

## **END-USER LICENSE AGREEMENT- PANDA CLOUD FUSION**

Please read the following License Agreement carefully before using this program. By accepting the Agreement, you are agreeing to become the licensee and expressing your complete acceptance of all the terms and conditions of this License Agreement. If you do not accept the terms of the Agreement, do not install the program. Similarly, use of the program implies your acceptance to be bound by the terms and conditions of this License Agreement.

The present License Agreement represents the entire agreement between the licensee and PANDA SECURITY S.L. (hereinafter PANDA). This License Agreement supersedes any prior License Agreements between the licensee and PANDA with respect to this product or any product it replaces. Similarly, and where permissible under applicable legislation, the terms and conditions of the present License Agreement shall take precedence over any communication or advertising material in the event that such material contradicts any of said terms and conditions and/or where such material predates this License Agreement.

The acceptance of the terms and conditions of this Agreement does not confer any rights of ownership over the programs or products belonging to PANDA or its Software Suppliers.

Where the end user of this product contracts the service through a PANDA Partner, the conditions set out in the present License Agreement shall apply to both the user and the Partner. For all purposes, the licensee of this product is the end client, or where applicable, the PANDA Partner, if the later is the sole user of the product. The responsibility for using and managing the product's administration console corresponds entirely to the end user, or to the PANDA Partner in cases where the end user has delegated use of the program on his/her systems to a PANDA Partner. PANDA shall not be held responsible for the use of the product's administration console by the Partner or the end user.

## **END-USER LICENSE AGREEMENT- PANDA CLOUD OFFICE PROTECTION**

The Web console used by the global security solution Panda Cloud Office Protection uses Google Analytics, an analytical Web service provided by Google, Inc., a Delaware company with registered offices at 1600 Amphitheatre Parkway, Mountain View (California), CA 94043, USA (hereinafter "Google"). Google Analytics uses cookies, which are text files installed on your computer to help the website analyze how you use the website. The information generated by the cookies about your use of the website will be directly transmitted to and filed by Google in servers in the United States. The cookies are associated solely to an anonymous user and his/her computer and do not provide the first name or last name of the user. Google will use this information on our behalf in order to monitor your use of the website, compiling website activity reports and offering other services related with the activity of the website and use of the Internet. Google may transmit this information to third parties when so required by legislation, or when third parties process information on behalf of Google. You may reject the processing of data or information by rejecting the cookies, using the corresponding configuration in your Internet browser. However, this may affect certain non-critical operations of the product. By using the website you are giving your consent to the processing of information about yourself by Google in the way and for the purposes described above.

**1.- LICENSE GRANT.-** PANDA grants the licensee the non-exclusive and non-transferable right to use the program during the period contracted, after which, he/she must remove it from the computer memory and cease to use the program.

This License Agreement grants the licensee the right to use the program on as many computers and/or servers as licenses bought and specified during the registration process.

In the event that the program is run on a Windows Terminal Server or other environments where multiple instances are run on a single server, a license must be acquired for each user in the organization who is going to be protected with the protection installed on the server

In the event that the licensee has purchased Panda Cloud Office Protection Advanced and uses the protection for Exchange Server, he/she must purchase at least as many licenses as users shall be protected by the protection for Exchange Server.

In both network environments and servers and workstations not connected to a network, the license is only applicable to the program specified in the License Certificate (if the program includes this Certificate).

In the case of Trial versions, the licensee may only use this version for the period and number of servers/workstations indicated by PANDA. Written permission must be granted by PANDA in order to extend this period. In the case of Demo versions, the licensee may install a maximum of six (6) licenses. Clause Five of this Agreement does not apply to such versions.

Similarly, PANDA grants the licensee the non-exclusive and non-transferable right to use the Panda MalwareRadar audit service for the contracted period or as otherwise contracted. The text with the Conditions of Use of the Service is available at <http://www.malwareradar.com/spain/license/>

In the case of subscription versions, if the monthly or periodic subscription fees are not paid, or when the subscription period has expired, the licensee will lose the rights granted by the present License Agreement as well as the rights to access the services associated with the program.

In the event that the licensee has purchased Panda Cloud Office Protection Advanced, PANDA informs him/her that the use of certain features included in the product might allow the licensee's System Administrator to access the URLs visited by end users, which may represent unauthorized access of personal data, regulated by applicable legislation governing the protection of personal data or, where appropriate, labor laws. The licensee admits that he/she knows the aforementioned limitations to the treatment of end users' (i.e. employees) data, undertaking to take all measures necessary to legitimize the processing of said data, and holding PANDA harmless from any and all liability which may arise in this respect.

**2.- INTELLECTUAL PROPERTY.-** This program, as well as any corresponding documentation or information, is the exclusive property of PANDA and/or its Software Suppliers. PANDA or its Software Suppliers own all intellectual property rights and copyrights pertaining to the programs, documentation or any other work, program or product given to the licensee by PANDA as part of this Agreement. With regard to GNU GPL (GNU General Public License) software or other types of free software, the corresponding License Agreements shall apply.

The program is protected by copyright laws, patents and international copyright treaties, in addition to the dispositions of laws and treaties applicable to the protection of intellectual property rights.

PANDA authorizes the use of its products in comparative reviews provided that these are objective and carried out in good faith and in accordance with accepted or customary industry practices. These reviews may only be carried out using the latest versions of the products concerned.

**3.- MODIFICATIONS TO PRODUCTS AND SERVICES.-** The licensee acknowledges and accepts that during the contracted period, PANDA may cease to develop the product contracted by the licensee in favor of others. In such circumstances, the licensee may choose another product in accordance with PANDA's product migration policy.

Similarly, the licensee acknowledges and accepts that during the contracted period, PANDA may alter the product features to respond to market needs.

The licensee may at any time access information relating to the lifecycle of PANDA Products and Solutions through the following link:  
<http://www.pandasecurity.com/spain/enterprise/support/lifecycle/>

If the licensee changes to a new version or new PANDA product to update a previous PANDA product version, the updated version or product is the only one the licensee has the right to use, accepting exclusively the terms and conditions applicable to all documentation, material and specifications corresponding to the new version or product. The licensee is obliged in such cases to delete any material corresponding to the previous version.

By accepting this License Agreement, the licensee accepts all such modifications to the services and characteristics of the program. Please check all such modifications before accepting this License Agreement.

**4.- DATA COLLECTION TECHNOLOGY.-** PANDA informs the licensee that in certain products it may use data collection technology to collect technical information (including suspicious files without personal information) to improve the product, to adapt it to user preferences and to prevent the unlicensed or illegal use of the product. The licensee accepts that PANDA may use such information as part of the services provided. The licensee acknowledges and accepts that PANDA may provide updates or additions to the software which automatically download to his/her computer.

As part of the service, the product transmits the IP address of the client as well as the malware status of its Network. Where end users have delegated use of the program to a PANDA Partner, this information will be accessible to the Partner as well as to PANDA. The user accepts this condition, and in those cases in which management through the Partner does not permit the end user to see this license agreement, the Partner undertakes to inform the user of this condition.

**5.- PRIVACY.-** PANDA guarantees that the information belonging to the licensee to which it may have access in order to provide the solution, shall be treated at all times as confidential information. PANDA shall only use such information for the purpose of providing the service and improving the product and its corresponding services.

**6.- WARRANTY.-** PANDA guarantees that the licensed program will fulfill its principal designed purposes and commits itself to solve the problems that affect its performance to this effect, with the means and in the time PANDA considers appropriate in accordance with its own criteria. PANDA shall not be responsible for defects that external technical equipment might cause to the performance of the licensed software.

**7.- DISCLAIMER.-** This warranty does not cover lost, stolen or accidentally damaged material, or material improperly used or modified without authorization or which is faulty due to causes attributable to third-parties other than PANDA.

PANDA shall not be held responsible by any person or entity regarding any damage or loss allegedly caused by the use or inability to use the program, either directly or indirectly, including (but not limited to) business interruptions, monetary loss or loss of anticipated income as a result of the use of the program. Specifically, PANDA shall not be held responsible for the use of the product feature allowing remote access to computers with Remote Access tools previously installed. The responsibility for using the remote access feature corresponds entirely to the computer system administrator or to the PANDA Partner in cases where the end user has delegated use of the program on his/her systems to a PANDA Partner.

Under no circumstances shall PANDA be liable for damages greater than the fee paid by the licensee for the program, regardless of whether the licensee has informed PANDA of the possibility of such damages.

The validity of the guarantees and liabilities established herein is subordinate to the legislation applicable in the corresponding State and/or Jurisdiction.

The licensee declares and guarantees that any information provided to PANDA in order to use the solution is true, correct and current. Similarly, the licensee declares that he/she is legally entitled to execute the present contract, and to carry out the corresponding actions that may be required.

**8.- HIGH RISK ENVIRONMENTS.-** This program has not been designed for and is not intended for use in hazardous environments requiring fail-safe (fault-tolerant) performance such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons or defense systems, life support systems or any other context in which the failure of any software could lead directly to death, personal injury or severe damage to property or the environment. PANDA specifically disclaims any express or implicit guarantee of the program's suitability for these types of activities.

**9.- OTHER RESTRICTIONS.** The licensee may not transfer the rights granted by means of this License Agreement. Additionally, it is not permitted to decompile, reverse-engineer or disassemble wholly or partially this program.

The licensee may not make any alterations, either wholly or partially, to the software, services and/or any other documentation or material included with the product.

**10.- JURISDICTION.-** The present Agreement is governed by Spanish law and in the event of any doubt or disagreement about its interpretation or effects, the only competent authority will be the Bilbao Courts of Justice. In the event of any dispute arising from the present Agreement, its interpretation or effects, the parties hereto submit to the decisions of the Courts and Tribunals of Bilbao, expressly waiving any other jurisdictional rights they may hold.

**11.- GENERAL-** The licensee authorizes PANDA personnel to visit him/her in order to verify that the conditions of this license are met.

The licensee knows and accepts that PANDA may take legal proceedings should he/she not adhere to this Agreement. PANDA reserves the right to terminate the present License Agreement automatically without prior notice should the licensee fail to comply with any of the terms and conditions of the present Agreement.

If any provision in this Agreement is against the law, that provision will be considered void, without affecting the totality of the Agreement or implying that the Agreement is void.

PANDA expressly reserves all other rights it may have and that are not herein granted to the licensee.

#### **SPECIFIC CLAUSES FOR FREE SOFTWARE AND THIRD PARTY SOFTWARE**

The program includes or may include some software programs licensed (or sub-licensed) to the licensee under free software licenses. The texts with the corresponding conditions are available in the product installation directory.

Should the licensee install the program, the corresponding license conditions and intellectual property and copyright notices will apply in addition to those laid out in the present Agreement.

Should the license conditions referred to in the present clause grant rights more extensive than those indicated in the present Agreement, said rights shall have precedence over the rights and restrictions stipulated herein, with respect only to the software or parts of the software licensed under said terms.

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## **END-USER LICENSE AGREEMENT – PANDA CLOUD SYSTEMS MANAGEMENT (PCSM)**

By purchasing and accessing the Software Services called PANDA CLOUD SYSTEMS MANAGEMENT the Customer agrees to these Conditions which will bind it, its employees and the Customer's Clients.

### **1. DEFINITIONS**

1.1 In these Conditions, the following definitions apply:

|                            |   |
|----------------------------|---|
| "Authorised Devices"       | those computer and other devices used by employees, agents and clients of the Customer in respect of which the Customer is licensed to use the Services and the Documentation;  |
| "Business Day"             | any day which is not a Saturday, Sunday or public holiday;  |
| "Change of Control"        | the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions;  |
| "Conditions"               | these terms & conditions as amended from time to time in accordance with clause 24;   |
| "Confidential Information" | information in whatever form (including, without limitation, in written, oral, visual or electronic form) relating to the business, employees, customers, Product, affairs and finances of the Supplier for the time being confidential and trade secrets including, without limitation, details of the Services, and the results of any performance tests of the Services, technical data and know-how or any suppliers, customers, agents, distributors, shareholders, management or business contacts and including (but not limited to) information that either party creates, develops, receives or obtains in connection the Contract, and any Customer Data, whether or not such information is marked confidential; |
| "Contract"                 | means the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions;  |
| "Customer Data"            | the data inputted by the Customer, Customer's Clients or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services;  |

|                               |   |
|-------------------------------|---|
| "Customer's Clients"          | clients of the Customer to whom the Customer supplies the Services in accordance with these Conditions;   |
| "Documentation"               | the user documentation made available to the Customer by the Supplier from time to time which sets out a description of the Software Service and the user instructions for the Software Service;  |
| "Effective Date"              | the date of the Supplier's acceptance of the Contract in accordance with clause 2.3;  |
| "Licence Term"                | The period selected by the Customer in the Order, commencing on the Effective Date together with any subsequent Renewal Periods shall constitute the "Licence Term";  |
| "Intellectual Property Right" | all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world; |
| "Licence Fees"                | the licence fees payable by the Customer to the Supplier for the Licences, as set out in clause 10;   |
| "Licences"                    | the licences purchased by the Customer pursuant to clause 10.1 which entitle the Customer or the Customer's Clients, as the case may be, to use the Software Services in relation to Authorised Devices in accordance with these Conditions;  |
| "Order"                       | the Customer's order sent to the Supplier for the provision of the Services by the Supplier;  |
| "Price List"                  | the list of Licence Fees as notified to the Customer from time to time;   |
| "Support Service"             | the Supplier's standard support service which is made available by the Supplier to the Customer as part of the Software Service in accordance with the Supplier's Standard Support Policy;  |
| "Virus"                       | any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise   |

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

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Conditions.

1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.4 Words in the singular shall include the plural and vice versa.

## 2. **ORDER PROCESS**

2.1 The Order constitutes an offer by the Customer to subscribe to the Services specified in the Order from the Supplier in accordance with these Conditions.

2.2 The Customer shall ensure that the information it supplies in the Order is complete and accurate and shall include:

2.2.1 the Customer's full name and contact details;

2.2.2 the length of the Licence Term; and

2.2.3 the number of Licences required by the Customer, or the Customer's Clients as the case may be.

2.3 The Order shall be deemed to be accepted by the Supplier on the earlier of:

2.3.1 the Supplier's email to the Customer confirming acceptance of the Order; or

2.3.2 commencement of provision of the Services,

at which point the Contract shall come into existence (the "Effective Date").

## 3. **LICENCES**

3.1 Subject to the Customer purchasing the Licences and paying the relevant Licence Fees and Additional Charges in accordance with clause 4.1 and clause 10.1, the restrictions set out in this clause 3 and the other provisions set out in these Conditions, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to use the Services and the Documentation in relation to the Authorised Devices during the Licence Term solely for the Customer's internal business operations which, for the avoidance of doubt, include the Customer providing



IT support for Authorised Devices owned by the Customer and/or the Customer's Clients.

3.2 The Customer undertakes that:

- 3.2.1 the maximum number of Authorised Devices that access and use the Services shall not exceed the number of Licences it has purchased from time to time;
- 3.2.2 it shall permit the Supplier to audit the Services at any time in order to establish the number of Authorised Devices that the Customer, or the Customer's Clients, as the case may be, have used to access and use the Services;
- 3.2.3 if any of the audits referred to in clause 3.2.2 reveal that the Customer has underpaid Licence Fees or any Additional Charges to the Supplier, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in the Price List within 20 Business Days of the date of notification by the Supplier;
- 3.2.4 each user of the Services shall keep a secure password for use of the Services and Documentation and that password shall be changed no less frequently than monthly and kept confidential;
- 3.2.5 if a user of the Services ceases to be employed or contracted by the Customer or the Customer's Clients, as the case may be, his/her password will be immediately revoked;
- 3.2.6 the Customer will at all times comply with best industry practice in respect of security measures appropriate for use of the Services; and
- 3.2.7 the Customer shall procure that the Customer's Clients comply with these Conditions.

3.3 The Customer shall not, and shall ensure that the Customer's Clients shall not, access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:

- 3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 3.3.2 facilitates illegal activity;
- 3.3.3 depicts sexually explicit images;
- 3.3.4 promotes unlawful violence;
- 3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activity; or
- 3.3.6 causes damage or injury to any person or property;

and the Supplier reserves the right, without liability to the Customer, to disable access to any material that breaches the provisions of this clause.

- 3.4 The Customer shall not and shall ensure that the Customer's Clients shall not:
- 3.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under these Conditions:
    - (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and/or Documentation (as applicable) in any form or media or by any means; or
    - (b) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or
  - 3.4.2 access all or any part of the Services and/or Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - 3.4.3 use the Services and/or Documentation to provide services to third parties other than the Customer's Clients; or
  - 3.4.4 subject to clause 20.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Customer's Clients; or
  - 3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 3.
- 3.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and shall, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 3.6 The rights provided under this clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.
4. **ADDITIONAL LICENCES**
- 4.1 The Customer may, from time to time during Licence Term purchase additional Licences in excess of the number specified in accordance with clause 2.2.3 and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Devices in accordance with these Conditions.
- 4.2 Where clause 4.1 applies, the Customer shall pay to the Supplier the relevant fees for such additional Licences as advised in writing by the Supplier.

5. **SERVICES**

- 5.1 The Supplier shall, during the Licence Term, provide the Services and make available the Documentation to the Customer on and subject to these Conditions.
- 5.2 The Supplier shall use commercially reasonable endeavours to make the Software Service available 24 hours a day, seven days a week except for planned and emergency maintenance carried out as included in the Support Service.
- 5.3 Provided that the Customer has paid all Licence Fees, the Supplier shall provide the Support Service, during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time.

6. **CUSTOMER DATA**

- 6.1 The Customer shall own all rights, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 6.2 The Supplier shall use the Customer Data for the purpose of providing the Services and may share aggregated anonymised Customer Data with other parties but will not identify any individual, firm or company.
- 6.3 The parties acknowledge that internet transmissions are never completely private or secure and in the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 6.4 If the Supplier processes any personal data on the Customer's behalf when performing its obligations under the Contract, the parties record their intention that the Customer shall be the data controller and the Supplier shall be a data processor and in any such case:
- 6.4.1 the Customer shall ensure that it is entitled to transfer the relevant personal data to the Supplier so that the Supplier may lawfully use, process and transfer the personal data in accordance with these Conditions on the Customer's behalf;
  - 6.4.2 the Customer shall ensure that the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
  - 6.4.3 the Supplier shall process the personal data only in accordance with these Conditions and any lawful instructions reasonably given by the Customer from time to time; and

- 6.4.4 each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

## 7. **THIRD PARTY PROVIDERS**

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

## 8. **SUPPLIER'S OBLIGATIONS**

- 8.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 8.2 The undertaking at clause 8.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, the Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 8.1. Notwithstanding the foregoing, the Supplier:
- 8.2.1 does not warrant that the Customer's use of the Services will be uninterrupted or error-free, nor that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
- 8.2.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 8.3 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under the Contract.

8.4 The Supplier warrants that it has and will maintain all licences, consents, and permissions necessary for the performance of its obligations under the Contract.

## 9. **CUSTOMER'S OBLIGATIONS**

The Customer shall:

9.1.1 provide the Supplier with:

- (a) all necessary co-operation in relation to the Contract; and
- (b) all necessary access to such information as may be required by the Supplier;

in order to render the Services, including but not limited to Customer Data, security access information and configuration services;

9.1.2 comply with all applicable laws and regulations with respect to its activities under the Contract;

9.1.3 carry out all other Customer responsibilities set out in these Conditions in a timely and efficient manner (and in the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary);

9.1.4 use and ensure that the Customer's Clients use the Services and the Documentation in accordance with these Conditions and be responsible for any breach of the Contract by the Customer or a Customer's Client;

9.1.5 obtain and maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under the Contract, including without limitation the Services;

9.1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and

9.1.7 be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

## 10. **CHARGES AND PAYMENT**

10.1 The Customer shall pay the Licence Fees to the Supplier in accordance with this clause 10 and the Price List.

10.2 In respect of Licence Term:

10.2.1 the Supplier shall invoice the Customer following receipt of the Order; and

- 10.2.2 the Licence Fee shall be calculated in accordance with the Price List based on the number of Authorised Devices specified in accordance with clause 2.2.3 and, where applicable, clause 4.1.
- 10.3 If the Supplier has not received payment within 60 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
  - 10.3.1 the Supplier may, without liability to the Customer, suspend the Customer's access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while any invoices remain unpaid; and
  - 10.3.2 interest shall accrue on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 10.4 All amounts and fees payable by the Customer to the Supplier in connection with the Contract:
  - 10.4.1 shall be payable in pounds sterling, US dollars or Euros, dependant on the Customer's place of business as specified in the Order;
  - 10.4.2 are, subject to clause 15.5 non-cancellable and non-refundable;
  - 10.4.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

## 11. PROPRIETARY RIGHTS

- 11.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Services and the Documentation. Except as expressly stated, the Contract does not grant the Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 11.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with these Conditions.

## 12. CONFIDENTIALITY

- 12.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under the Contract. A party's Confidential Information shall not be deemed to include information that:
  - 12.1.1 is or becomes publicly known other than through any act or omission of the receiving party;
  - 12.1.2 was in the other party's lawful possession before the disclosure;

- 12.1.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 12.1.4 is independently developed by the receiving party, which independent development can be shown by written evidence; or
  - 12.1.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of the Contract.
- 12.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of these Conditions.
- 12.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 12.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Supplier's Confidential Information.
- 12.6 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 12.7 This clause 12 shall survive termination of the Contract, however arising.

### 13. **INDEMNITY**

- 13.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- 13.1.1 the Customer is given prompt notice of any such claim;
  - 13.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
  - 13.1.3 the Customer is given sole authority to defend or settle the claim.
- 13.2 The Supplier shall, subject to clause 13.5, defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom copyright, trade mark, database right or right of confidentiality and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- 13.2.1 the Supplier is given prompt notice of any such claim;

- 13.2.2 the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
  - 13.2.3 the Supplier is given sole authority to defend or settle the claim.
- 13.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 13.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
  - 13.4.1 a modification of the Services or Documentation by anyone other than the Supplier; or
  - 13.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
  - 13.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 13.5 The foregoing states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

#### 14. **LIMITATION OF LIABILITY**

- 14.1 This clause 14 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
  - 14.1.1 any breach of the Contract;
  - 14.1.2 any use made by the Customer of the Services and/or Documentation or any part of them; and
  - 14.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 14.2 Except as expressly and specifically provided in these Conditions:
  - 14.2.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use and the Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;



- 14.2.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Contract; and
- 14.2.3 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 14.3 Nothing in these Conditions excludes the liability of the Supplier:
  - 14.3.1 for death or personal injury caused by the Supplier's negligence; or
  - 14.3.2 for fraud or fraudulent misrepresentation.
- 14.4 Subject to clause 14.2 and clause 14.3, the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under the Contract.

15. **TERM AND TERMINATION**

- 15.1 The Contract shall, unless otherwise terminated as provided in this clause 15, commence on the Effective Date and shall continue for the Licence Term.
- 15.2 The Customer may terminate the Contract at any time by notifying it to Supplier, in which case the Contract shall terminate upon the expiry of the applicable Licence Term. The Licence Fee and, where applicable, Additional Charges, shall remain payable in respect of such Licence Term, and where already paid, the Customer shall not be entitled to any refund of the Licence Fee or Additional Charges paid in respect of such Licence Term.
- 15.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate the Contract immediately by written notice to the other party without liability to the other if:
  - 15.3.1 the other party commits a material breach of any of the terms of the Contract including, without limitation, these Conditions and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
  - 15.3.2 the other Party is deemed unable to pay its debts within the meaning of the Insolvency Act 1986 or becomes insolvent, enters into liquidation (whether voluntary or compulsory) or passes a resolution for its winding up; an order is made or a resolution is passed for the winding up of the other Party (unless it is for the purpose of amalgamation or reconstruction when solvent); an administration order is made or an administrator is appointed to manage the affairs, business and/or property of the other Party; a receiver and/or administrative receiver is appointed in respect of all or any of the other Party's assets; the other party has an encumbrancer taking possession of any of its assets; the other Party makes or proposes any other composition, scheme or arrangement with (or assignment for the benefit of)

its creditors; any procedural step is taken in relation to or with a view to any of the above; or the other Party takes or suffers any similar or analogous action to the above in any jurisdiction; or

15.3.3 the other Party ceases or threatens to cease to exist or to carry on trading (otherwise than for the purposes of solvent amalgamation or reconstruction).

15.4 The Supplier may terminate the Contract immediately by written notice and without liability to the Customer if the Customer undergoes a Change of Control.

15.5 The Supplier may terminate the Contract for convenience at any time by written notice to the Customer and where none of clauses 15.2, 15.3 or 15.4 applies, the Customer shall be entitled to a refund on a pro rata basis of any Licence Fee or Additional Charges paid in respect of the remainder of the relevant Licence Term.

15.6 On termination of the Contract for any reason:

15.6.1 all licences granted under the Contract shall immediately terminate;

15.6.2 save as provided in clause 15.5, all Licence Fees in respect of the relevant Licence Term shall be payable and the Customer shall not be entitled to any refund;

15.6.3 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;

15.6.4 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession; and

15.6.5 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

## 16. **FORCE MAJEURE**

The Supplier shall have no liability to the Customer under the Contract if it is prevented from or delayed in performing its obligations under the Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, internet backbone failure, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.

## 17. **WAIVER**

17.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.

17.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

18. **SEVERANCE**

18.1 If any provision (or part of a provision) of the Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

19. **ENTIRE AGREEMENT**

19.1 These Conditions and any documents referred to in them, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

19.2 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract, other than as expressly set out in these Conditions.

20. **ASSIGNMENT**

20.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

21. **NO PARTNERSHIP OR AGENCY**

Nothing in these Conditions is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. **THIRD PARTY RIGHTS**

The Contract does not confer any rights on any person or party (other than the parties to the Contract and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

23. **NOTICES**

23.1 Any notice required to be given under the Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the

other party at such address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in these Conditions.

- 23.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

24. **AMENDMENTS**

- 24.1 The Supplier has the right to amend these Conditions from time to time. The Customer will be subject to the Conditions in force at the time it places an Order, and to any amended version of these Conditions with effect from the start of the following Renewal Period.

25. **GOVERNING LAW AND JURISDICTION**

- 25.1 The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.
- 25.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).