

These terms and conditions (as amended under clause 26.2) (“**Conditions**”) govern the supply of services and licensing of software by IPV Limited, registered in England and Wales with no. 05168019, with registered address at Conqueror House, Vision Park, Chivers Way, Cambridge CB24 9ZR (“**IPV**”) to the person/firm to who buys such services/licences (“**Customer**”). These Conditions apply to the exclusion of any other terms that Customer seeks to impose, or which are implied by trade, custom, practice or course of dealing.

*****Note particularly clause 18.1 (Limitation of Liability)*****

1. INTERPRETATION

In these Conditions: (i) **person** includes a natural person, corporate or unincorporated body; (ii) a reference to IPV or Customer includes its personal representatives, successors and permitted assigns; (iii) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and includes any subordinate legislation; (iv) any phrase introduced by the terms **including** or **include** shall be illustrative and shall not limit the sense of the preceding words; (v) a reference to **writing** or **written** includes emails but excludes faxes; (vi) the terms ‘personal data’, ‘data subject’, ‘processor’, ‘controller’, ‘processing’, ‘personal data breach’, ‘pseudonymisation’, ‘special categories of data’ and ‘supervisory authority’ have the meanings set out in Data Protection Law; and (vii) the following definitions apply:

“**Acceptable Use Policy**”: the acceptable use policy (if any) for the applicable Licensed Software.

“**Additional Maintenance Services**”: any Out of Hours Maintenance and/or any Excluded Maintenance performed by IPV in accordance with these Conditions.

“**Affiliates**”: each agent, employee, contractor or sub-contractor of a party or the party's Group.

“**Applicable Law**”: the laws of England and Wales, together with any other mandatory laws, regulations, regulatory policies, guidelines or industry codes which apply to the performance of each party's obligations under the Contract.

“**Authorised Users**”: those employees and independent contractors of the Customer who are entitled to use the Hosted Software Services under the Contract.

“**Availability**”: the availability of an access point on IPV's hosting provider's backbone network, subject to clauses 9.10 and 9.11.

“**Business Day**”: a day other than a Saturday, Sunday or public holiday in England.

“**Charges**”: the charges payable by the Customer to IPV, as set out in the SoW.

“**Confidential Information**”: information of commercial value, in whatever form or medium, disclosed by a party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, information pertaining to clients, pricing and marketing information relating to the business of either party, information which is marked as confidential, or information which ought reasonably to be considered confidential in light of the nature of the information and/or circumstances of its disclosure.

“**Configuration Services**”: those configuration Services detailed in the SoW, if any.

“**Contract**”: each contract (as defined in clause 2.1) between the Customer and IPV relating to one or more of the following: (i) the licence of Licensed Software; and/or (ii) the supply of Services.

“**Customer Content**”: any data, documents, text, drawings, diagrams, images or sounds (together with any database made up of any of these), embodied in any medium, that are provided to IPV by or on behalf of the Customer, in order to perform its obligations pursuant to a Contract.

“**Customer Data**”: the data inputted into the information fields of the Hosted Software by the Customer, by Authorised Users, or by IPV on the Customer's behalf.

“**Customer Materials**”: any and all materials, other equipment (including cabling, network interfaces, power and power adapters) and software necessary for IPV to perform its obligations pursuant to a Contract, save to the extent the same is expressed to be supplied by IPV pursuant to the applicable Contract.

“**Customer Obligations**”: the obligations described in clause 3.

“**Customer Personnel**”: employees, directors and agents of the Customer, together with employees, directors and agents of any contractor undertaking activities on behalf of the Customer who are not IPV Personnel.

“**Data Processing Particulars**”: the following details, as provided in the SoW: (i) the subject matter, duration, nature and purpose of the Processing; (ii) the type of Personal Data being Processed; and (iii) the categories of Data Subjects.

“**Data Protection Legislation**”: any law, statute, regulation, rule or other binding restriction regarding the protection of individuals with regards to the Processing of their Personal Data to which a party is subject, including the DPA and the GDPR (to the extent it remains applicable) and any code of practice or guidance published by the Information Commissioner's Office from time to time.

“**Data Subject**”: has the meaning set out in the Data Protection Legislation.

“**Default**”: any act or omission of a party, or failure by a party to perform a relevant obligation under a Contract.

“**Defect**”: an error in the applicable software that causes it to fail to operate materially in accordance with its Software Specification/Documentation.

“**Deliverables**”: all software code, documents, products and materials in any form: (i) developed by IPV or its agents, contractors and employees; and/or (ii) licensed by IPV to the Customer and its Affiliates, as part of or in relation to the performance of its obligations under a Contract, including all Intellectual Property Rights as may be embodied therein.

“**Documentation**”: the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by IPV as specified in the SoW.

“**Download Apps**”: in respect of any Hosted Software Services being provided by IPV under a Contract, the computer programmes referred to as the “Download Apps” in the SoW together with associated databases in machine-readable object code form only, including any error corrections, updates, upgrades, modifications and enhancements to it made available to download from the applicable Download Store.

“**Download App Terms**”: the specific user terms made available to the user at the time of download of the Download App, as updated from time to time and notified to the user via the Download Store/Download App.

“**Download Store**”: in respect of Download Apps made available for iOS based devices, the App Store (made available by Apple) and in respect of Android based devices, the Google Play Store (made available by Google).

“**Download Store Terms**”: the standard terms and conditions of the applicable Download Store relating to the installation and use of apps made available for use on the relevant platform.

“**DPA**”: the Data Protection Act 2018.

“**Effective Date**”: in respect of the provision of a particular Service or licence of Software, the Effective Date for the same specified in the SoW, or if none is specified, the effective date for the applicable Contract, or if none is specified, the Start Date of the applicable Contract.

“**Emergency Maintenance**”: maintenance resulting from the identification of an issue requiring urgent resolution for reasons of safety, security, as mandated by Applicable Law or as IPV may otherwise determine using its own skill and judgment.

“**Excluded Causes**”: any of the following:

- (i) misuse, incorrect use of or damage from whatever cause (other than any act or omission by IPV), including failure or fluctuation of electrical power;
- (ii) failure to maintain the necessary environmental conditions for use;
- (iii) use in combination with any equipment or software not provided/approved in writing by IPV;
- (iv) use in combination with equipment or software which suffers a fault;
- (v) relocation or installation by the Customer or any Third Party;
- (vi) any act or omission of a Third Party;
- (vii) any breach of the Customer's obligations under the Contract howsoever arising;
- (viii) any modification not authorised by IPV;
- (ix) operator error; or
- (x) any other excluded causes set out in the SoW.

“**Excluded Maintenance**”: any Maintenance Services necessary as a result of any of the Excluded Causes.

“**Group**”: each and every entity that directly or indirectly controls, is controlled by, or is under common control with a party, for so long as such control exists. In the case of companies and corporations, control means beneficial ownership of more than 50% of the voting stock, shares, interest or equity in an entity; in the case of any other legal entity, “control” and “controlled” shall exist through the ability to directly or indirectly control the management and/or business of the legal entity.

“GDPR”: Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016, together with any implementation of the above into UK law. Any reference to “articles” are references to the GDPR.

“Hosted Software Maintenance Event”: maintenance of the Hosting Services and/or Hosted Software that may require interruption of the Hosted Software Services.

“Hosted Software”: the Remote Apps and the Download Apps (if any).

“Hosted Software Services”: the making available by IPV to Customer of access to the Hosted Software via the Hosting Services.

“Hosting Services”: the hosting services that IPV provides pursuant to the Contract to: (i) allow Authorised Users to access and use the Remote Apps and Customer Data; and (ii) allow interaction of the Download Apps with the Remote Apps and Customer Data. For the avoidance of doubt, this excludes the Hosted Software.

“Hosting Service Charges”: the charges set out in the SoW for the provision of the Hosting Services.

“Included Corrective Maintenance”: maintenance services expressly described within the Services Specification, to be provided during the Maintenance Support Hours.

“Initial Licence Term”: in respect of any element of the Licensed Software, the initial term for such element where specified in the SoW, otherwise the Initial Term.

“Initial Services Term”: in respect of any element of the Services, the initial term for such element where specified in the SoW, otherwise the Initial Term.

“Initial Term” the period of time described as such in the SoW.

“Insolvency Event”: (a) the Customer suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts under section 123 of the Insolvency Act 1986 or is deemed either unable to pay its debts or as having no reasonable prospect of so doing within the meaning of section 268 of the Insolvency Act 1986 or (if a partnership) has any partner to whom any of the above applies; (b) the Customer starts negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for/enters into any arrangement with its creditors; (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for/in connection with the winding up of the Customer; (d) the Customer is the subject of a bankruptcy petition or order; (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced on or sued against, the whole or part of its assets which is not discharged within 14 days; (f) an application is made to court, or an order is made to appoint an administrator, or notice of intention to appoint an administrator is given or an administrator is appointed over the Customer; (g) a floating charge holder over the assets of the Customer becomes entitled to appoint or has appointed an administrative receiver; (h) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer; (i) any event analogous to those mentioned in (a)-(h) above in another jurisdiction.

“Installation Services”: those installation Services described in clause 7 and detailed in the SoW, if any.

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

“IPV Bespoke Software”: software programmes developed by IPV specifically for the Customer, as set out in the SoW, including any incorporated Open-Source Software.

“IPV Modified Software”: any IPV Standard Software which is modified or to be modified by IPV under the Contract, including any incorporated Open-Source Software.

“IPV Personnel”: IPV employees, directors and agents, together with employees, directors and agents of any contractor undertaking activities on behalf of IPV in relation to the performance of its obligations under the applicable Contract.

“IPV Software”: any IPV Standard Software, the IPV Modified Software, the Bespoke Software and the Software Development Tools referred to in the SoW and all subsequent amendments and updates to, or new versions of, such software as may be licenced to the Customer under a Contract.

“IPV Standard Software”: any software described as such in the SoW (including any Hosted Software), which is licensed directly from IPV to the Customer pursuant to clause 8 and is provided (or made available) to the Customer without modification, together with any incorporated Open-Source Software.

“IPV Software Documentation”: any operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by IPV in respect of the applicable IPV Software, as set out in the SoW.

“Licensed Software”: any IPV Software and any Hosted Software (except any Open-Source Software).

“Location”: the location for performance of the applicable Services set out in the SoW (if any), or any other location agreed between the parties in writing from time to time.

“Maintenance Services”: those software maintenance Services detailed in the SoW, if any.

“Maintenance Support Hours”: the maintenance support hours specified in the SoW or if no hours are specified, 9.00am to 6.00pm UK time, each Business Day.

“Minimum Spend” the minimum spend detailed in the SoW either: (i) across all Services provided by IPV; or (ii) with respect to the specific Services to which a minimum spend applies, as stated in the SoW.

“New Release”: a new release of all or any part of the Supported Software suitable for use by the Customer in which previously identified faults have been remedied or to which any modification, enhancement, revision or update has been made, or to which a further function or functions have been added.

“New Version”: a new version of the Licensed Software released by IPV which provides additional or improved functionality or performance.

“Normal Business Hours”: 9.00am to 6.00pm UK time, each Business Day.

“Open-Source Software”: any software licensed under any form of open-source licence meeting the Open Source Initiative’s Open Source Definition (<http://www.opensource.org/docs/definition.php>) or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at <http://www.gnu.org/licenses/gpl.html>), or anything similar, included or used in, or in the development of, IPV Software, or with which IPV Software is compiled or to which it is linked.

“Open-Source Software Licence”: in respect of any Open-Source Software, the specific licence under which such Open-Source Software is distributed, (as varied from time to time in accordance with the terms of the same).

“Order”: Customer’s agreement to the terms of an SoW, which may include a communication from the Customer to IPV agreeing to the terms of the SoW (within the period during which the terms of the SoW remain valid), such as clicking “Place Order” at the end of an email sent by IPV containing/referring to the SoW.

“Order Acceptance”: IPV’s acceptance of an Order, which shall consist of a communication from IPV to the Customer expressly accepting the Order.

“Out of Hours Maintenance”: maintenance performed outside of the Maintenance Support Hours.

“Permitted Hosted Software Maintenance Event”: a Hosted Software Maintenance Event: (i) for Planned Maintenance outside of Maintenance Support Hours, where IPV has given the Customer at least [3] days’ advance notice of the same; (ii) for Emergency Maintenance during the daily window of 10.00pm to 2.00am UK time, where IPV has given the Customer as much notice as possible of the same; and (iii) which occurs during Maintenance Support Hours and which was caused by the Customer or requested by the Customer to be undertaken during Maintenance Support Hours.

“Permitted Purpose”: the purpose of the Data Processing as set out in more detail in the Data Processing Particulars.

“Personal Data Breach”: has the meaning set out in the GDPR.

“Planned Maintenance”: maintenance intended to resolve or prevent issues, improve performance, make enhancements or implement configuration changes that are notified to Customer in advance.

“Remote Apps”: in respect of any Hosted Software Services being provided by IPV under a Contract, the computer programmes referred to as the “Remote Apps” in the SoW together with associated databases in machine-readable object code form only, including any error corrections, updates, upgrades, modifications and enhancements to them made available to the Customer under the Contract.

“Renewal Period” the period described as such in clause 20.1.

- “**Security Requirements**”: the requirements regarding the security of the Personal Data, as set out in the Data Protection Legislation (including, in particular, the seventh data protection principle of the DPA and/or the measures set out in Article 32(1) of the GDPR (taking due account of the matters described in Article 32(2) of the GDPR) as applicable.
- “**Service Credits**”: the sums attributable to a failure of the Support Service Level, as set out in the SoW or added by a change pursuant to Clause 26.2.
- “**Service Credit Limit**”: in respect of a Service to be provided by IPV pursuant to a Contract, the limit on the accrual of Service Credits (if any), as set out in the SoW or added by a change pursuant to Clause 26.2.
- “**Service Delivery Failure**”: where, in a particular calendar month, the Uptime Service Level is not achieved.
- “**Service Level Start Date**”: the start of the month after the Installation Services (if any) and Set-up Services (as applicable) have been satisfactorily completed.
- “**Service Levels**”: in respect of a Service to be provided by IPV pursuant to a contract, the service levels for the applicable Services (if any), as set out in the SoW or added by a change pursuant to Clause 26.2.
- “**Services**”: the services to be supplied by IPV to the Customer, consisting of one or more of the following: Configuration Services, Installation Services, Training Services, Maintenance Services and Consultancy Services as set out in the SoW.
- “**Services Specification**”: the specification for the Services as set out (or referred to) in the SoW (including in any applicable statement of work).
- “**Service Term**”: the term for the provision of the applicable Services (or where different elements of the Services are to be provided for differing terms, the term for that element), as set out in the SoW.
- “**Software Development Services**”: those software development Services detailed in the SoW, if any.
- “**Software Development Tools**”: any tools and know-how developed, and methods invented, by IPV in the course of or as a result of carrying out the Software Development Services, whether or not developed or invented specifically or used exclusively to carry out the Software Development Services.
- “**Software Specification**”: the specification of the applicable Software, as detailed in the SoW.
- “**Sourcing Issue**”: an inability on the part of IPV to source particular materials or resources (including IPV Personnel) on terms similar or identical to those available at the Effective Date (including due to exchange rate fluctuations, increases in taxes or duties) or a change in Applicable Law.
- “**Standard Rates**”: IPV’ standard rates for the Services as made available by IPV from time to time.
- “**Standard Support Service**”: the support service more particularly described in the SoW.
- “**Start Date**”: as defined in clause 2.1.
- “**SoW**”: IPV’s written statement of work relating to one or more of the following: (i) the supply of Services; and/or (ii) the licensing of IPV Software.
- “**Subject Access Request**”: an actual or purported subject access request or notice or complaint from (or on behalf of) a Data Subject exercising his rights under the Data Protection Legislation.
- “**Supported Software**”: those software programs listed as Supported Software in an SoW and, to the extent specified in the SoW, all subsequent amendments and updates to and New Releases of such programmes made available to the Customer.
- “**Term**”: the period described as such in clause 20.1.
- “**Term Extension**”: each extension to the Term, as detailed in the SoW.
- “**Third Party**”: a person other than IPV Personnel or the Customer.
- “**Training Services**”: those training Services detailed in the SoW, if any.
- “**Uptime Service Level**”: the uptime service level set out in the SoW, identifying a percentage level of Availability per calendar month.
- “**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.
- “**Year**”: the period of 12 calendar months from the applicable Effective Date and each 12 calendar month period thereafter.

2. BASIS OF CONTRACT

- 2.1. Each SoW provided to the Customer constitutes an invitation to treat by IPV.
- 2.2. Each Order constitutes an offer by the Customer to purchase Services and/or the Licensed Software (as applicable). Following receipt of an Order, IPV shall at its option submit an Order Acknowledgement to the Customer, which shall form a contract subject to the terms of the applicable SoW and these Conditions (“**Contract**”). Should the Order (or any other correspondence from the Customer) contradict in any way the SoW or any of these Conditions (“**Contradictory Terms**”), such Contradictory Terms shall not be incorporated unless and to the extent that a revised SoW is issued incorporating any of the Contradictory Terms. A Contract shall come into existence immediately following the sending of an Order Acknowledgement to the Customer (“**Start Date**”).
- 2.3. After the Start Date, a Contract may not be terminated except in accordance with its terms.
- 2.4. Unless expressly stated to the contrary in the relevant SoW (or otherwise agreed in writing by IPV), each SoW is only valid for 30 days from its date of issue.
- 2.5. If there is an inconsistency between any of the provisions of a Contract, the following descending order of priority shall apply: (i) the SoW itself; and then (ii) these Conditions.
- 2.6. Each party warrants that: (i) it has full capacity to enter into and perform its obligations under a Contract; and (ii) each Contract is executed by a duly authorised representative of that party.
- 2.7. The warranties set out at clause 2.6 above are deemed to be repeated by each party in respect of a Contract on the applicable Start Date for the same.
- 2.8. In consideration for the payment of the Charges, IPV will provide the Services and/or grant access to any Licensed Software (as appropriate) in accordance with the Contract, from the applicable Effective Date.

3. CUSTOMER OBLIGATIONS

- 3.1. The Customer shall:
 - 3.1.1. provide all necessary co-operation reasonably required in relation to a Contract;
 - 3.1.2. comply with any and all obligations which are set out in the SoW, including in the applicable Services Specification which are stated to be performed by the Customer and any other obligations which are apparent or would be ordinarily expected to be complied with by the Customer in the ordinary course of receipt of similar services;
 - 3.1.3. provide such assistance from the Customer Personnel as may be reasonably requested by IPV from time to time;
 - 3.1.4. ensure that the terms of each Contract (including any specification) are complete and accurate;
 - 3.1.5. respond promptly to any request for a decision, guidance, information or instruction which IPV may submit in relation to a Contract from time to time;
 - 3.1.6. not to do or permit anything to be done that will or may damage the business, reputation, image and/or goodwill of IPV;
 - 3.1.7. comply with the Acceptable Use Policies (if any);
 - 3.1.8. only use the Services for lawful purposes and shall not use the Services: (i) in any way that breaches any Applicable Law; (ii) in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect; (iii) for the purpose of harming or attempting to harm minors in any way; (iv) to send, knowingly receive, upload, download, use or re-use any material which does not comply with the content standards set out in clause 3.2; (v) transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam); (vi) knowingly transmit any data, send or upload any material that contains Harmful Code; and (vii) not (and shall not attempt to) probe, scan, penetrate or test the vulnerability of any systems or networks of IPV or to breach any of IPV’ security or authentication measures, whether by passive or intrusive techniques, without IPV’ prior written consent;
 - 3.1.9. ensure that there are in place all necessary consents, licences and permissions required to permit IPV to access and use all the Customer Content and Customer Materials and any other items as may be appropriate in connection with each and every Contract; and

- 3.1.10. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to IPV' data centres (or, where appropriate, the third-party portal through which IPV provides Services to the Customer).
- 3.2. The content standards are as follows.
- 3.2.1. Content must: (i) be accurate (where they state facts); (ii) be genuinely held (where they state opinions); and (iii) comply with Applicable Law.
- 3.2.2. Content must not: (i) contain any material which is defamatory of any person, obscene, offensive, hateful or otherwise inflammatory; (ii) promote sexually explicit material; (iii) promote violence; (iv) promote discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; (v) be used to impersonate any person, or to misrepresent your identity or affiliation with any person; (vi) infringe the copyright, database right or trade mark of any other person; (vii) give the impression that they emanate from IPV, if this is not the case; or (viii) advocate, promote or assist any unlawful act.
- 4. SERVICES**
- 4.1. The terms of this clause 4 apply with respect to any Services supplied pursuant to a Contract.
- 4.2. During the applicable Services Term, in consideration for the payment of all applicable Charges, IPV shall provide the applicable Services to the Customer materially in accordance with the Services Specification.
- 4.3. IPV shall use reasonable endeavours to observe all health and safety and security requirements that apply at the Customer's premises and that have been communicated to it in advance of the provision of the Services, provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.
- 4.4. IPV will use its reasonable endeavours to supply all relevant Services in accordance with any performance metrics set out in the SoW in respect of such Services.
- 4.5. In respect of the Services, IPV shall use reasonable endeavours to meet any performance dates specified in the SoW/Services Specification, but any such dates are estimates only and time is not of the essence for the performance of the Services.
- 4.6. If performance of the Services is delayed at the request of the Customer, or because of any acts or omissions of the Customer, the parties may agree revised dates for performance. At its discretion, IPV may apply a reasonable increase to the Charges as a result of such delay.
- 4.7. IPV shall have the right to make any changes to the Services which: (i) improve the nature or quality of the Services; (ii) are necessary to comply with Applicable Law; (iii) result from a Sourcing Issue; or (iv) do not materially negatively affect the nature or quality of the Services, and IPV shall notify the Customer in any such event. Such notification shall include any variations to the Charges which IPV reasonably considers to be necessary in light thereof.
- 4.8. IPV shall use its reasonable endeavours to comply with any applicable Service Levels from the Service Level Start Date
- 4.9. Where Service Credits are stated to accrue, subject to the Service Credit Limit, IPV shall automatically credit the Customer with the applicable Service Credits. Service Credits shall either be shown as a deduction from the amount due from the Customer to IPV in the next invoice then due to be issued under the Service Contract, or IPV shall issue a credit note against a previous invoice and the amount for the Service Credits shall be repayable by IPV as a debt within 10 Business Days of issue of the credit note.
- 4.10. The Service Credits shall be the exclusive financial remedy for the Customer for each service failure for which a Service Credit has been set, unless:
- 4.10.1. the Customer is otherwise entitled to terminate the Contract (or a part thereof) for a Default by IPV in accordance with these Conditions; or
- 4.10.2. the failure to perform the relevant Services in accordance with the Service Levels has arisen due to theft, gross negligence, fraud, fraudulent misrepresentation or wilful default.
- 4.11. The parties agree that any such Service Credits have been calculated as, and are, a genuine pre-estimate of the loss likely to be suffered by the Customer.
- 4.12. Where there is a Default on the part of the Customer, IPV (without limiting its other rights or remedies) may suspend performance (and is relieved from its performance obligations) until the Customer remedies the same. The Customer shall be liable for any costs incurred by IPV
- 5. SOFTWARE DEVELOPMENT SERVICES**
- 5.1. The terms of this clause 5 apply where IPV has agreed under a Contract to provide any Software Development Services.
- 5.2. IPV shall develop the Bespoke Software and make the modifications to the Modified Software in accordance with the applicable Software Specification.
- 5.3. Before delivering any item of Bespoke Software or Modified Software, IPV shall carry out its standard tests to ensure that such item is in operable condition and is capable of meeting the requirements of the Software Specification, or such tests as are specified in the applicable SoW (or are otherwise agreed in writing between the parties).
- 5.4. The Customer shall be deemed to have accepted the Bespoke Software or Modified Software if either: (i) the acceptance testing is certified by IPV to be successful; (ii) the Customer fails to provide the data or results necessary for acceptance testing to be undertaken within the time limits specified in the SoW (in respect of which, time shall be of the essence); or (iii) the Customer commences operational use of the Bespoke Software or Modified Software (as applicable).
- 6. CONFIGURATION SERVICES**
- 6.1. The terms of this clause 6 apply where IPV has agreed under a Contract to provide any Configuration Services.
- 6.2. The Customer shall in a timely manner:
- 6.2.1. provide all the Customer Content;
- 6.2.2. prepare its premises, equipment and existing systems (or those of its third-party contractors); and
- 6.2.3. facilitate such access to the Customer's premises, equipment and existing systems (or those of its third-party contractors), as may be needed for IPV to perform the Configuration Services.
- 6.3. IPV shall carry out any such Configuration Services at the Location (or, at IPV' option where applicable, via remote access), and subject the results of such services ("**Configuration**") to its standard installation and acceptance tests, or such tests as are specified in the applicable SoW.
- 6.4. The Customer shall be deemed to have accepted the Configuration if either: (i) the acceptance testing is certified by IPV to be successful; (ii) the Customer fails to provide the data or results necessary for acceptance testing to be undertaken within the time limits specified in the SoW (in respect of which, time shall be of the essence); or (iii) the Customer commences operational use of the Configuration.
- 7. INSTALLATION SERVICES**
- 7.1. The terms of this clause 7 apply where IPV has agreed under a Contract to install any software (the "**Installation Materials**"), as stated in the SoW.
- 7.2. The Customer shall in a timely manner:
- 7.2.1. provide all the Customer Content and Customer Materials;
- 7.2.2. prepare its premises, equipment and existing systems (or those of its third-party contractors); and
- 7.2.3. facilitate such access to the Customer's premises, equipment and existing systems (or those of its third-party contractors), as may be needed for IPV to perform the Installation Services.
- 7.3. IPV shall carry out any such installs at the Location (or, at IPV' option where applicable, via remote access), and subject the Installed Materials to its standard installation and acceptance tests, or such tests as are specified in the applicable SoW.
- 7.4. The Customer shall be deemed to have accepted the Installation Materials if either: (i) the acceptance testing is certified by IPV to be successful; (ii) the Customer fails to provide the data or results necessary for acceptance testing to be undertaken within the time limits specified in the SoW (in respect of which, time shall be of the essence); or (iii) the Customer commences operational use of the Installation Materials.
- 8. LICENSED SOFTWARE**
- 8.1. The terms of this clause 8 apply where the Customer licences any Licensed Software from IPV.
- 8.2. In consideration for the payment of all applicable Charges, IPV hereby grants to the Customer a non-exclusive licence for the Licence Term to use the Licensed Software.
- 8.3. Use of the Licensed Software shall be restricted to: (i) the Licence Type restrictions set out in the SoW for the same; (ii) the Quantity restrictions set out in the SoW for the same; (iii) the Use Extent set out in the SoW; (iv) object code form; (v) the purpose described in the SoW; (vi) the normal business purposes of the Customer (and, where "Group use" is expressly permitted in the SoW, the normal business purposes of the Customer's

- Affiliates); (vii) employees of the Customer (and, where "contractor use" is permitted in the SoW, third party contractors using the same solely for the benefit of the Customer (and, where "Group use" is permitted in the Key Terms, for the benefit of the Customer's Affiliates)).
- 8.4. For the period of:
- 8.4.1. 3 months from delivery, the IPV Software will perform in accordance with the Software Specification/Documentation in all material respects; and
- 8.4.2. the Licence Term, the Hosted Software will perform in accordance with the Software Specification/Documentation in all material respects. The Customer's sole remedy for breach of the warranty under this clause 8.4 shall be the correction of the Defect by IPV within a reasonable time from notification by the Customer of the same.
- 8.5. Delivery of Licensed Software shall be deemed to occur as follows: (i) Downloadable software (no activation key necessary): When IPV provides the Customer with valid details or credentials necessary to download the Software; (ii) Activation key is necessary: IPV provides a valid activation key for any software requiring an activation key; (iii) Physical disk or drive containing the software: The disk or drive is delivered to the Customer at the Customer's premises.
- 8.6. IPV shall provide to the Customer, from time to time, copies of the Documentation containing sufficient up-to-date information for the proper use and maintenance of the Licensed Software. Such Documentation may be supplied in electronic form.
- 8.7. The Customer may make such further copies of the Documentation as are reasonably necessary for the use and maintenance of Licensed Software and for training the Customer's personnel in use of Licensed Software. The Customer shall ensure that all of IPV's proprietary notices are reproduced in any such copy. The Customer may provide copies of the Documentation to any third party who needs to know the information contained in it, provided that such third party first enters into appropriate confidentiality obligations no less stringent than those contained in these Conditions.
- 8.8. Any unauthorised modifications, use or improper installation of Licensed Software by the Customer (or on behalf of the Customer, other than by IPV Personnel) shall render all IPV's warranties and obligations under the Contract null and void. IPV shall not be obliged to rectify any particular Defect if attempts to rectify such Defect other than normal recovery or diagnostic procedures have been made by the Customer's personnel or third parties without the permission of IPV.
- 8.9. Notwithstanding any other provision, IPV specifically denies any implied or express representation that the Licensed Software will:
- 8.9.1. be fit to operate in conjunction with any hardware items or software products other than with those that are identified in the SoW (or in the relevant documentation) as being compatible with the Licensed Software; or
- 8.9.2. operate uninterrupted or error-free.
- 8.10. The Customer may not use the Licensed Software other than as specified in this clause without the prior written consent of IPV, and the Customer acknowledges that additional fees may be payable on any change of use approved by IPV.
- 8.11. Except as expressly licensed, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, access all or any part of the Licensed Software in order to develop software which competes with the same, decompile, disassemble, modify, adapt or make error corrections to the same in whole or in part.
- 8.12. The Customer shall not: (i) sub-license, assign or novate the benefit or burden of the licence to the Licensed Software in whole or in part; (ii) allow the Licensed Software to become the subject of any charge, lien or encumbrance; or (iii) deal in any other manner with any or all of its rights and obligations under the Contract, without the prior written consent of IPV.
- 8.13. The Customer shall: (i) ensure that the number of persons using the Licensed Software does not exceed the number specified in the SoW (ii) keep a complete and accurate record of Authorised Users, and produce such record to IPV on request from time to time; (iii) notify IPV as soon as it becomes aware of any unauthorized use of the Licensed Software by any person; (iv) pay, for broadening the scope of the licences granted under this licence to cover the unauthorized use, an amount equal to the fees which IPV would have levied (in accordance with its normal commercial terms then current) had it licensed any such unauthorised use on the date when such use commenced together with interest at the rate provided for under these Conditions, from such date to the date of payment.
- 8.14. The Customer shall use reasonable endeavours to prevent any unauthorised access to, or use of, the Licensed Software and notify IPV promptly of any such unauthorised access or use.
- 8.15. The Customer shall permit IPV to inspect and have access to any premises (and to the computer equipment located there) at or on which the Licensed Software is being kept or used, and have access to any records kept in connection with this licence, for the purposes of ensuring that the Customer is complying with the terms of this licence, provided that IPV provides reasonable advance notice to the Customer of such inspections, which shall take place at reasonable times. This right shall continue beyond termination/expiry to enable IPV to verify that use has ceased.
- 9. HOSTED SOFTWARE SERVICES**
- 9.1. The terms of this clause **Error! Reference source not found.** apply where the Customer orders Hosted Software Services from IPV.
- 9.2. Hosted Software:
- 9.2.1. In respect of Remote Apps, "use" of the Hosted Software means accessing the Remote Apps from the remote location via the Hosting Services, solely in accordance with the Documentation.
- 9.2.2. In respect of Download Apps, "use" of the Software means downloading the same from the applicable Download Store and using the same solely in accordance with the Documentation. Use of Download Apps is also subject to compliance with the Download Store Terms and the Download App Terms.
- 9.2.3. The Customer acknowledges that backup copies of the Hosted Software are not required, as the Remote Apps are not locally installed and the Download Apps can only be installed as a result of a download from the relevant Download Store.
- 9.3. The Customer's access to the Hosting Services shall be limited to the Authorised Users who are licensed to use the applicable Hosted Software.
- 9.4. The Customer shall ensure that each Authorised User keeps a secure password for his use of the Hosted Software, that such password is changed no less frequently than monthly and that each Authorised User keeps his password confidential.
- 9.5. The Customer shall not store, distribute or transmit any Virus, or any material through the Hosting Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; or promotes unlawful violence, discrimination based on race, gender, colour, religious belief, sexual orientation, disability, or any other illegal activities.
- 9.6. Except as expressly licensed, the Customer has no right (and shall not permit any third party) to copy, adapt, reverse engineer, access all or any part of the Hosting Services (or any of the Hosted Software) in order to build a product or service which competes with the same, decompile, disassemble, modify, adapt or make error corrections to the same in whole or in part.
- 9.7. IPV shall:
- 9.7.1. with effect from the Service Level Start Date, use its reasonable endeavours to comply with the Uptime Service Level; and
- 9.7.2. endeavour to keep any interruptions to the Hosting Services to a minimum.
- 9.8. In the event of a failure to comply with its obligations relating to the Hosted Software Services, IPV will use all reasonable commercial endeavours to correct the same 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 this clause. The obligations in this clause shall not apply to the extent any failure is caused by a Force Majeure Event or any Customer Default.
- 9.9. IPV does not warrant that:
- 9.9.1. the Customer's use of the Hosted Software Services will be uninterrupted or error-free; or
- 9.9.2. the Customer's access to the Customer Data will be uninterrupted or error-free.
- 9.10. The following shall not reduce Availability: (i) availability of the portion of the circuit that does not transit the hosting provider's backbone network, as the Customer is responsible for its own internet access; (ii) Permitted Hosted Software Maintenance Events; (iii) Customer-caused or third party-caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted by IPV to perform the Hosted Software Services); and (iv) outages or disruptions attributable in whole or in part to Force Majeure Events.
- 9.11. Availability measurements are performed at 5 minute intervals and measure the Availability of an availability test page within the Hosted Software within 30 seconds. Availability measurement begins on the first day of the first calendar month, beginning on the Service Level Start Date. Uptime Service Level calculation shall be carried out by IPV and is based on the monthly average percentage Availability, calculated at the end of each

calendar month as the total actual minutes of Availability divided by total possible uptime minutes in the month. IPV shall keep and shall send to the Customer, on request, full records of its Availability measurement activities under the Contract.

- 9.12. If there is a Hosted Service Delivery Failure in a month, IPV shall apply the applicable Service Credits to the Customer's account, subject to: (i) the Customer requesting it within 40 Business Days of the service-affecting event(s); and (ii) Service Credits in a given month being limited to the Service Credit Cap.
- 9.13. IPV reserves the right to modify the Hosted Software Services in any manner which: (i) is necessary to comply with any Applicable Law or safety requirement; (ii) results from a Sourcing Issue; or (iii) does not materially affect the nature or quality of the same, and IPV shall notify the Customer in any such event. Any other modification required by IPV shall be implemented pursuant to clause 26.2.
- 9.14. IPV shall follow the archiving procedures for Customer Data as described in the Services Specification. However, it is the responsibility of Customer to ensure Customer Data is appropriately backed-up.

10. OPEN-SOURCE SOFTWARE

- 10.1. The terms of this clause 10 apply where Open-Source Software is made available to the Customer pursuant to a Contract.
- 10.2. The Customer acknowledges and agrees that:
 - 10.2.1. IPV is making such Open-Source Software available pursuant to the terms of the Open-Source Software Licence and such software is provided "as is" and expressly subject to the disclaimer in clause 19.1;
 - 10.2.2. any such Open-Source Software provided by IPV may only be used according to the terms and conditions of the Open-Source Software Licence.
- 10.3. The Customer shall comply with the terms of the Open-Source Software Licence.

11. MAINTENANCE SERVICES

- 11.1. The terms of this clause 11 apply where the Customer orders Maintenance Services from IPV.
- 11.2. IPV shall provide the Maintenance Services for the Supported Software to the Customer in accordance with the description and specification set out in the SoW.
- 11.3. On the Customer informing IPV within Maintenance Support Hours of a Defect in the Supported Software, IPV shall perform Included Corrective Maintenance of the Supported Software.
- 11.4. On the Customer informing IPV outside of Maintenance Support Hours of a Defect in the Supported Software, IPV shall perform Additional Corrective Maintenance of the Supported Software.
- 11.5. With respect to Excluded Maintenance:
 - 11.5.1. IPV is not obliged to perform any Excluded Maintenance unless the Customer has agreed to pay the applicable Charges in respect of it; and
 - 11.5.2. where IPV is performing or has performed the Maintenance Services in circumstances where it is subsequently established that the Defect in the Supported Software was due to any of the Excluded Causes, IPV may charge, and the Customer shall pay, the applicable additional Charges in respect of that work.
- 11.6. Any Charges for Additional Maintenance Services shall be calculated on a time and materials basis.

12. TRAINING SERVICES

- 12.1. The terms of this clause 12 apply where the Customer orders Training Services from IPV.
- 12.2. The Customer acknowledges and agrees that:
 - 12.2.1. any individual identified in the SoW or otherwise may be replaced at any time with another qualified individual at IPV's option
 - 12.2.2. any materials provided in respect of Training Services are licensed to the Customer solely for the purposes of the receipt of such Training Services by the Customer Personnel, unless and to the extent that wider use by other Customer Personnel is stated within the SoW.

13. CHARGES

- 13.1. The price for Services and licences of the Software is the price set out in the SoW. Where no price is quoted, it shall be:
 - 13.1.1. the price set out in IPV' published price list as at the Start Date for the applicable Software licences/performance of the relevant Services; or
 - 13.1.2. where applicable in respect of Services, on a time and materials basis in accordance with the Standard Rates.
- 13.2. Except where expressly agreed in writing to the contrary, the Charges shall not include travel or accommodation expenses, which shall become payable upon production of appropriate receipts.
- 13.3. On no less than 2 months' written notice to the Customer prior to a Term Extension, IPV may (in addition to any change made pursuant to clause 4.7) adjust the Charges by a percentage equal to the percentage increase in the RPI since the prices were last set/revised, as appropriate. Such increase shall be subject to a maximum of 5%.
- 13.4. If it is reasonably apparent that any of the pricing in the SoW is incorrect ("**Obvious Pricing Error**"), the Customer must notify IPV of the same. When IPV becomes aware of an Obvious Pricing Error, it shall promptly notify the Customer of the error together with the correct price ("**Correct Price**"). Following notification of the Correct Price, such price shall apply in place of the Obvious Pricing Error. If the Customer objects to the Correct Price, it may terminate the relevant Contract on written notice to IPV.
- 13.5. Where a failure of the Customer to comply with its obligations in the Contract (including those set out in these terms and conditions as well as the SoW) results in additional costs for IPV and/or wasted time, IPV may charge the Customer for the same on a time and materials basis. In order to calculate the same, IPV' Standard Rates shall apply unless other rates are specified in the SoW.
- 13.6. Unless otherwise specified to the contrary in the applicable SoW, IPV will invoice the Customer as described in the table below:

Maintenance Services	Annually in advance
All Other Services	Monthly in advance
Licence fees	Annually in advance
Hosting Charges	Monthly in arrears

- 13.7. If Services performed as a result of the acts or omissions of the Customer, IPV may invoice the same on the date upon which delivery/performance was attempted.
- 13.8. The Customer shall pay each invoice which is properly due and submitted to it by IPV within 30 days of invoice date (save in respect of charges for the provision of Transition Assistance, which shall be paid within 5 days of invoice date), to a bank account nominated in writing by IPV.
- 13.9. All Charges stated or referred to in a Contract are exclusive of:
 - 13.9.1. value added tax or other sales taxes, which shall be added to IPV' invoice(s) at the appropriate rate; and
 - 13.9.2. all packing, insurance and transport costs, which shall be paid by the Customer (unless the same is expressly stated to be included within the price in the SoW).
- 13.10. IPV may, without limiting its other rights or remedies, set off any amount owing to it by the Customer or any Affiliate against any amount payable by IPV to the Customer.

14. INTELLECTUAL PROPERTY

- 14.1. IPV warrants that it has, and will continue to have, all necessary rights in and to any and all Intellectual Property Rights that it purports to grant to the Customer pursuant to a Contract. The Customer warrants to IPV that IPV's possession and use in accordance with this agreement of any materials (including third-party materials supplied by the Customer to IPV) shall not cause IPV to infringe the rights, including any Intellectual Property Rights, of any third party.
- 14.2. The Customer acknowledges and agrees that IPV and/or its licensors own all Intellectual Property Rights in the Services and the Licensed Software.
- 14.3. Except as expressly stated herein, these Conditions do not grant the Customer any Intellectual Property Rights or any other rights or licences to, in or in respect of the Services or Software.
- 14.4. IPV acknowledges and agrees that the Customer and/or its licensors own all Intellectual Property Rights in the Customer Content. Except as expressly stated herein or as is necessary to perform IPV' obligations under a Contract, these Conditions do not grant IPV any Intellectual Property Rights or any other rights or licences to or in respect of any Customer Content.

- 14.5. Nothing in these Conditions shall be construed so as to prevent IPV from using in the furtherance of its own business general know-how or expertise gained in its performance of a Contract, provided that any such use does not constitute or result in a disclosure of any Confidential Information in breach of clause 15 or infringement of any Intellectual Property Rights.
- 15. CONFIDENTIALITY**
- 15.1. Each party may be given access to Confidential Information from the other party, any member of its Group or any of its Affiliates in order to perform its obligations under a Contract. A party's Confidential Information shall not include information that:
- 15.1.1. is or becomes publicly known other than through any act or omission of the receiving party;
 - 15.1.2. was in the other party's lawful possession before the disclosure;
 - 15.1.3. is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or
 - 15.1.4. is independently developed by the receiving party, which independent development can be shown by written evidence.
- 15.2. Subject to clause 15.4 below, each party shall hold the other's Confidential Information (including any such information originating from any of its Affiliates or any other member of its Group) 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 performance of its obligations under a Contract.
- 15.3. 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, save to other members of its Group, its Affiliates, or its professional advisors.
- 15.4. A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 15.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 15.5. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any unconnected third party.
- 15.6. IPV acknowledges that the Customer Data is the Confidential Information of the Customer.
- 15.7. IPV may publicise its involvement with the Customer for its own marketing purposes, and any such publication shall not constitute an unlawful disclosure of Confidential Information for the purposes of this clause 15.
- 16. DATA PROTECTION ARRANGEMENTS**
- 16.1. The parties acknowledge that the factual arrangement between them dictates the classification of each party in respect of the Data Protection Legislation. However, the parties anticipate that the Customer shall act as a Controller and IPV shall act as a Processor and in any such case:
- 16.1.1. IPV shall be a Controller where it is collecting and using Personal Data in relation to the management of its Customer accounts; and
 - 16.1.2. IPV shall be a Processor where it is Processing Personal Data in relation to the Data Processing Particulars in connection with performing its obligations under a Contract.
- 16.2. IPV shall comply with, and shall procure that any Affiliates comply with, the provisions of the Data Protection Legislation in relation to all Personal Data that is Processed by it in connection with a Contract.
- 16.3. IPV shall be permitted to appoint sub-contractors, and to disclose Personal Data to them for Processing in accordance with the relevant Contract, provided always that the sub-contractor's right to Process the Personal Data terminates automatically on expiry or termination (for whatever reason) of the relevant Contract for which the sub-contractor was engaged.
- 17. DATA PROCESSING OBLIGATIONS**
- 17.1. To the extent that IPV is acting as a Processor for and on behalf of the Customer, it shall:
- 17.1.1. Process Personal Data for and on behalf of the Customer for the purposes of performing its obligations under a Contract, and only in accordance with the terms of that Contract and any documented instructions from the Customer;
 - 17.1.2. notify the Customer immediately (and in any event within 24 hours of becoming aware of the same) if it believes (or ought reasonably to have been aware) that any of the Customer's written instructions infringe the Data Protection Legislation;
 - 17.1.3. implement and maintain appropriate technical and organisational security measures which are sufficient to comply with at least the obligations imposed on the Customer by the Security Requirements;
 - 17.1.4. take all reasonable steps to ensure the reliability and integrity of any IPV Personnel who shall have access to the Personal Data;
 - 17.1.5. ensure that access to the Personal Data is restricted to only those members of IPV' Personnel who require it in order to discharge IPV' obligations under a Contract;
 - 17.1.6. notify the Customer promptly (and in any event within 2 Business Days) following its receipt of any Subject Access Request or correspondence from the UK Information Commissioner's Office or any other European data protection authority, and together with such notices, shall provide a copy of such Subject Access Request or correspondence and reasonable details of the circumstances giving rise to it; and
 - 17.1.7. with respect to a Subject Access Request, not disclose any Personal Data in response without the express written authorisation of the Customer.
- 17.2. Where IPV becomes aware (or reasonably should have become aware) of an actual or suspected Personal Data Breach, it shall:
- 17.2.1. notify the Customer as soon as is practicable, but in any event within 48 hours, including details of how the breach occurred and what Personal Data may have been compromised;
 - 17.2.2. implement any measures necessary to restore the security of compromised Personal Data; and
 - 17.2.3. assist the Customer to make any notifications to the UK Information Commissioner's Office and affected Data Subjects.
- 17.3. Except to the extent required by Applicable Law, upon the termination of a Contract for any reason, or earlier if instructed in writing by the Customer to do so, IPV shall cease Processing all Personal Data and return and/or permanently and securely destroy so that it is no longer retrievable (as directed in writing by the Customer) all Personal Data and all copies in its possession or control (and it shall provide the Customer with a certificate signed by a duly authorised representative confirming it has done so). Where the Customer makes any such request prior to the termination of a Contract, and it serves to hinder or prevent IPV' obligations thereunder, the Contract shall continue despite such reduced performance, and the Charges which have been paid or which will become payable shall not be affected thereby.
- 18. FREEDOM OF INFORMATION ACT**
- 18.1. If the Customer receives a request under the Freedom of Information Act 2000 ("FOIA") or any similar legislation which may require the disclosure by it of any information it holds relating to IPV (whether or not such information is Confidential Information), the Customer will immediately notify IPV of:
- 18.1.1. the request;
 - 18.1.2. the Customer's opinion as to whether or not any information relating to IPV might be disclosed;
 - 18.1.3. whether (and, if so, when) the Customer intends to make the disclosure. If the Customer does not initially intend to make the disclosure, but later changes its mind, the Customer shall immediately notify IPV.
- 18.2. The Customer agrees that it will not disclose any information relating to or provided by IPV where one of the exemptions to the obligations to provide information under FOIA (or any similar legislation) applies.
- 18.3. The Customer will provide IPV with at least 10 Business Days' written notice that it intends to disclose any information, prior to disclosing any information under FOIA (or any similar legislation).
- 18.4. The Customer agrees to keep IPV informed as to the progression of any request to which this clause 18 relates.
- 18.5. If the Customer requires IPV's assistance in dealing with a request the Customer may receive under FOIA or any similar legislation, the Customer agrees to pay IPV its reasonable costs incurred in assisting the Customer, including payment for both personnel time spent in providing the assistance and any disbursements and expenses IPV incurs.
- 19. WARRANTIES, INDEMNITIES & LIMITATION OF LIABILITY**
- 19.1. All representations or warranties (whether written or oral, express or implied by statute, common law or otherwise) apart from those expressly set out in these Conditions are hereby excluded. In particular, but without prejudice to the generality of the foregoing, IPV makes no representation or gives any warranty (whether express or implied, statutory and/or otherwise), and will have no liability, regarding the fitness of the Services or Software for any purpose, whether or not such purpose is disclosed to IPV.

- 19.2. The Customer hereby indemnifies IPV from and against any and 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 and other reasonable professional costs and expenses) suffered or incurred by IPV in connection with:
- 19.2.1. IPV's storage/handling of any Customer Data and the Customer's use of the same through the Hosted Software Services;
 - 19.2.2. any failure of the Customer to obtain appropriate licences and/or consents in accordance with its obligations under these Conditions or any subsequent revocation or non-renewal of any such licence and/or permit;
 - 19.2.3. any failure of the Customer to ensure its compliance with Applicable Law in accordance with its obligations under these Conditions;
 - 19.2.4. any use of the Services or the Licensed Software by Customer other than as envisaged under the Contract;
 - 19.2.5. the Customer's breach of any End User Agreement;
 - 19.2.6. a failure of an Authorised User to comply with the Download Store Terms or the Download App Terms; and
 - 19.2.7. any other Customer Default.
- 19.3. IPV shall defend the Customer, its officers, directors and employees against any claim that the Licensed Software or Services infringe any United Kingdom patent effective as of the Start Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts finally awarded against Customer in judgment or settlement of such claims, provided that:
- 19.3.1. IPV is given prompt notice of any such claim;
 - 19.3.2. the claim does not result from the Customer's failure to install an update or new version of any Licensed Software as soon as is practicable following its release by IPV;
 - 19.3.3. the Customer provides reasonable co-operation to IPV in the defence and settlement of such claim (at IPV's expense, provided such expenses are reasonable and can be evidenced to IPV's satisfaction); and
 - 19.3.4. IPV is given sole authority to defend or settle the claim.
- In the defence or settlement of any claim, IPV may procure the right for the Customer to continue using the Licensed Software or Services, replace or modify the Licensed Software or 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. In no event shall IPV, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on: (a) a modification of the Licensed Software or Services by anyone other than IPV; (b) the Customer's use of the Licensed Software or Services in a manner contrary to the instructions given to the Customer by IPV; or (c) the Customer's use of the Licensed Software or Services after notice of the alleged or actual infringement from IPV or any appropriate authority. The foregoing states the Customer's sole and exclusive rights and remedies, and IPV's (including its employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 19.4. The following provisions set out the entire financial liability of either party (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the other in respect of:
- 19.4.1. any breach of these Conditions howsoever arising; and
 - 19.4.2. any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with a Contract.
- 19.5. Nothing in these Conditions shall limit or exclude IPV' or the Customer's liability for:
- 19.5.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;
 - 19.5.2. fraud or fraudulent misrepresentation; and
 - 19.5.3. any other liability which cannot be limited or excluded by Applicable Law.
- 19.6. In the event of a Default by IPV, IPV' liability in respect of loss or damage to tangible property of the Customer shall not exceed £10,000 (ten thousand).
- 19.7. Subject to clauses 19.5 and 19.6, IPV' liability in respect of loss or damage under a Contract in any 12 month period shall not exceed the lower of:
- 19.7.1. a sum equal to the total Charges paid and payable to IPV by the Customer under such Contract during the period of 12 months immediately prior to the event giving rise to the claim, or
 - 19.7.2. £100,000,
- however that liability arises including breach of contract, tort, misrepresentation or breach of statutory duty.
- 19.8. Subject to clause 19.5, in no event will IPV be liable to the Customer (whether in contract, tort, negligence or otherwise):
- 19.8.1. for any delay in performance of the Services or any failure to perform the Services that is caused or contributed to by a Force Majeure Event or any Customer Default;
 - 19.8.2. for any breach by the Customer of any Open-Source Software Licence;
 - 19.8.3. for any loss not flowing directly and naturally in the ordinary course of events from its own act or omission;
 - 19.8.4. for any loss of profit, revenue, use, anticipated savings, data, goodwill or opportunity or damage to reputation;
 - 19.8.5. for any indirect, special or consequential loss or damage;
 - 19.8.6. to the extent that any delay in performing or failure to perform IPV' obligations is due to a failure by the Customer to perform its own obligations under a Contract or if delay results from a failure by the Customer to comply with reasonable requests by IPV for instructions, information or action required by it to perform its obligations within a reasonable time; or
 - 19.8.7. for the consequences of any acts or omissions of the Customer or the Customer Personnel.
- 19.9. In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for IPV to use reasonable commercial endeavours to restore the same from its latest back-up maintained by IPV in accordance with the archiving procedure described in the Services Specification.
- 19.10. In no event shall IPV be liable for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by IPV to perform services related to maintenance and back-up).
- 20. TERM AND TERMINATION**
- 20.1. Each Contract shall commence on the Effective Date and continue for the duration stated in the relevant SoW (or until performance of Services has been completed) and each Term Extension (the "Term") unless terminated in accordance with its terms.
- 20.2. Without prejudicing any other right or remedy available to it, either party may terminate the relevant Contract with immediate effect by giving written notice to the other party if:
- 20.2.1. the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 10 Business Days after being notified in writing to make such payment;
 - 20.2.2. the other party commits a material breach of any other term of the Contract which breach is irremediable or (if remediable) fails to remedy it within a period of 10 Business Days after being notified in writing to do so (this clause 20.2.2 only applies if Service Credits are not applicable); or
 - 20.2.3. the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms under the Contract.
- 20.3. Without prejudicing any other right or remedy available to it, IPV may terminate any Contract should an Insolvency Event occur.
- 20.4. Without prejudicing any other right or remedy available to it, IPV may terminate any Contract with immediate effect by giving written notice to the Customer if there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 20.5. Without prejudicing any right to terminate which IPV may have, IPV will be entitled to suspend any Services without notice if:
- 20.5.1. there is a Default on the part of the Customer; or
 - 20.5.2. any of the events set out in clauses 20.2, 20.3 or 20.5 occur in relation to the Customer.
- 20.6. IPV may rely on the suspension to relieve it from the performance of any of its obligations in each case to the extent the suspension prevents or delays the performance by IPV of any of its obligations and IPV shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from any failure or delay by IPV to perform any of its obligations as set out in this clause. IPV shall during the period of any suspension be entitled to refuse to release any IP Address used by the Customer allocated by IPV.

- 20.7. Where IPV acquires the right to terminate or suspend Services under a Contract pursuant to this clause 20, such right shall extend to any other Contracts concluded between the parties incorporating these Conditions, whether prior or subsequent to the Contract under which the right of termination or suspension has arisen.
- 20.8. The Customer may terminate the Contract immediately if there is a Manifest Pricing Error as detailed in Clause 13.4.
21. **CONSEQUENCES OF TERMINATION**
- 21.1. On termination for any reason:
- 21.1.1. all rights granted to the Customer under the Contract shall cease;
- 21.1.2. for the avoidance of doubt, all rights granted to the Customer under any End-User Agreement shall continue in accordance with the terms of that agreement;
- 21.1.3. the Customer shall cease all activities authorised by the Contract; and
- 21.1.4. the Customer shall immediately pay any sums due to IPV (including sums on a time and materials basis for any work in progress) without set off or deduction.
- 21.2. Subject to IPV' obligations with respect to any other Contract which remains in force:
- 21.2.1. 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; and
- 21.2.2. provided all sums due to IPV's Group from Customer's Group have been paid, IPV shall make available to the Customer via IPV' FTP site a copy of all Customer Data in a commonly-readable electronic format for a period of no more than 6 days following termination. After such period, IPV may permanently delete all Customer Data residing on its systems.
22. **ASSIGNMENT**
- 22.1. The Customer may not freely assign, sub-contract, charge or otherwise deal in any other manner with all or any of its rights or obligations under a Contract without the consent of IPV, such consent not to be unreasonably withheld or delayed.
- 22.2. IPV may freely assign, sub-contract, charge or otherwise deal in any other manner with all or any of its rights or obligations under a Contract without the prior written consent of the Customer.
- 22.3. The Customer agrees that it shall co-operate and undertake all matters at IPV' cost and expense that are necessary to novate or assign any Contract or any parts thereof to any third party when requested to do so by the Customer.
23. **FORCE MAJEURE**
- 23.1. Neither party shall be in breach of a Contract nor liable for delay in performing, or failure to perform, any of its obligations under that Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control, including strikes; lock-outs or other industrial disputes (except with respect to that party's own employees); acts of God; war; riot; civil commotion; compliance with any law or governmental order, rule, regulation or direction; accident; fire, flood, or storm. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 2 months, the party not affected may terminate the relevant contract (together with any other Contract between the parties) by giving 10 Business Days' written notice to the other party.
24. **NOTICES**
- 24.1. A notice given pursuant to the Contract shall be in writing, addressed to the place of business of the relevant party, directed to the named individuals given in the SoW (if any) and shall be: (i) delivered personally; (ii) sent by e-mail; or (iii) sent by pre-paid special delivery.
- 24.2. A notice is deemed to have been received:
- 24.2.1. if delivered personally, at the time of delivery;
- 24.2.2. in the case of e-mail, at the time of transmission, provided a delivery notification is obtained evidencing delivery of the email; and
- 24.2.3. in the case of special delivery, the date on which delivery takes place, as evidenced by the acknowledgement from the Royal Mail, provided that, if receipt is not within Normal Business Hours on a Business Day, delivery shall be deemed to be when business next starts in the place of receipt.
25. **DISPUTE RESOLUTION**
- 25.1. If a dispute arises out of or in connection with these Conditions or the performance, validity or enforceability of a Contract (a "Dispute") then the parties shall follow the procedure set out in this clause 25:
- 25.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a "Dispute Notice"), together with relevant supporting documents. On service of the Dispute Notice, the parties shall attempt in good faith to resolve the Dispute; and
- 25.1.2. if the parties are for any reason unable to resolve the Dispute within 20 Business Days from service of the Dispute Notice, the parties will 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 Solve. To initiate the mediation, a party must serve notice in writing (an "ADR Notice") to the other party to the Dispute, requesting mediation. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 10 Business Days after the date of the ADR Notice.
- 25.2. If the Dispute is not resolved within 1 month of the mediator's appointment, then either party may commence Court proceedings, but provided that nothing in this clause 25.2 shall prevent either party from either continuing with any means of alternative dispute resolution as may be agreed in writing from time to time, or seeking an injunction or other interim relief at any time if it reasonably believes such action is necessary to prevent irreparable damage.
26. **GENERAL**
- 26.1. A natural or legal person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. This clause does not alter any right or remedy of any person which exists or is available otherwise than pursuant to that Act.
- 26.2. Variations:
- 26.2.1. Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by IPV.
- 26.2.2. A waiver of any right is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or Default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 26.3. The construction, validity and performance of each Contract shall be governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.
- 26.4. No delay or omission by the Customer in exercising any of its rights or remedies under a Contract or under any Applicable Law on any occasion shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.
- 26.5. In the event that any provision of a Contract shall be void or unenforceable by reason of any provision of Applicable Law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the original intent of the Contract so far as possible.
- 26.6. Nothing in a Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of the other party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 26.7. Each party undertakes to the other that it will not, and will procure that its employees will not, in the course of performing its obligations under a Contract, knowingly engage in any activity which would constitute a breach of the Bribery Act 2010 and that it has in place a compliance programme designed to ensure compliance with the terms of the Bribery Act 2010 and has and will maintain in place, adequate procedures designed to prevent any of its third party contractors or sub-contractors from undertaking any conduct that would give rise to an offence under the Bribery Act 2010.