

## Terms and Conditions

### Part A: General Terms and Conditions

#### A1 Definitions and Interpretation

A1.1 The definitions in this clause A1.1 apply throughout the Terms except where an alternative definition is given in a specific part or clause of the Terms in which case that alternative definition shall take precedence in that part or section as applicable:

**“Acceptable Use Policy”** means Medhurst’s current policy for appropriate use of the Medhurst Website and Services, as published on the Medhurst Website from time to time.

**“Agreement”** has the meaning given in clause A2.3.

**“Agreement Date”** means the date of the Agreement as specified in the Order.

**“Business Days”** means a day other than a Saturday, Sunday or bank or public holiday in England.

**“Charges”** means the Charges detailed in the Order as being payable for the Products.

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

**“Customer”** means the customer which will receive or use the Services and/or Deliverables to be supplied by Medhurst as identified in the Order.

**“Customer Content”** means any files software, audio, video, animated materials, multimedia content, graphics, text, data, objects or other content (online or otherwise) belonging to the Customer or Users that (a) originate or are transmitted from any website owned or operated by the Customer (b) are uploaded or routed to or through the Services; (c) are stored on or within the Services; (d) are provided to Medhurst in any medium or (e) are transmitted or routed using the Services.

**“Customer Equipment”** means Equipment and software to be provided by or belonging to the Customer.

**“Data Protection Legislation”** means all applicable data protection legislation including Regulation (EU) 2016/679 (the General Data Protection Regulation or the GDPR), the Data Protection Act 2018, the UKGDPR (as defined in the Data Protection Act 2018), the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any national implementing laws, regulations and secondary legislation and any equivalent legislation (all as amended, updated or re-enacted from time to time).

**“Deliverables”** means any Goods, Rental Equipment, documentation, drawings, specifications, diagrams, plans, data (including encrypted data), patterns, models or other Materials, records, reports or other information which are to be delivered by Medhurst pursuant to the Agreement as specified in the Order.

**“Equipment”** means all components, materials, plant, tools, test equipment, hardware, firmware, computing and data communications equipment and any related documentation used in the provision of the Services.

**“Event of Force Majeure”** means an event beyond a party’s reasonable control including but not limited to flood, storm, fire, epidemic or pandemic, 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.

**“Goods”** means the goods including software which Medhurst is to supply to the Customer pursuant to the Agreement as specified in the Order excluding any Rental Equipment.

**“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, trademarks, service marks, designs, design rights, copyright (including all copyright in any designs and computer software and any databases), rights related to copyright such as moral rights and performers rights, database rights, inventions, trade secrets, rights in computer software, rights in get up, know-how, confidential information, trade names, business names, domain names and all other intellectual property rights, the right to sue for infringement, unfair competition and passing off and all rights of a similar character, in any part of the world, whether or not the same are registered or capable of registration, whether vested, contingent or future, and all applications and rights to apply for protection of any of the same including all renewals and extensions of such rights or applications.

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

**“Medhurst”** means Medhurst Communications Ltd (Company Number 03868503) of 17 Brunel Way, Segensworth, Fareham, Hampshire PO15 5TX United Kingdom and/or any of its group companies which shall supply services to you.

**“Medhurst Equipment”** means Equipment provided by or belonging to Medhurst, its contractors or agents other than Deliverables.

**“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.

**“Order”** means the document(s) agreed between Medhurst and the Customer for the Agreement detailing the specifics of the order including the Services and/or Deliverables to be provided, any site/delivery addresses, term, and contract price.

**“Personnel”** means any employee, contractor, agent or otherwise of Medhurst that is engaged by Medhurst in the performance of the Agreement.

**“Product”** means the Services and/or Deliverables specified in the Order.

**“Regulations”** means all applicable laws, regulations, statutes or other rules or codes of practice applicable to the Agreement.

**“Rental Equipment”** means the equipment which Medhurst is to lease to the Customer pursuant to the Agreement as detailed in the Order and including all substitutions, additions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

**“Services”** means the Services which Medhurst will supply to the Customer under the Agreement as specified in the Order.

**“Service Misuse”** means any use of the Services in breach of clause A6.

**“Site(s)”** means any sites specified in the Order at which or in relation to which the Services are to be supplied.

**“Special Terms”** means those of the Special Terms as set out in Parts B to F of these Terms as applicable to the Agreement as specified in the Order.

**“Terms”** means the terms and Conditions contained in Part A to Part F of this document.

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

**“User”** means any person other than the Customer who receives or uses the Services or any part of them.

**“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.

A1.2 In these Terms:

A1.2.1 Headings are included for convenience only and shall have no effect on the interpretation of the Agreement.

A1.2.2 A reference to a gender includes each other gender.

A1.2.3 A reference to a party includes that party’s successors and permitted assigns.

A1.2.4 Words in the singular include the plural and vice versa.

A1.2.5 Any words that follow ‘include’, ‘including’, ‘in particular’ or any similar words or expressions shall be construed as illustrative only and shall not limit the sense of the word, phrase, term, definition or description preceding those words.

A1.2.6 A reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time and includes all subordinate legislation made under that legislation.

## **A2 The Agreement**

A2.1 Any quotation for Services or Deliverables is not an offer. It will lapse thirty (30) days after its date of issue but may in any case be withdrawn or modified by Medhurst at any time.

A2.2 Where Medhurst and the Customer agree to enter into a contract for the provision of Services and/or Deliverables, the parties will agree an Order. The Order shall not be binding unless signed by the authorised representatives of both parties.

A2.3 Each Order together with the Terms (subject to any applicable variations thereto specified in the Order) and any other documents referred to in the Order shall form the Agreement.

A2.4 The Agreement shall commence on the Agreement Date and will continue for the term specified in the Order unless terminated earlier in accordance with the Agreement.

A2.5 Unless stated otherwise in the Order, if and to the extent only of any direct conflict between the documents making up the Agreement the following order of precedence shall apply:

- Acceptable Use Policy (highest precedence)
- Order
- The applicable Special Terms
- The General Terms set out in this Part A
- Quotation (lowest precedence)

## **A3 Services and Deliverables**

A3.1 Medhurst will provide the Customer with the Services and/or Deliverables in accordance with the Agreement.

A3.2 Subject to the provisions of clause C3 and D5 where applicable, each Deliverable shall be delivered to the address specified in the Order on or before the agreed delivery date provided in the Order. Installation services (if any) relating to a Deliverable will also be carried out when and where agreed in the Order or otherwise in writing between the parties.

A3.3 The Services include support only insofar as specified in the relevant Special Terms and/Order.

A3.4 Medhurst shall not in any event be obliged to supply support:

A3.4.1 in respect of faults or problems directly or indirectly arising from:

- (a) use of the Services in breach of the Agreement;
- (b) products or services not supplied by Medhurst; or
- (c) any cause external to the Services;

A3.4.2 where the Customer is using anything other than the most recent version of any relevant software;

A3.4.3 where the Customer or any third party not authorised by Medhurst has modified the relevant software or attempted to resolve the problem; or

A3.4.4 if any Charges due to Medhurst are unpaid.

## **A4 Price and Payment**

A4.1 The Customer shall pay the Charges in respect of the Services and Deliverables.

A4.2 Medhurst reserves the right to review the Charges at approximately each anniversary of each Commencement Date to reflect the effects of inflation and market changes. Any changes to the Charges will take effect thirty 30 days after written notice of the change is given to the Customer.

A4.3 The Charges exclude the following which shall be payable by the Customer monthly in arrears following submission of an appropriate invoice:

A4.3.1 where specified in an order the cost of travel, accommodation and subsistence incurred by Personnel (including the cost of time spent travelling) in connection with the Services; and

A4.3.2 the cost to Medhurst or any materials or services procured by Medhurst from third parties for the provision of the Services where such items and their cost are approved by the Customer in advance from time to time.

A4.4 The Charges will be invoiced at the intervals specified in the Order or if no intervals are so specified Medhurst will invoice the Customer at the end of each month for the Services performed and Deliverables delivered in that month.

A4.5 Unless otherwise agreed, the Customer shall pay each invoice submitted to it by Medhurst in cleared funds 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 an amount which is the subject of a bona fide dispute in which case clause A4.12 shall apply).

A4.6 Time of payment shall be of the essence.

A4.7 Without limiting Medhurst's remedies, if payment is overdue:

A4.7.1 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;

A4.7.2 Medhurst shall have the right to charge interest for late payment of invoices at the same rate which would apply to a qualifying debt under The Late Payment of Commercial Debts (Interest) Act 1998 from the due date until payment, whether before or after judgment; and

A4.7.3 Medhurst may suspend performance of all or any part of the Services and delivery of any Deliverables pending payment in full.

A4.8 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 the 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.

A4.9 In calculating the 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 Charges as detailed in the Order.

A4.10 All Charges are expressed exclusive of Value Added Tax (or any equivalent tax) chargeable which shall be paid by the Customer on receipt of a valid tax invoice.

A4.11 Notwithstanding the provisions of clause A4.10 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.

A4.12 If the payment of any amount is disputed then provided details of the same have been provided to Medhurst in writing and the Customer has paid in full any amount not in dispute, the disputed amount shall be dealt with in accordance with clause A25.

A4.13 Until payment of all sums due under any contract have been received in full and in cleared funds, Medhurst shall have a general and particular lien on any Equipment, goods or Materials belonging to the Customer which are in Medhurst's possession or control as security for payment of all sums claimed by Medhurst from the Customer. If an invoice for the Charges is not paid in full on its due date for payment, Medhurst may, without prejudice to its other rights and remedies, give notice in writing to the Customer of its intention to sell or otherwise dispose of some or all of the Equipment, goods and Materials in its possession if the amount outstanding is not paid in full within 14 days of the notice. If the amount due is not paid by the expiry of such period, Medhurst may sell or otherwise dispose of some or all of the Equipment, goods and Materials in its possession, as agent of the Customer and at the Customer's expense and risk, and shall remit the proceeds of sale or disposal of such to the Customer after deduction of all amounts due to Medhurst and the expenses incurred by Medhurst for the sale or disposal of the same. Medhurst shall not be liable for the price obtained for the sale or disposal.

## **A5 Customer's Obligations**

A5.1 The Customer undertakes to Medhurst throughout the term of the Agreement to:

A5.1.1 provide Medhurst with accurate and up to date details of its e-mail, telephone numbers (including mobile) and physical addresses and promptly to notify Medhurst in writing of any alterations thereto from time to time;

A5.1.2 ensure that all passwords and user IDs provided to the Customer or Users are kept secure and confidential and are used only by those Users permitted under the Agreement;

A5.1.3 have and continue to own or maintain, the legal right and authority, during the term of the Agreement, to allow Medhurst to place and use any Customer Equipment as contemplated under the Agreement;

A5.1.4 if applicable, ensure that Medhurst has access to such of the Site(s), Customer Equipment, Rental Equipment, systems and networks as Medhurst shall require for the purposes of carrying out its obligations under the Agreement during all normal working hours and upon reasonable notice from Medhurst at any other time;

A5.1.5 if applicable, provide such facilities and assistance as Medhurst shall reasonably 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 at the Site(s));

A5.1.6 at the request of Medhurst, promptly 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, such staff to fully co-operate with Medhurst to enable the Services to be performed;

A5.1.7 be responsible for the safe keeping of any Medhurst Equipment which is located on the Sites and be liable to Medhurst for any loss or damage to the Medhurst Equipment except in so far as it can be shown that any such loss or damage is attributable to the acts or negligence of Medhurst or the Personnel;

A5.1.8 save as expressly agreed otherwise in the Agreement, be responsible for Customer Equipment including insuring and maintaining the Customer Equipment and keeping it in suitable premises and under suitable conditions as recommended by the applicable manufacturer;

A5.1.9 ensure the Services are used at all times in compliance with all Regulations and any necessary policies or terms identified in the Agreement or notified to the Customer by Medhurst from time to time. The Customer shall ensure that its use and the use by Users of the Services shall not cause a breach of any agreements with any third parties. The Customer acknowledges and agrees that Medhurst exercises no control whatsoever over Customer Content and that it is the sole responsibility of the Customer to ensure that the Customer Content complies with all Regulations and the Agreement.

A5.1.10 keep Medhurst advised of any relevant health and safety at work rules and regulations and reasonable security arrangements applicable to the Sites and take all reasonable precautions to protect the health & safety of the Personnel while on the Sites;

A5.1.11 ensure that its employees and agents comply with all reasonable instructions made by Personnel in the course of performance of the Services including without limitation complying with safety procedures;

A5.1.12 comply, and ensure Users comply, at all times and in all respects with the Acceptable Use Policy; and

A5.1.13 take all precautions to protect its data and ensure that a daily back-up arrangement is implemented before and during the Agreement and maintain media, servers or devices containing back-ups unless Medhurst is providing this Service.

A5.2 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 the Agreement.

## **A6 Acceptable Use**

A6.1 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 its employees, agents or Users shall entitle Medhurst, without limiting any other rights or remedies, to suspend or terminate the Services or part thereof forthwith without notice.

A6.2 Without limiting clause A6.1, Medhurst's network and Services may only be used in accordance with the Agreement. The Customer shall, and shall procure Users shall, comply at all times with all Regulations, Medhurst's operating procedures as notified to the Customer, and the Acceptable Use Policy. The Customer shall not use or permit the use of the Services, 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 Regulation, to communicate or publish inappropriate Materials or in a manner which may expose Medhurst to legal liability.

A6.3 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:

A6.3.1 Service Misuse;

A6.3.2 any claim that any Customer Content or other Material of the Customer's, or the manner in which the Customer or the Users make use of any Customer Content or Material, constitutes an infringement of any Intellectual Property Rights of any third party;

A6.3.3 any breach of this Agreement by the Customer, its employees, contractors, agents, representatives and Users.

## **A7 Medhurst's Warranty**

A7.1 Medhurst warrants to the Customer that:

A7.1.1 it will perform the Services with reasonable care and skill;

A7.1.2 it will use reasonable endeavours to attain any service levels or project specifications which are agreed with the Customer; and

A7.1.3 that any Personnel required to visit the Customer's premises 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.

A7.2 Medhurst does not warrant or represent that the Services or any related system, server, network or website will be free from errors or operate without interruption.

## **A8 Limitation of Liability**

A8.1 Neither party excludes or limits liability to the other party for:

A8.1.1 death or personal injury resulting from the negligence or wilful default of the party or its employees', agents' or subcontractors';

A8.1.2 fraud or for fraudulent misrepresentation;

A8.1.3 the obligation of the Customer to pay any valid and undisputed Charges;

A8.1.4 any breach of any obligations implied by Section 12 of the Sales of Goods Act 1979 or Sections 2 and 7 of the Supply of Goods and Services Act 1982; or

A8.1.5 any other liability which may not be limited or excluded by law.

A8.2 All clauses in the Agreement which exclude or limit Medhurst's liability apply to and may be enforced by Medhurst's directors, officers, employees, subcontractors, agents and group companies as well as to/by Medhurst and those parties shall all have the benefit of the limits in terms of the Contracts (Rights of Third Parties) Act 1999.

A8.3 Subject to A8.1 Medhurst's maximum aggregate liability to the Customer howsoever arising, including in negligence, shall be 125% of the total Charges paid or due and payable during the 12 month period in which the first cause of action arose giving rise to the relevant claim or series of connected claims or where the cause of action arises in the first 12 months' of the Agreement the 12 month period having commenced on the Agreement Date.

A8.4 Subject to A8.1 and without prejudice to A8.3, Medhurst's total aggregate liability for damage to tangible property caused by the negligence of its employees or agents in connection with the Agreement shall not exceed £50,000 in any 12 months period.

A8.5 Subject to clauses 8.1, Medhurst shall in no circumstance be liable to the Customer for:

A8.5.1. loss of data, corruption of data, reinstatement of data, misdirection, non-delivery or non-publication of data;

A8.5.2 loss of profits or revenues;

A8.5.3 loss of or damage to goodwill;

A8.5.4 business interruption;

A8.5.5 loss of production;

A8.5.6 management time;

A8.5.7 loss of anticipated savings;

A8.5.8 loss of contracts; and

A8.5.9 any indirect, special or consequential loss or damage.

A8.6 Unless the Customer notifies Medhurst that it intends to make a claim in respect of an event within the notice period, Medhurst shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became,

or ought reasonably to have become, aware of its having grounds to make a claim in respect of the event and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

A8.7 Subject to clauses A8.1, Medhurst accepts no responsibility for any viruses introduced to the Customer's equipment, systems or networks no matter how so introduced.

A8.8 Except as expressly stated in the Agreement, and subject to A8.1, all warranties and conditions whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

A8.9 Any Customer Equipment used in relation to the Services shall be held, worked on and used at the Customer's Risk. Medhurst shall not be liable for any defect, wastage or other loss whatsoever in, of or arising from the Customer Equipment unless and to the extent such is caused directly by Medhurst's negligence or wilful default.

A8.10 Medhurst shall not be responsible for any loss, damage, cost or expense to the extent the same arises from any defect, unsuitability, mistake or inaccuracy in any Customer Equipment or any Equipment or software specified by the Customer (unless and to the extent caused by Medhurst's negligence or wilful default). Any loss, damage, cost or expense arising therefrom shall be for the sole account of the Customer who shall indemnify Medhurst accordingly.

A8.11 Subject to clauses A8.1, A8.3 and A8.4 Medhurst's liability for any Customer Equipment or Equipment or software specified or by the Customer shall be limited to the lesser of the basic raw material cost of the equipment or software and an independent external valuation of the same.

A8.12 Subject to clauses A8.1 Medhurst shall have no liability under or in relation to the Agreement to the extent that any default by Medhurst results from a default of the Customer.

A8.13 Medhurst shall not be responsible for or liable with respect to any inaccuracy, illegality, misinformation or any violation of a third party right or interest associated with or directly or indirectly arising out of the Customer Content.

A8.14 The Customer acknowledges and agrees that the allocation of risk in this clause A.8 is fair and reasonable having regard to the Charges and to the Customer's ability to rely on its own business insurance.

## **A9 Customer's Warranty**

The Customer warrants and undertakes to Medhurst that it has full power, capacity and authority to enter into the Agreement and to perform the Agreement and that the Agreement is executed by a duly authorised representative of the Customer.

## **A10 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.

## **A11 Termination**

A.11.1 The Agreement may be terminated:

A11.1.1 by either party giving thirty (30) days' written notice to the other, such notice to expire at the end of any minimum period specified in the Order or, if no minimum period is so specified, on any anniversary of the Agreement Date;

A11.1.2 in accordance with clauses A20.3;

A11.1.3 immediately by Medhurst giving written notice to the Customer if the Customer fails to pay any invoice due within 14 days of the due date for payment;

A11.1.4 immediately by either party giving written notice to the other if that other party commits any other material breach of any term of the Agreement and which (in the case of a breach capable of being remedied) has not have been remedied within 45 days of a written request by the other party to remedy the same;

A11.1.5 immediately by either party giving the other written notice if that other party:

- (a) ceases to operate;
- (b) becomes unable to pay its debts as they fall due, becomes bankrupt or insolvent, enters liquidation, administration or receivership, or enters into any arrangement with creditors or is subject to a winding up petition or in relation to a partnership if any of the aforesaid applies in relation to any of the partners.

A11.2 Medhurst may decide to suspend immediately provision of all or part of the Services until further notice on notifying the Customer either orally (confirming such notification in writing) or in writing:

A11.2.1 if Medhurst is entitled to terminate the Agreement;

A11.2.2 in the event of a Service Misuse; or

A11.2.3 if Medhurst is obliged to comply with an order, instruction or request of a court, government, emergency service organisation or other competent authority.

A11.3 Any exercise by Medhurst of a right to suspend in respect of an event shall not exclude Medhurst's right to subsequently terminate the Agreement.

A11.4 Where the suspension is implemented as a consequence of the breach, fault or omission of the Customer or any User, the Customer shall reimburse Medhurst for all reasonable costs and expenses incurred in relation to implementing the suspension and where applicable recommencing the Services.

## **A12 Effects of Termination**

A12.1 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.

A12.2 Upon termination of the Agreement Medhurst will return to the Customer any property belonging to the Customer which is in its possession.

A12.3 Upon termination of the Agreement the Customer will:

A12.3.1 immediately deliver up Medhurst any of Medhurst's property which it has no contractual right to retain (including but not limited to any Rental Equipment, Medhurst Equipment and stock stored on the Site(s) 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

A12.3.2 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.

A12.4 Termination of the Agreement shall be without prejudice to any other rights or remedies a party may be entitled to 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.

A12.5 The following clauses hereof shall survive termination of the Agreement A4.7, A4.13, A.6.3, A8, A12, A13, A14, A15, A19, A20 to A25.

## **A13 Confidentiality**

A13.1 In this clause Confidential Information means all information disclosed by a disclosing party to the other party in contemplation of the Agreement or under or as a result of the Agreement which:

A13.1.1 relates to the operations, plans, know-how, trade secrets, business affairs, personnel, customers or suppliers of either party;

A13.1.2 the receiving party knows or might reasonably expect is regarded as by the disclosing party as the confidential information of the disclosing party; or

A13.1.3 is designated as confidential by the disclosing party.

A13.2 Each of the parties undertakes to the other:

A13.2.1 to only use the Confidential Information disclosed by the disclosing party for the purposes of the Agreement; and

A13.2.2 not to disclose any Confidential Information received from the disclosing party without the prior written consent of the disclosing party save that the receiving party may disclose it on a need to know basis to its employees, agents, consultants and sub-contractors to enable it to perform its obligations under the Agreement provided the receiving parties have agreed materially similar terms and conditions regarding confidentiality as are in the Agreement.

A13.3 The provisions of clause A13.2 shall not apply to any information which:



A13.3.1 is or becomes public knowledge other than as a result of a breach of this clause;

A13.3.2 is in the possession of the recipient without restriction in relation to disclosure before the date of receipt from the disclosing party;

13.3.3 is received from a party not under a duty of confidence; or

13.3.4 is required to be disclosed by law or a competent authority but only to the extent required by law or such competent authority and provided that unless the same is prohibited by law, prior notice of such disclosure is given to the other party.

#### **A14 Employment or Engagement of Medhurst's Staff**

A14.1 The Customer shall not directly or indirectly, during nor at any time within twelve (12) months after the termination of the Agreement:

A14.1.1 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 the Agreement;

A14.1.2 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 the Agreement, other than pursuant to the terms of the Agreement and/or Service Order executed with Medhurst.

A14.2 Without prejudice to any rights conferred to Medhurst under this clause A14, 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 all costs, expenses and losses incurred in replacing the relevant Personnel.

#### **A15 Data Protection**

A15.1 Medhurst and the Customer agree to comply with all applicable requirements of the Data Protection Legislation in respect of the Agreement.

A15.2 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.

#### **A16 Change Control**

A16.1 The Customer may at any time request and Medhurst may at any time recommend changes in the Service and Deliverables.

A16.2 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 to facilitate compliance of the Agreement.

A16.3 Medhurst shall advise the Customer of the likely impact of any requested or recommended change on the Charges and timescales set out in the Order. 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.

A16.4 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 the Agreement as if such change has not been requested or recommended.

A16.5 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 either party may require that the matter 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 A16.5 shall relieve the Customer from its obligations under the Agreement.

A16.6 Any agreement to a requested or recommended change shall become valid as an amendment to the Agreement only when recorded in writing and signed by authorised representative of both parties.

#### **A17 Intellectual Property Rights**

A17.1 All intellectual property provided by Medhurst under the Agreement (**Medhurst Intellectual Property**) shall remain the property of Medhurst or its licensor. Intellectual property shall include all inventions, improvements, methods, developments,

software or documents protected by Intellectual Property Rights that were created, made or concerned by Medhurst or its employee or agents in the course of or as a result of the Services being provided under the Agreement.

A17.2 Subject to A17.3 below, Medhurst grants or will procure for the Customer a non-exclusive, non-transferable licence for the Customer to use the Medhurst Intellectual Property during the term of the Agreement for the sole purpose of using the Services and Deliverables as provided under the Agreement. The Customer shall follow all reasonable instructions that Medhurst gives from time to time with regard to the use of Intellectual Property Rights.

A17.3 Notwithstanding A17.2 above, Medhurst grants the Customer a non-exclusive royalty free irrevocable worldwide licence to use any configurations, designs, schemes and models for the Services and Deliverables developed by Medhurst specifically for the purposes of the Agreement, for the Customer's own business purposes after termination of the Agreement provided the Customer has paid the relevant and valid Charges for the same. Accordingly the Customer shall not be required to return any records of such configurations, designs, schemes or models upon termination of the Agreement.

A17.4 Where under the Agreement the Customer is permitted to make the Services available for use by Users, the Customer will ensure that all Users will comply with this clause A17.

A17.5 The Customer grants or will procure for Medhurst a non-exclusive, non-transferable, royalty free licence to use any Customer Content or software furnished by or used by the Customer during the Term to the extent required by Medhurst to provide the Services.

A17.6 Medhurst warrants, subject to the other terms of the Agreement, that the Customer's use or receipt in the United Kingdom of any Products supplied by Medhurst, in accordance with the Agreement and any other instructions which Medhurst may give to the Customer 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:

A17.6.1 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;

A17.6.2 the Customer making no admissions in relation to such an allegation without Medhurst's consent.

A17.6.3 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:

(a) 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 the Agreement in respect of or arising from such Products;

(b) 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

(c) 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.

A17.7 Save as provided in clause A17.6, 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 the Agreement and any other instructions Medhurst may give concerning their use, or any use in combination with any goods or services not supplied by Medhurst.

A17.8 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 the Agreement only.

## A18 Legislative Change

Medhurst reserves the right to make any changes in the specification of the Services or Deliverables which are required to conform with any Regulation or safety requirement which is not in existence or within the reasonable contemplation of the parties at the Agreement Date or which do not materially affect their quality or performance. If any variation in the Services or Deliverables or the Agreement is agreed or is required for compliance with any 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.

## A19 Third Party Rights

Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

## **A20 Force Majeure**

A20.1 Neither party shall be liable for any breach of its obligations (other than a payment obligation) resulting from an Event of Force Majeure.

A20.2 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.

A20.3 If a default due to an Event of Force Majeure continues for more than two (2) calendar months, then the party not subject to the Event of Force Majeure shall be entitled to terminate the Agreement forthwith by written notice to the other party. Neither party shall have any liability to the other in respect of the termination of the Agreement as a result of an Event of Force Majeure.

## **A21 Waiver**

The waiver by either party of a breach or default of any of the provisions of the 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.

## **A22 Notices**

A22.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service or sent by email to the address specified in clause A22.2.

A22.2 The addresses for service shall be:

A22.2.1 in the case of Medhurst:

Postal Address: 17 Brunel Way, Segensworth, Fareham, Hampshire, PO15 5TX

Email: As specified in the Order

A22.2.2 in the case of the Customer the addresses specified in the Order,

or such alternative addresses as that party shall have notified to the other in accordance with this clause.

A22.3 Any notice or communication shall be deemed to have been received:

A22.3.1 if delivered by hand, on signature of a delivery receipt;

A22.3.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and

A22.3.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause A22.3.3, business hours means 9.00am to 5.30pm Monday to Friday on a day that is not a public holiday in the place of receipt.

A22.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## **A23 No Agency or Partnership**

Nothing in the 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.21 Invalidity and Severability**

If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause A21 shall not affect the validity and enforceability of the rest of the Agreement.

## **A22 Entire Agreement**

A22.1 The Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

A22.2 Each party acknowledges that in entering into the Agreement it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Agreement.

A22.3 Nothing in this clause shall limit or exclude any liability for fraud.

### **A23 Variation**

Except as set out in the Agreement, no variation of the Agreement shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

### **A24 Assignment**

A24.1 The Agreement is personal to the Customer and the Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Agreement.

A24.2 Medhurst may at any time assign, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights under the Agreement and subject to any applicable provisions of Part B sub-contract any of its obligations under the Agreement.

### **A25 Disputes and Law**

A25.1 If a dispute arises out of or in connection with the Agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

A25.1.1 Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, a senior executive of each party with the authority to settle disputes shall attempt in good faith to resolve the Dispute.

A25.1.2 If such senior executives of the parties are unable to resolve the Dispute for any reason unable within 30 days of it being referred to them, either party may require the parties to attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

A25.1.3 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute.

A25.1.4 If the Dispute is not resolved within 90 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 90 days, or the mediation terminates before the expiration of the said period of 90 days, either party may refer the Dispute to the English Courts.

A25.2 Any negotiation/mediation shall be conducted on a confidential basis. The parties shall not disclose details of the negotiations to any third parties except professional advisers.

A25.3 Subject to clause A25.1 the Agreement and any dispute or claim arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and subject to the exclusive jurisdiction of the English Courts.

## **Part B: Data Protection**

B1 This Part B will apply where Medhurst acts as a processor of Customer Personal Data pursuant to the Services.

B.2 The definitions in this clause B2 apply in this Part B.

B2.1 **Applicable Law** means (a) any law, statute, regulation, by-law or subordinate legislation in force from time to time to which a party is subject and/or which is applicable in any jurisdiction that the Services are provided to or in respect of; (b) the common law and laws of equity as applicable to the parties (or either of them) from time to time; (c) any binding court order, judgment or decree as applicable to the parties (or either of them) from time to time; or (d) any applicable direction, policy, rule or order that is binding

on a party and that is made or given by any regulatory body having jurisdiction over that party or any of that party's assets, resources or business;

B2.2 **Customer Personal Data** means any Personal Data which Medhurst receives pursuant to the performance of the Services;

B2.3 **Data Controller** has the meaning as defined in the Data Protection Legislation;

B2.4 **Data Processor** has the meaning as defined in the Data Protection Legislation;

B2.5 **Data Protection Losses** means all liabilities, including all: (a) reasonable and properly incurred costs (including legal costs) and expenses, claims, actions, interest, losses and damages and (b) to the extent permitted by the Data Protection Legislation or any Applicable Law: (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority and (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject;

B2.6 **Data Subject** has the meaning as defined in the Data Protection Legislation;

B2.7 **Personal Data** has the meaning as defined in the Data Protection Legislation;

B2.8 **Personal Data Breach** means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Customer Personal Data;

B2.9 **Sub-Processors** shall have the meaning given to it in clause B12; and

B2.10 **Supervisory Authority** means any regulator, authority or body responsible for administering Data Protection Legislation.

B3 Both parties agree to comply with all applicable requirements of the Data Protection Legislation in respect of the Services.

B4 Medhurst and the Customer acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Data Controller and Medhurst is the Data Processor in respect of the Customer Personal Data. The Order sets out the nature and purpose of processing by Medhurst, the duration of the processing and the types of Personal Data and categories of Data Subject.

B5 Without prejudice to the generality of clause B3, the Customer will ensure that it has all necessary and appropriate consents and notices in place to enable lawful transfer of the Customer Personal Data to Medhurst for the duration and purposes of the Agreement.

B6 The Customer shall not unreasonably withhold, delay or condition its agreement to any change to the Services and/or the Agreement requested by Medhurst in order to ensure the Services and Medhurst (and any Sub-Processor) can comply with the Data Protection Legislation.

B7 Without prejudice to the generality of clause B3, Medhurst shall, in relation to any Customer Personal Data processed by it in connection with the performance by Medhurst of its obligations under the Agreement:

B7.1 process that Customer Personal Data (including with regard to any transfers of Customer Personal Data outside the UK and the European Economic Area under clause B7.5) only on the written instructions of the Customer unless Medhurst is required by Applicable Law to process Customer Personal Data otherwise than in accordance with the Customer's written instructions. Where Medhurst is relying on Applicable Law as the basis for processing Customer Personal Data, Medhurst shall notify the Customer of this before performing the processing required by the Applicable Law unless any Applicable Law prohibits Medhurst from so notifying the Customer on important grounds of public interest;

B7.2 immediately inform the Customer if Medhurst becomes aware of a written instruction given by the Customer under clause B7.1 that, in Medhurst's opinion, infringes Data Protection Legislation and Medhurst shall be entitled to suspend the Services (or at Medhurst's discretion just the part of the Services which are impacted by the infringement) until such time as the parties have agreed appropriate amended instructions which are not infringing;

B7.3 ensure that it has in place appropriate technical and organisational measures:

B7.3.1 to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Customer Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Customer Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it); and

B7.3.2 in so far as possible and taking into account the nature of the processing, to assist the Customer in the fulfilment of the Customer's obligations to respond to any request from a Data Subject relating to Customer Personal Data;

B7.4 ensure that all personnel who have access to and/or process Customer Personal Data are subject to a binding written contractual obligation to keep the Customer Personal Data confidential except where disclosure is required in accordance with Applicable Law, in which case Medhurst shall, where not prohibited by Applicable Law, promptly notify the Customer of any such requirement before disclosure;

B7.5 not transfer any Customer Personal Data outside of the United Kingdom and European Economic Area, unless the prior written consent of the Customer has been obtained (which shall not be unreasonably withheld or delayed) and the following conditions are fulfilled:

B7.5.1 the Customer or Medhurst have provided appropriate safeguards in relation to the transfer; and

B7.5.2 the Data Subject has enforceable rights and effective legal remedies;

B7.6 refer to the Customer any request from a Data Subject relating to Customer Personal Data within four Business Days of receipt of the request;

B7.7 taking into account the nature of the processing and the information available to Medhurst, assist the Customer, at the Customer's cost, in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, data protection impact assessments and consultations with relevant Supervisory Authorities;

B7.8 notify the Customer without undue delay on becoming aware of a Personal Data Breach and provide the Customer with details of the Personal Data Breach;

B7.9 at the written direction of the Customer, delete or return all Customer Personal Data to the Customer in such form as the Customer reasonably requests once processing by Medhurst of any Customer Personal Data is no longer required for the purpose of Medhurst's performance of its obligations under the Agreement and delete existing copies unless required by Applicable Law to store the Customer Personal Data, in which case Medhurst shall inform the Customer of any such requirement;

B7.10 maintain written records of all categories of processing activities carried out on behalf of the Customer; and

B7.11 make available to the Customer, at reasonable notice, such information as is reasonably necessary to demonstrate Medhurst's compliance with the obligations of Data Processors under the Data Protection Legislation and allow for audits, including inspections, by the Customer or the Customer's designated auditor for the purpose of verifying such compliance, subject to the Customer:

B7.11.1 giving Medhurst reasonable prior notice of such information request, audit and/or inspection being required by the Customer;

B7.11.2 ensuring that all information obtained or generated by the Customer or its auditor(s) in connection with such information requests, inspections and audits is kept strictly confidential (save for disclosure to a Supervisory Authority or as otherwise required by Applicable Law); and

B7.11.3 ensuring that such audit or inspection is undertaken during normal business hours, with, so far as reasonably practicable, minimal disruption to Medhurst's business and the business of other customers of Medhurst.

B12 The Customer agrees that Medhurst may disclose Customer Personal Data to those third parties and any agents or sub-contractors approved pursuant to the Agreement, together **Sub-Processors**, engaged by Medhurst for the purposes of the performance of the Services under the Agreement, provided that:

B12.1 the details of such Sub-Processors have been notified to the Customer;

B12.2 prior to any processing of Customer Personal Data by the Sub-Processor, Medhurst will enter into a contract with the Sub-Processor which incorporates terms which are substantially similar to those set out in this Part B, in relation to the processing of Customer Personal Data;

B12.3 Medhurst will provide 14 days notification to the Customer of the proposed appointment of a new Sub-Processor, and the Customer shall be deemed to have consented to such appointment if it does not raise a reasonable objection within 14 days of such notification; and

B12.4 where the Customer raises a reasonable objection in accordance with clause B7.12.3, Medhurst will:

B12.4.1 use its reasonable endeavours to remedy the situation giving rise to the reasonable objection, to the reasonable satisfaction of the Customer; or

B12.4.2 propose an alternative Sub-Processor to conduct the relevant processing (providing notice to the Customer in accordance with clause B7.12.3); and

B12.4.3 in the event that Medhurst is unable to remedy the situation in accordance with (a) above or the Customer does not approve the proposed alternative Sub-Processor in accordance with (b) above, then the parties shall refer the matter for resolution in accordance with clause A25 of the Terms.

B13 As between the Customer and Medhurst, Medhurst shall remain fully liable for all acts or omissions of any Sub-Processor in relation to Customer Personal Data.

B14 Notwithstanding clause B7.9, Medhurst shall as soon as reasonably practicable comply with any written request from the Customer to return or delete any Customer Personal Data, unless Medhurst is required by Applicable Law to store the Customer Personal Data, in which case Medhurst shall inform the Customer of any such requirement. If a return or deletion of any Customer Personal Data instructed by the Customer results in Medhurst not being able to perform its obligations under the Agreement, or otherwise breaching its obligations under the Agreement, Medhurst will not be liable for such non-performance or breach.

B15 The Customer shall indemnify and keep indemnified Medhurst in respect of all Data Protection Losses suffered or incurred by, or awarded against, Medhurst arising from or in connection with any:

B15.1 compliance by the Customer with the Data Protection Legislation;

B15.2 breach by the Customer of any of its obligations under this Part B; or

B15.3 processing carried out by Medhurst or any Sub-Processor pursuant to a written instruction given by the Customer under clause B7.1.

B16 If the Customer or Medhurst receives a compensation claim from a Data Subject relating to processing of Customer Personal Data pursuant to the Agreement, it shall promptly provide the other party with notice and full details (to the extent in its possession) of such claim. The party with conduct of the action shall, where it intends to seek recovery in respect of the claim from the other party pursuant to the Agreement:

B16.1 make no admission of liability nor agree to any settlement or compromise of the relevant claim without the prior written consent of the other party which shall not be unreasonably withheld or delayed; and

B16.2 consult fully with the other party in relation to any such action.

B17 The terms in this Part B shall survive termination (for any reason) or expiry of the Agreement and continue:

B17.1 indefinitely in the case of clauses B15. to B17. (inclusive); and

B17.2 until 12 months following the earlier of the termination or expiry of the Agreement in the case of clauses B1. to B14. (inclusive).

provided always that any termination or expiry of clauses B1 to B14 (inclusive) shall be without prejudice to any accrued rights or remedies of either party under any such clauses at the time of such termination or expiry.

## Part C: Supply of Good Terms and Conditions

### C1 Supply of Goods

C1.1 The provisions of this Part C shall apply to the Agreement if and to the extent that Medhurst agrees to supply Goods to the Customer.

C1.2 Medhurst shall supply, and the Customer shall purchase, the Goods as described in the Order on the terms of the Agreement.

### C2 Title and Risk

C2.1 Risk of loss, theft, damage or destruction of the Goods shall pass to the Customer upon delivery.

C2.2 Title to the Goods shall not pass to the Customer until Medhurst receives payment in full (in cash or cleared funds) for the Goods and any other goods, services or deliverables that Medhurst has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment (in cash or cleared funds) of all such sums.

C2.3 Until title to the Goods passes to the Customer, the Customer shall:

- C2.3.1 keep the Goods properly stored and identified as Medhurst's property;
- C2.3.2 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery; and
- C2.3.3 give Medhurst such information relating to the Goods as Medhurst may require from time to time.

### **C3 Delivery**

- C3.1 Medhurst shall effect delivery of the Goods to the place for delivery stated in the Order. If required by Medhurst a duly authorised representative of the Customer will be required to sign a delivery receipt.
- C3.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- C3.3 Medhurst will not deliver the Goods in advance of the quoted delivery date other than with the Customer's agreement.
- C3.4 If Medhurst fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Medhurst shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- C3.5 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 Agreement 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.
- C3.6 If the Customer fails to accept delivery of the Goods within 3 Business days of Medhurst notifying the Customer that the Goods are ready, then except where such failure is caused by an Event of Force Majeure or Medhurst's failure to comply with its obligations under the Agreement:
  - C3.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Medhurst notified the Customer that the Goods were ready; and
  - C3.6.2 Medhurst shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- C3.7 If 10 Business Days after the day on which Medhurst notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, Medhurst may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

### **C4 Warranties**

- C4.1 Where Goods are expressly sold on an "as is", "as seen", "in existing condition", "ex-rental", "ex-lease" 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.
- C4.2 Where Medhurst is expressly trading as a reseller of the Goods Medhurst only sells the Goods with the benefit of any manufacturer's warranty which the Customer may be entitled to. Medhurst will use reasonable endeavours to provide the Goods with the benefit of any applicable manufacturer's warranty and will provide the Customer with written details of any such warranty.
- C4.3 Medhurst will not be responsible for any loss suffered by the Customer arising out of any failure or delay by a manufacturer in repairing Goods under a manufacturer's warranty or otherwise.
- C4.4 Save where clauses C4.1 and C4.2 apply, Medhurst warrants that on delivery and for a period of time as specified in the Order from the date of delivery (the **Warranty Period**) the Goods shall:
  - C4.4.1 conform in all material respects with their description and any applicable specification detailed in the Order; and
  - C4.4.2 be free from material defects in design, material and workmanship;
  - C4.4.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - C4.4.5 be fit for any purpose held out by Medhurst.



C4.5 Subject to clause C4.6, if:

C4.5.1 the Customer gives notice in writing to Medhurst during the Warranty Period and within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause C4.4;

C4.5.2 Medhurst is given a reasonable opportunity of examining such Goods; and

C4.5.3 the Customer (if asked to do so by Medhurst) returns such Goods to Medhurst's place of business at the Customer's cost, Medhurst shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

C4.6 Medhurst shall not be liable for the Goods' failure to comply with the warranty set out in clause C4.4 in any of the following events:

C4.6.1 the Customer makes any further use of such Goods after giving notice in accordance with clause C4.5;

C4.6.2 the defect arises because the Customer failed to follow the Medhurst's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

C4.6.3 the defect arises as a result of Medhurst following any drawing, design or Specification supplied by the Customer;

C4.6.4 the Customer alters or repairs such Goods without Medhurst's written consent;

C4.6.5 the defect arises as a result of fair wear and tear, wilful damage, negligence (other than on the part of Medhurst or its Personnel), or abnormal storage or working conditions; or

C4.6.6 the Goods differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

C4.7 Except as provided in this clause C4, Medhurst shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause C4.4.

C4.8 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.

C4.9 The terms in this clause C4 shall apply to any repaired or replacement Goods supplied by Medhurst.

C4.10 Where the Goods are supplied by Medhurst for export from the UK, the Customer shall comply with all applicable legislation and regulations and payment of any duties, import taxes or other costs of export/import.

C4.11 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.

## **C5 Software Licences**

C5.1 Where Medhurst is to supply software, the Customer shall license the same directly from the relevant licensor on the terms referred to in the Order. In respect of any software not expressly subject to separate terms referred to in the Order, Medhurst hereby grants the Customer and its agents and contractors a worldwide, royalty-free, non-exclusive, irrevocable, perpetual, transferable and sub-licensable licence to Use the software for the Customer's own business purposes.

C5.2 Nothing in the Agreement shall be construed as an assignment or transfer of any Intellectual Property Rights in the software, and all such rights are reserved by the Supplier or the relevant third-party licensor.

## Part D: Rental Equipment Terms and Conditions

### D1 Definitions

#### D1.1 The definitions in this clause D1 shall apply in this part D;

“**Delivery Date**” means the date stated for delivery in the Order.

“**Rental Period**” has the meaning given in clause D3.1.

“**Risk Period**” has the meaning given in clause D4.2.

“**Total Loss**” means the Rental Equipment is, in Medhurst’s reasonable opinion damaged beyond repair, lost, stolen, seized or confiscated.

### D2 Rental Equipment

D2.1. The provisions of this Part D shall apply to the Agreement if and to the extent that Medhurst agrees to lease Rental Equipment to the Customer.

D2.2 Medhurst shall lease the Rental Equipment to the Customer for the Rental Period on the terms of the Agreement.

### D3 Rental Period

D3.1 The Rental Period shall start on the date the Rental Equipment is delivered (or deemed to be delivered) and shall continue for a fixed term of 3 years unless the Agreement is terminated earlier in accordance with its terms (**Rental Period**).

D3.2. Clause A11.1.1 shall not apply to the Agreement.

D3.3 The Agreement shall automatically terminate if a Total Loss occurs in relation to the Rental Equipment.

D3.4 On termination of this Agreement by Medhurst pursuant to clauses A11.1.3, A11.1.4 or A11.1.5, any other repudiation of this Agreement by the Customer accepted by Medhurst or pursuant to clause D3.3, without prejudice to any other rights or remedies of Medhurst, the Customer shall pay to Medhurst on demand a sum equal to the whole of the Charges that would have (but for the termination) been payable if the Agreement had continued to the end of the Rental Period, less a discount for accelerated payment at the 5% percent.

D3.5 The sums payable pursuant to clause D3.4 shall be agreed compensation for Medhurst’s loss and shall be payable in addition to all Charges and other sums then due but unpaid and any sums payable in relation to any loss or damage to the Rental Equipment or failure by the Customer to return the Rental Equipment to Medhurst in accordance with this Agreement.

### D4 Title, Risk and Insurance

D4.1 The Rental Equipment shall at all times remain the property of Medhurst and the Customer shall have no right, title or interest in or to the Rental Equipment save for the right to possession and use of the Rental Equipment subject to the terms and conditions of the Agreement.

D4.2 Risk of loss, theft, damage or destruction of the Rental Equipment shall pass to the Customer upon delivery. The Rental Equipment shall remain at the sole risk of the Customer during the Rental Period and any further term during which the Rental Equipment is in the possession, custody or control of the Customer (**Risk Period**) until such time as the Rental Equipment is redelivered to Medhurst.

D4.3 During the Rental Period and the Risk Period the Customer shall, at its own expense, obtain and maintain the following insurances:

D4.3.1 insurance of the Rental Equipment to a value of not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident and such other risks as Medhurst may from time to time nominate in writing; and

D4.3.2. insurance against such other risks relating to the Rental Equipment as may be required by law, together with such other insurances as Medhurst may from time to time consider necessary and advise to the Customer.

D4.4 The Customer shall promptly on request supply copies of the relevant insurance policies or other insurance confirmations acceptable to Medhurst and proof of premium payment to Medhurst.

D4.5 The Customer shall give immediate written notice to Medhurst in the event of any loss, accident or damage to the Rental Equipment arising out of or in connection with the Customer's possession or use of the Rental Equipment.

D4.6 If the Customer fails to effect or maintain any of the insurances required under this Agreement, Medhurst shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.

## **D5 Delivery**

D5.1 Medhurst shall effect delivery of the Rental Equipment to the place for delivery stated in the Order. If required by Medhurst a duly authorised representative of the Customer will be required to sign a delivery receipt.

D5.2 Medhurst shall use reasonable endeavours to effect delivery by the Delivery Date.

D5.3 If the Customer fails to accept delivery of the Rental Equipment within 3 Business Days of Medhurst notifying the Customer that the Rental Equipment is ready, then except where such failure is caused by an Event of Force Majeure or Medhurst's failure to comply with its obligations under the Agreement:

D5.3.1 delivery of the Rental Equipment shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Medhurst notified the Customer that the Goods were ready; and

D5.3.2 Medhurst shall store the Rental Equipment until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

## **D6 Customer Obligations**

D6.1 The Customer shall during the term of the Agreement:

D6.1.1 ensure that the Rental Equipment is kept and operated in a suitable environment, which shall as a minimum meet the requirements set out in the user documentation and manuals provided to the Customer, and is used only for the purposes for which it is designed, and operated in a proper manner in accordance with any operating instructions provided to the Customer;

D6.1.2 take such steps (including compliance with all safety and usage instructions provided to the Customer) as may be necessary to ensure, so far as is reasonably practicable, that the Rental Equipment is at all times safe and without risk to health when it is being used or maintained;

D6.1.3 be responsible for and indemnify Medhurst against any loss or damage to the Rental Equipment;

D6.1.4 not repair or alter the Rental Equipment (including removing any existing component (or components) from the Rental Equipment) without the prior written consent of Medhurst. Title and property in any substitutions, replacements, renewals made in or to the Rental Equipment shall vest in Medhurst immediately on installation;

D6.1.5 keep Medhurst fully informed of all material matters relating to the Rental Equipment;

D6.1.6 at all times keep the Rental Equipment in the possession or control of the Customer and inform Medhurst on request of its location;

D6.1.7 permit Medhurst or its duly authorised representative to inspect the Rental Equipment at all reasonable times and for such purpose to enter any premises at which the Rental Equipment may be located, and shall grant reasonable access and facilities for such inspection;

D6.1.8 not, without Medhurst's the prior written consent, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Rental Equipment or allow the creation of any mortgage, charge, lien or other security interest in respect of it;

D6.1.9 not do or permit to be done any act or thing which will or may jeopardise the right, title or interest of Medhurst in the Rental Equipment;

D6.1.10 not suffer or permit the Rental Equipment to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Rental Equipment is so confiscated, seized or taken, the Customer shall notify Medhurst and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Rental Equipment and shall indemnify Medhurst on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;

D6.1.11 not use the Rental Equipment for any unlawful purpose;

D6.1.12 ensure that at all times the Rental Equipment remains identifiable as being Medhurst's property and wherever possible shall ensure that a visible sign to that effect is attached to the Rental Equipment;

D6.1.13 deliver up the Rental Equipment at the end of the Rental Period at such address as Medhurst requires, or if necessary allow Medhurst or its representatives access any premises where the Rental Equipment is located for the purpose of removing the Rental Equipment; and

D6.1.14 not do or permit to be done anything which could invalidate the insurances referred to in clause D4.3.

D6.2 The Customer acknowledges that Medhurst shall not be responsible for any loss of or damage to the Rental Equipment or any breach of the warranties in clause D7.1 or remedying any defect in the Rental Equipment which arise from:

D6.2.1 accident, negligence, misuse, mishandling, abuse or contamination (unless caused by Medhurst) including liquid spills, external impacts and overclocking;

D6.2.2 operation outside usage parameters or otherwise not in compliance with the Agreement or user documentation or instructions provided with the Rental Equipment;

D6.2.3 the use of software, hardware or parts not supplied by Medhurst;

D6.2.4 improper installation, maintenance (unless caused by Medhurst) or environmental conditions;

D6.2.5 any virus, worms, trojan horses, spyware, logic bombs or similar files, scripts, agents, things or devices;

D6.2.6 any repair, service or modification by anyone other than Medhurst or its authorised agents or providers; or

D6.3.7 expendable or consumable parts.

D6.4 The Customer shall indemnify Medhurst in full against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Medhurst arising out of, or in connection with any failure by the Customer to comply with the terms of the Agreement.

## D7 Warranties

D7.1 Subject to clause D6.2 Medhurst warrants that the Rental Equipment shall on delivery conform in all material respects with its description and any applicable specification detailed in the Order.

D7.2 Where the Rental Equipment has the benefit of a third-party warranty such as a manufacturer warranty Medhurst will give the Customer written details of such warranty and Medhurst will give the Customer reasonable assistance in relation to any claim under such warranty. Medhurst will not be responsible for any loss suffered by the Customer arising out of any failure or delay by such third party warrantor in repairing Rental Equipment under such warranty or otherwise.

D7.3 If the Rental Equipment does not have the benefit of a third party warranty as detailed in clause D7.2, Medhurst warrants that on delivery and if applicable for any warranty period thereafter specified in the Order (the **Warranty Period**) the Rental Equipment shall:

D7.3.1 be free from material defects in design, material and workmanship (please note that this does not include purely cosmetic issues which do not materially impact on the operation of the Rental Equipment);

D7.3.2 be of satisfactory quality (within the meaning of the Sales of Goods Act 1979); and

D7.3.3 be fit for any purpose held out by Medhurst.

D7.4 Subject to clause D6.2 Medhurst shall use reasonable endeavours to remedy free of charge, any material defect in the Rental Equipment which arises within Warranty Period provided the Customer:

D7.4.1 notifies Medhurst within 10 Business Days of the defect arising;

D7.4.2 allows Medhurst to make a full examination of the alleged defect; and

D7.4.3 on Medhurst's request returns or makes available for collection the applicable Rental Equipment as directed by Medhurst.

D7.5 If Medhurst fails to remedy any material defect in the Rental Equipment in accordance with clause D7.4 Medhurst shall at the Customer's request accept the return of the applicable part(s) of the Rental Equipment and make an appropriate reduction in the Charges payable during the remaining Rental Period.

D7.5 The terms implied by section 9 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Agreement.