or damage to the tangible property of The Customer, The Customer shall insure its tangible property to its full replacement value against all normal commercial risks and Medhurst shall have no liability whatsoever to The Customer for any loss of or damage to The Customer’s tangible property;

A.9.3.3 in the case of any other loss or damage caused by a Default of Medhurst or of its Personnel or any other liability (whether in contract, tort, for breach of statutory duty or otherwise) arising under or in relation to this Agreement, the aggregate liability of Medhurst shall not exceed one hundred and twenty-five per cent (125%) of the aggregate of the Service Charges paid for the Services or the price paid for the Goods in relation to which the Default or liability arose.

A.9.4 Subject to clauses A.9.1 and A.9.2, Medhurst shall not be liable to The Customer whether in contract, tort, statutory duty or otherwise for any loss which is or which represents loss of or reinstatement of data, misdirection or non-delivery or non-publication of data, loss of profits, loss of goodwill, loss of revenue, business interruption, loss of production, management time, third party liability, loss of use of any tangible or intangible asset, loss of anticipated savings, loss of contracts and/or any indirect, special or consequential loss.

A.9.5 If a number of events of Default give rise substantially to the same loss then they shall be regarded as giving rise to only one claim under this Agreement.

A.9.6 The Customer agrees to afford Medhurst not less than forty-five (45) days in which to remedy any Default.

A.9.8 Subject to clauses A.9.1 and A.9.2, Medhurst shall have no liability to The Customer in respect of any Default unless The Customer shall have served notice of the same upon Medhurst within three months of the date it became aware of the circumstances giving rise to the Default or the date when it ought reasonably to have become so aware.

A.9.9 Subject to clauses A.9.1 and A.9.2, Medhurst accepts no responsibility for any viruses introduced to The Customer's premises, equipment, systems or networks no matter how so introduced.

A.9.10 Nothing in clause A.9 shall confer any right or remedy upon The Customer to which it would not otherwise be entitled.

A.9.11 The express terms of this Agreement are in substitution for and Medhurst excludes (to the fullest extent permitted by law) all terms and warranties implied by law.

A.9.12 Medhurst shall not be liable for any defect, wastage or other loss whatsoever (unless and to the extent caused directly by Medhurst's negligence or wilful default) in, of or arising from equipment, hardware or software or other items (in this clause, "equipment") supplied or made available to Medhurst by The Customer, which equipment shall be held, worked on and used at the Customer's risk. Quantities of equipment supplied by the Customer shall allow for normal spoilage and fair wear and tear.

A.9.13 Medhurst shall not be responsible for any loss, damage, cost or expense arising from any defect, mistake or inaccuracy in any equipment specified or supplied by The Customer (unless and to the extent caused by Medhurst's negligence). Any loss, damage, cost or expense arising therefrom shall be for the sole account of The Customer who shall indemnify Medhurst accordingly.

A.9.14 Medhurst's liability for equipment specified or provided to Medhurst by The Customer or otherwise held or worked on by Medhurst on behalf of The Customer shall be limited to the lesser of the basic raw material cost of the equipment or an independent external valuation of such equipment.

A.9.15 Subject to clauses A.9.1 and A.9.2, Medhurst shall have no liability under or in relation to this Agreement for any Default which would not have arisen but for or which is caused by The Customer's Default.

A.9.16 The Customer acknowledges and agrees that the allocation of risk in this clause A.9 is fair and reasonable having regard to the Service Charges and to The Customer's ability to rely on its own business insurance to bear or recover any losses described in clause A.9.3 and A.9.4.

#### **A.10 Customer's Warranty**

The Customer warrants and undertakes to Medhurst that it has full power, capacity and authority to enter into this Agreement (including but not limited to, where its procedures so require, the consent of its parent company) to enter into and to perform this Agreement and that this Agreement is executed by a duly authorised representative of The Customer. The Customer undertakes to indemnify Medhurst against any loss or damage which Medhurst may suffer as a result of a breach by The Customer of this clause A.10 or clause A5.

#### **A.11 Duration of Agreement**

This Agreement will commence on the Effective Date and will continue thereafter until the later of termination in accordance with clause A13 or the termination of the last Service Order.

#### **A.12 Customer's Representatives**

The Customer shall promptly communicate to Medhurst the identity of a person(s) or the department within its organisation who shall act as the sole contact point and channel of communication for the provision by Medhurst of the Services. The Customer shall forthwith inform Medhurst of any change in the identity of any such person(s) or department. If Medhurst requires, The Customer shall nominate a suitable alternative person.

#### **A.13 Termination**

A.13.1 This Agreement or specific Service Order or part thereof may only be terminated:

A.13.1.1 by either party giving thirty (30) days' written notice to the other such notice to expire at the end of the minimum period specified in the applicable Service Order or, if no minimum period is so specified, on any anniversary of the Effective Date;

A.13.1.2 in accordance with clauses A18.3 or A24;

A.13.1.3 forthwith by Medhurst if The Customer fails to pay the Service Charges or any Additional Charges due within 14 days of the due date for payment;



A.13.1.4 forthwith by either party if the other commits any material breach of any term of this Agreement (other than for non-payment of Service or Additional Charges) and which (in the case of a breach capable of being remedied) shall not have been remedied within 45 days of a written request by the other party to remedy the same;

A.13.1.5 forthwith by either party if the other convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composite scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver, administrator or similar officer is appointed in respect of all or any part of the business or assets of the other party or if a petition is presented or a meeting is convened for the purpose of considering the winding up of the other party.

A.13.1.6 on the event

A.13.2 Termination shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.

#### **A14. Effects of Termination**

A14.1 Upon termination for any reason, all sums due to Medhurst shall become immediately payable by The Customer without set-off, withholding or deduction on any account whatsoever.

A14.2 Following completion of any work by Medhurst or termination of any Services or of this Agreement all copies of programs, manuals and documentation used by Medhurst for the purpose of providing such Services or performing the work will be returned to The Customer.

A14.3 Upon termination of this Agreement for whatever reason, The Customer will:

A.14.3.1 immediately deliver up any of Medhurst's property which it has no contractual right to retain (including but not limited to any stock stored on The Customer's site by Medhurst) and Medhurst may enter any premises to recover and remove such property. Any property not recovered will be charged at cost plus reasonable costs of procuring same; and

A.14.3.2 within 7 days of termination, cease using and delete from all computers in its possession or under its control, all TCP/IP addresses supplied by Medhurst.

A.14.4 Termination of this Agreement shall not affect:

A.14.4.1 the accrued rights and remedies of the parties (which rights and remedies are at all times cumulative and not exclusive); and

A.14.4.2 the continuance in force of any clause expressed to remain in force after termination or required to give effect to any such clause or of clauses A.4.5, A.4.11, A.5.1.15, A.9, A.10, A.14, A.15, A.17, A.18, A.19, A.21, A.22, A.25, A.27 or A.29.

## **A15 Confidentiality**

A15.1 Each of the parties undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it shall have obtained or received as a result of the discussions leading up to or entering into of this Agreement save that which is:

A15.1.1 already in its possession or developed independently by it other than as a result of a breach of this clause; or

A15.1.2 already generally available and in the public domain otherwise than as a result of a breach of this clause;

A15.1.3 a disclosure to enable a determination to be made under clause A24.

A15.1.4 a disclosure by either party of any document related to the Agreement to which it is a party and which the other party (acting reasonably) has agreed in writing with the disclosing party contains no commercially sensitive information.

A15.2 Each of the parties undertakes to the other to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause A15.1 by its employees, agents or sub-contractors.

A15.3 Where either party, in carrying out its obligations under this Agreement, is provided with information relating to people, that party shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless that party has sought the prior written consent of that person and the other party.

## **A.16 Employment or Engagement of Medhurst's Staff**

A16.1 The Customer shall not directly or indirectly, during nor at any time within twelve (12) months after the termination of this Agreement:

A16.1.1 solicit or entice away or employ or attempt to solicit or entice away or employ any Personnel who are or have been directly associated with the performance of this Agreement;

A16.1.2 retain, engage or in any other way whatsoever have the benefit of the services of any Personnel who are or have been directly associated with the performance of this Agreement, other than pursuant to the terms of this Agreement and/or Service Order executed with Medhurst;

A16.2 save as stated in A16.1, if any Personnel who are directly associated with the performance of this Agreement are employed either directly or indirectly by The Customer, by way of compensation for loss of Personnel, business interruption and associated recruitment costs The Customer shall pay to Medhurst the equivalent of twelve (12) months' salary of the relevant Personnel.

## **A17 Data Protection**

A17.1 The parties will ensure that in storing and processing personal data they will at all times comply with the provisions of the latest Data Protection Act and the Data Protection Principles together with any subsequent re-enactment or amendment thereof, and all personal data acquired by either party from the other will be returned to the disclosing party on request. The parties hereby acknowledge that performance of a duty imposed by legislation will not constitute a breach of any obligation in respect of confidentiality or privacy or otherwise pursuant to this Agreement which may be owed to the other party.

A17.2 If and to the extent that Medhurst acquires from The Customer any personal data in connection with the Services, Medhurst shall act as a data processor only and The Customer shall remain as data controller in respect of such data.

A.17.3 The Customer acknowledges that details of any IP address registered for it or used by it in connection with receipt of the Services constitute public information available on public databases and The Customer hereby irrevocably consents to Medhurst's communication of such information to the extent required for the purpose of providing the Services.

## **A18. Force Majeure**

A18.1 Neither party shall be liable for any breach of its obligations (other than a payment obligation) resulting from causes beyond its reasonable control including but not limited to flood, storm, fire, strikes, lock-outs or industrial disputes, insurrection or riots, embargoes, inability to obtain supplies, telecommunication failures or attacks caused by third parties, requirements or regulations of any civil or military authority (an "Event of Force Majeure").

A18.2 Each of the parties agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

A18.3 If a Default due to an Event of Force Majeure continues for more than two (2) calendar months, then the party not in Default shall be entitled to terminate this Agreement forthwith by written notice to the party subject to Force Majeure. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

#### **A19. Waiver**

The waiver by either party of a breach of default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions, nor shall any delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have hereunder operate as a waiver or any breach of default by the other party.

#### **A.20 Notices**

Any notice, request, instruction or other document to be given shall be delivered or sent by first class post or by facsimile (such facsimile notice to be confirmed by letter posted within 12 hours) to the address of the other party set out in this Agreement (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by facsimile) upon the expiration of 12 hours after despatch.

#### **A.21 Invalidity and Severability**

If any provision of this Agreement is found by any court, or administrative body, of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

#### **A22 Entire Agreement**

This Agreement embodies the entire legal and contractual relationship between the parties relating to the subject matter of this Agreement and, except in the case of any fraudulent misrepresentation made by either party in connection with the subject matter of this Agreement and/or save as may be expressly referred to or referenced in this Agreement, terminates, cancels and supersedes all prior representations, agreements or understandings (written or oral) with respect to this Agreement and its subject matter.

#### **A23 Successors**

This Agreement shall be binding upon and ensure for the benefit of the successors in title of the parties.

#### **A24 Assignment**

The Customer shall not assign any of its rights or obligations under this Agreement to any other person and breach of this clause shall entitle Medhurst to terminate this Agreement forthwith.

#### **A25 Disputes and Law**

A25.1 The parties shall attempt to resolve any dispute relating to this Agreement through negotiations between senior executives of the parties who have authority to settle the dispute.

A25.2 Subject to clause A25.1, if the matter is not resolved through negotiation, the parties may at their election, attempt in good faith to resolve the dispute through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution in London.

A25.3 If the matter has not been resolved by an ADR procedure within thirty (30) days of the initiation of that procedure, or if either party does not wish to participate in an ADR procedure, the dispute may be referred by either party to the English courts and the parties submit to their exclusive jurisdiction for that purpose.

A25.4 This Agreement shall be governed by and construed in accordance with English Law and is subject to the exclusive jurisdiction of the English Courts.

#### **A.26 Change Control**

A.26.1 The Customer may at any time request and Medhurst may at any time recommend changes in the Service.

A.26.2 Neither party will be required to agree to any requested or recommended change but neither party will unreasonably withhold its agreement to such a request. It shall be unreasonable to refuse consent where the change is necessitated by a change in law which means a change should occur to facilitate compliance with this Agreement.

A.26.3 Medhurst shall advise The Customer of the likely impact of any requested or recommended change on the price and timescales set out in the Service Order or Statement of Work. In respect of a change requested by the Customer, Medhurst reserves the right to make a reasonable charge for the preparation of the impact assessment.

A.26.4 Until such time as any change is formally agreed and processed, Medhurst shall, unless otherwise agreed, continue to perform and to be paid in accordance with this Agreement as if such change has not been requested or recommended.

A.26.5 The parties shall respond in writing to, or shall meet to discuss, any requested or recommended change as soon as practicable. If the parties have not agreed any matter arising out of the request or recommendation for change within four weeks of the request or recommendation the matter shall be dealt with through the dispute resolution procedure set out in clause A25. No failure by the parties to comply with the provisions of this sub-clause A26.5 shall relieve The Customer from its obligations under this Agreement.

A.26.6 Any agreement to a requested or recommended change shall become valid as an amendment to this Agreement only when recorded in writing and signed by authorised representative of both parties.

## **A27 Intellectual Property Rights**

A27.1 Medhurst shall retain the right and title to all Intellectual Property Rights and other rights in any equipment, programs and to any work or material created or supplied by Medhurst or the Personnel in the course of providing the Services or in quoting for the Services.

A27.2 The Customer shall follow all reasonable instructions that Medhurst gives from time to time with regard to the use of Intellectual Property Rights and other notice of ownership rights of Medhurst and / or its licensors.

A27.3 Medhurst warrants, subject to the other terms of this Agreement, that The Customer's use or receipt in the United Kingdom of any Products supplied by Medhurst, in accordance with their respective Product Descriptions and any other instructions from Medhurst which it may give concerning their use, will not infringe the Intellectual Property Rights of any third party. Medhurst's liability under this warranty shall be conditional on the following:

A27.3.1 The Customer promptly notifying Medhurst in writing of any allegation made by a third party that The Customer's use of any Products infringes its Intellectual Property Rights;

A27.3.2 The Customer making no admissions in relation to such an allegation without Medhurst's consent;

A27.3.3 where any allegation is made or, in Medhurst's opinion, is likely to be made, by a third party that its Intellectual Property Rights are being infringed by The Customer's use of Products supplied by Medhurst, Medhurst shall have the option to do any or all of the following:

(i) repay to The Customer any sums paid by The Customer in respect of the affected Products (and, if it so elects, to require The Customer to deliver up any affected Products to Medhurst) and if it does so it shall have no further liability whatsoever to The Customer under this Agreement in respect of or arising from such Products;

(ii) at its own expense modify or replace the Products (in such a way that their functionality or standard overall is not materially adversely affected) so as to avoid the infringement; and / or

(iii) conduct and / or settle all negotiations and litigation with any such third party in which case The Customer shall not have any dealings with such third party in relation to its allegation but shall give Medhurst all reasonable assistance required by Medhurst in such negotiations or litigation. The costs incurred or recovered in such negotiations and litigation will be for Medhurst's account.

A.27.4 Save as provided in clause A27.3, Medhurst shall have no liability whatsoever to The Customer in respect of any infringement or alleged infringement of any Intellectual Property Rights or other rights and in any event Medhurst shall have no liability to The Customer hereunder for any infringement which is based on the use of any item supplied by Medhurst other than in accordance with the terms of this Agreement and their respective Product Descriptions and any other instructions Medhurst may give concerning their use, or in combination with any goods or services not supplied by Medhurst.

A.27.5 Any Internet protocol or TCP/IP address provided by Medhurst shall be and remain the absolute property of Medhurst and The Customer shall have a non-transferable licence to use such address during the continuance of this Agreement only.

## **A28 Legislative Change**

Medhurst reserves the right to make any changes in the specification of the Services which are required to conform with any applicable law, regulation or safety requirement which is not in existence or within the reasonable contemplation of the parties at the Effective Date or which do not materially affect their quality or performance. If any variation in the Services or the Agreement is agreed or is required for compliance with any applicable law, regulation or safety recommendation, The Customer shall pay such additional amount as is fair and reasonable and Medhurst shall have reasonable additional time to perform the Agreement.

## **A29 Third Party Rights**

A person who is not party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right of remedy of a third party which has been expressly conferred in agreement or is available apart from that Act.