

Intrinsic Terms & Conditions of Supply

Version 2017/02

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms & Conditions the following words have the following meanings:

- **“Business Day”** means a day (other than a Saturday or Sunday) on which banks are open for general business in London;
- **“Charges”** means the price for the Hardware, the Software, the Services and any other applicable charges (annual or otherwise) as specified in the Quote (plus an additional 3% charge for any payment by credit card);
- **“Confidential Information”** means all information, whether written or oral, obtained by one party from the other pursuant to the Contract which is expressly stated to be confidential or which is manifestly confidential in nature;
- **“Contract”** means the agreement between Intrinsic and the Customer for the provision of the Hardware, Software and/or Services (as set out in the Quote) comprised of these Terms & Conditions, the Quote and any documents expressly incorporated by reference by Intrinsic in the Quote;
- **“Contract Commencement Date”** means the date stated in the Quote;
- **“Customer”** means the firm or company set out in the Quote;
- **“Customer Data”** shall include, but not be limited to data transmissions (including the originating and destination numbers and IP addresses, date, time and duration of voice or data transmissions, and other data necessary for the establishment, billing or maintenance of the transmission), data containing personal and/or private information of the Customer, its employees or authorised users of the Services, Hardware or Software, and other data provided to or obtained by Intrinsic, its subcontractors and representatives in connection with the provision of Services and/or Hardware and/or Software under the Contract;
- **“Customer Hardware”** means the Customer’s computer hardware and equipment (including any pre-installed software) identified in the Quote (whether or not supplied by Intrinsic) for which Intrinsic will provide the Services and is identified in the Quote;
- **“Customer Software”** means the Customer’s software programs (including but not limited to any licensed software) identified in the Quote (whether or not supplied by Intrinsic) and each and every component thereof for which Intrinsic will provide the Services and is identified in the Quote;
- **“Hardware”** means the computer hardware and equipment which is to be supplied by Intrinsic and is identified in the Quote;
- **“Hardware Location”** means that part of the Customer’s premises where the Hardware and the Customer Hardware is located as set out in the Quote;
- **“Implementation Services”** means the installation, consulting or professional services, as described in a Project Initiation Document, a Proposal or a Statement of Works;
- **“Initial Term”** means the minimum period for the Support Services as set out in the Quote, such period commencing on the Support Services Commencement Date;
- **“Intrinsic”** means Intrinsic Technology Limited (Company No.3808242) whose registered office is at 160 Blackfriars Road, London SE1 8EZ;
- **“Intrinsic Documentation”** means:
 - (a) the Service Description, Service Option Description, Project Initiation Document, Proposal and/or the Statement of Works as appropriate; and
 - (b) any other documents applicable to the Hardware, Software and/or Services as appropriate that is provided and/or otherwise made available by Intrinsic to the Customer;
- **“Party”** means each of Intrinsic and the Customer;

- **“Project Initiation Document”, “Proposal” and “Statement of Works”** each mean the document agreed to by both Parties in writing describing the bespoke services to be provided by Intrinsic and as identified in the Quote;
- **“Quote”** means the document incorporated within the Contract setting out or referring to the document(s) that set(s) out:
 - (a) as appropriate:
 - (i) the Hardware and Software; and/or
 - (ii) the Customer Hardware and Customer Software; and/or
 - (iii) the Services; and/or
 - (iv) the relevant Service Description(s); and/or
 - (v) the relevant Service Option Description(s); and/or
 - (vi) the relevant Project Initiation Document, Proposal and/or Statement of Works; and/or
 - (vii) the Special Terms; and
 - (b) the related Charges;
- **“Services”** means the Support Services, Service Option(s), and/or Implementation Services as appropriate which are to be supplied by Intrinsic and are identified in the Quote;
- **“Service Description”** means the description of services as published from time to time by Intrinsic and as identified in the Quote;
- **“Service Option”** means the additional services made available in conjunction with Support Services from time to time by Intrinsic;
- **“Service Option Description”** means the description of any additional services as published from time to time by Intrinsic and as identified in the Quote;
- **“Service Units”** means Intrinsic’s ‘unit-based’ currency purchased by the Customer and exchangeable for Service Options in accordance with Clause 17;
- **“Software”** means the software programs and each and every component thereof which Intrinsic shall procure a licence for and deliver as identified in the Quote, or any software which forms an integral part of the Hardware, including (if applicable) upgrades and new releases;
- **“Software Update”** means a change in the Customer Software provided by the owner thereof and typically provides a maintenance correction only;
- **“Software Upgrade”** means a major change to the Customer Software that introduces new optional features and functionality;
- **“Special Terms”** means the additional terms and conditions relating to a particular Service and identified in the Quote;
- **“Standard Business Hours”** means 9.00am to 5.00pm on a Business Day;
- **“Supported Assets”** means:
 - (a) the Customer Hardware and any agreed replacement items of any of the customer’s hardware supported by Intrinsic pursuant to the Contract; and/ or
 - (b) the Customer Software and any agreed replacement items of any of the customer’s software supported by Intrinsic pursuant to the Contract;
- **“Support Services”** means the services to maintain or assist in the management of Supported Assets including incident correction and, if ordered, Software Updates and Software Upgrades, as described in the relevant Service Description;
- **“Support Services Commencement Date”** means the date of the earliest delivery of any associated Hardware or Software to Intrinsic or the Customer, unless expressly stated to the contrary in the Quote;
- **“Third Party Supplier”** means any party other than Intrinsic and the Customer that Intrinsic elects to use to provide part of the Services.

1.2 References in the Contract:

- (a) To a statutory provision will be interpreted as a reference to such provision as amended or re-enacted from time to time;
- (b) To a “person” includes any company (as defined in Section 1 Companies Act 2006), firm, body corporate or corporation (as defined in Section 1173(1) Companies Act 2006) or person, partnership or organisation;

(c) To a Party includes its respective successors and permitted assignees and their respective employees and agents; and

(d) To any word in the singular include the plural and vice versa.

- 1.3 Headings are for convenience only and do not affect the interpretation of the Contract.
- 1.4 A reference to a third person or third party is a reference to a person who is not party to the Contract.
- 1.5 The words 'include', 'including', 'for example' or 'such as' are not used as, and are not to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

2. CONTRACT

- 2.1 The Contract is on these Terms and Conditions and any other document incorporated within the Contract, which shall prevail over any terms or conditions introduced or submitted by the Customer (on any purchase order or other communication for the supply/ purchase of Hardware, Software or Services by Intrinsic), irrespective of their date.
- 2.2 The obligations and rights of the Customer and Intrinsic under the Contract may not be modified or altered except in writing signed by an authorised signatory of Intrinsic.
- 2.3 Where Intrinsic is providing telecom-services such services shall be governed by the applicable terms issued by the third party telecoms supplier, such terms will either be included within the Intrinsic Documentation or be available upon request.

3. DELIVERY OF HARDWARE AND SOFTWARE MEDIA

- 3.1 Intrinsic shall use its reasonable endeavours to deliver or procure the delivery of the Hardware or Software media to such location as stated in the Quote on or before any specified date for delivery and/or agreed date (as the case may be). Time in this respect shall not be of the essence.

4. TITLE, RISK AND OWNERSHIP

- 4.1 Risk in Hardware and Software media shall pass to the Customer on delivery to the Customer. Title in the Hardware (excluding any rights in ownership of the Software) shall pass to the Customer on receipt by Intrinsic of full and cleared payment of the Charges for the Hardware. The Customer retains all rights and obligations associated with the ownership and ultimate disposal of the Hardware and Software media thereafter.
- 4.2 Any items of hardware that Intrinsic lends to the Customer will remain Intrinsic's property. The Customer must take all reasonable steps to ensure that such hardware is kept safe and not removed from the Customer's premises without Intrinsic's prior written consent.
- 4.3 Any part of any Customer Hardware that Intrinsic removes to repair or test will remain the Customer's property and Intrinsic will take all reasonable steps to make sure that such hardware is kept safe.
- 4.4 If any Customer Hardware or Customer Software media (in whole or in part) is retrieved and permanently replaced by Intrinsic then such replacement shall become the Customer's property and the Customer Hardware or Customer Software media retrieved by Intrinsic shall become Intrinsic's property.

5. SOFTWARE LICENCES

- 5.1 The copyright and all other intellectual property rights in and to any Software provided by Intrinsic hereunder shall remain vested in the owner thereof and the Customer shall enter into with the Software owner such end user licence agreement as may be prescribed by the Software owner. The Customer shall abide by the terms of and be responsible for any end user licence agreement with the Software owner.
- 5.2 The Customer shall acquire no right to use the Software until Intrinsic has received cleared and full payment in respect the Software supplied under the Contract.

6. PROVISION OF SERVICES

- 6.1 Where the Customer engages Intrinsic to provide Support Services, subject to Clauses 6.3 and 8, the Services shall be provided (unless otherwise specified in the Quote or in a document referred to in the Quote) for up to 8 hours a day during the Standard Business Hours in accordance with the relevant Service Description; and for the Charges set out in the Quote.
- 6.2 Where the Customer engages Intrinsic to provide a Service Option, subject to Clauses 6.3 and 8, the Services shall be provided (unless otherwise specified in the Quote or in a document referred to

in the Quote) for up to 8 hours a day during the Standard Business Hours in accordance with the relevant Service Option Description; and for the Charges set out in the Quote.

- 6.3 The Support Services and any Service Options will commence (or be deemed to have commenced if the Supported Assets are not installed and ready for service) on the Support Services Commencement Date.
- 6.4 Intrinsic shall use its reasonable endeavours to provide the Support Services and any Service Options within the applicable response times set out in the Quote. Time in this respect shall not be of the essence.
- 6.5 Where the Customer engages Intrinsic to provide Implementation Services, subject to Clauses 6.6, 6.7 and 8, the Services shall be provided (unless otherwise specified in the Quote or in a document referred to in the Quote) for up to 8 hours a day during the Standard Business Hours in accordance with the relevant Project Initiation Document, Proposal or Statement of Works, or on a time and materials basis, as set out in the Quote; and for the Charges set out in the Quote.
- 6.6 In relation to any Implementation Services the Customer and Intrinsic shall prior the commencement of such Implementation Services:
 - (a) each nominate an authorised representative who will be the prime point of contact (“Project Manager”) for the provision/ receipt of the Implementation Services; and
 - (b) agree the appropriate methods and frequency of monitoring the progress of the Implementation Services; and
 - (c) agree and define each party’s obligations in relation to the Implementation Services.
- 6.7 Intrinsic shall use its reasonable endeavours to provide or procure the provision of the Implementation Services in accordance with the agreed timetable set out in the Quote. Time in this respect shall not be of the essence
- 6.8 Intrinsic may use Intrinsic’s approved third party network of engineers to provide the Services.
- 6.9 Subject to the Customer complying with its obligations of confidentiality and payment under the Contract, Intrinsic hereby grants the Customer a non-exclusive licence to use, modify and adapt the Intrinsic Documentation solely for the purposes of receiving the Services for its own internal business use. The Customer hereby indemnifies and holds Intrinsic harmless from any direct and indirect liability arising from any modifications or adaptations to the Intrinsic Documentation carried out by, or on behalf of, the Customer or any use thereof.
- 6.10 Intrinsic shall own and be fully entitled to use in any way it deems fit any intellectual property skills, knowledge, experience, techniques, materials, concepts or know-how acquired, developed or used in the course of performing Services and any improvements made, developed or used by Intrinsic during the course of Services. Nothing herein shall be construed or give effect to any transfer of right, title or interest in Intrinsic’s intellectual property.
- 6.11 The Customer shall indemnify and hold Intrinsic harmless in respect of any losses, costs, damages, claims and/or expenses incurred by Intrinsic arising out of any use, access or modification of the Customer’s computer systems, data, software or materials by Intrinsic in its provision of the Services hereunder. The indemnity in this Clause 6.11 shall survive the termination or expiry of the Contract.

7. WARRANTIES

- 7.1 Intrinsic warrants it has the right to provide or procure the provision of Hardware, Services and/or Software to the Customer.
- 7.2 The warranties and remedies given by Intrinsic to the Customer in respect of Hardware or Software are those which are provided by the third party manufacturer or owner (as the case may be) of such Hardware or Software to Intrinsic (with all necessary changes) and are subject to any relevant limitations and exclusions imposed by such manufacturer or owner (as the case may be). Intrinsic shall provide the Customer with details of such warranties and remedies for breach of such warranties (if applicable) upon request.
- 7.3 The Customer’s sole remedy for breach of any warranties in Clause 7.2 is to require Intrinsic to repair, replace or refund (at Intrinsic’s option) the defective item within a reasonable time at no charge to the Customer provided any such defect is notified to Intrinsic during the applicable warranty period. The Customer shall provide all information as may be reasonably necessary to assist Intrinsic in repairing the defective item including, without limitation, sufficient information to enable Intrinsic to re-create the defect.

- 7.4 Intrinsic shall not be liable for a breach of the warranties in Clause 7.2 if such breach arises directly or indirectly because: (a) Customer makes or causes to be made any modifications to the Hardware or Software without Intrinsic's consent; (b) any of the Hardware, Software or Supported Assets are used in combination with any software or materials not supplied by Intrinsic or not recommended by Intrinsic; (c) any of the Hardware, Software or Supported Assets are used incorrectly; (d) causes external to any of the Hardware, Software or Supported Assets including but not limited to failure or fluctuations of electrical power; inappropriate environmental conditions; fire; flood; or other natural disasters; or (e) fair wear and tear.
- 7.5 Intrinsic warrants that: (a) subject to Clauses 7.4, 8.1, 8.2 and 18.5 the Services will be provided in a timely and professional manner and Intrinsic shall use its reasonable endeavours to comply with any time schedules agreed in writing between the parties; and (b) the Services will conform to the standards generally observed in the industry for similar services and will be provided with reasonable skill and care.
- 7.6 Intrinsic does not warrant that the Hardware, Software or Supported Assets will be error free or run without interruption.
- 7.7 The warranties detailed in this Clause 7 set out the entire warranty obligations of Intrinsic and all other warranties at law, including fitness for any particular purpose or satisfactory quality, are hereby excluded to the fullest extent permissible by law.

8. CUSTOMER'S RESPONSIBILITIES

- 8.1 The Customer agrees to perform in a timely and professional manner all of the Customer's pre-requisites, responsibilities and obligations set out in the Intrinsic Documentation that are required for the provision of the Services including but not limited to: access to Customer premises, computer systems and /or data as is necessary; affording Intrinsic reasonable working conditions and facilities; promptly providing the information requested from the Customer in the Intrinsic Documentation and ensure its employees or agents co-operate with Intrinsic.
- 8.2 If the provision of any Service at a pre-agreed time on a pre-agreed date is delayed by the Customer or the Customer's employees, directors, agents, advisors or sub-contractors, the Customer shall pay Intrinsic's rates for professional services prevailing at that time in respect of idle-time incurred for the delay. Any agreed time schedules shall be deferred by a period of time of no less than the period of the delay.
- 8.3 Where the Statement of Works has to be agreed or modified after the Contract Commencement Date Intrinsic and Customer shall promptly and co-operatively agree the Statement of Works (and/or revised Statement of Works) the content of which shall be consistent with the principles set out in Intrinsic's current change control documentation.
- 8.4 The Customer agrees to:
- (a) inform Intrinsic immediately if the Customer suspects there may be a potential breach of the Customer's obligations and responsibilities under the Contract;
 - (b) inform Intrinsic immediately if the Customer experiences problems with the Hardware, Software or Supported Assets; and
 - (c) provide Intrinsic with copies of the Customer's health and safety procedures or policy (if requested).

9. CHARGES AND PAYMENT

- 9.1 Unless agreed otherwise in writing all Charges shall be invoiced in accordance with the Quote and the following:
- (a) 100% of Charges for Hardware and/or Software to be invoiced on the earlier of:
 - (i) delivery (in whole or in part) to Intrinsic's pre-staging area; or
 - (ii) delivery (in whole or in part) to Intrinsic's warehouse for storage on behalf of the Customer; or
 - (iii) delivery (in whole or in part) to the Customer;
 - (b) Charges for all Implementation Services to be invoiced as set out in the Project Initiation Document, Proposal or Statement of Works;
 - (c) Charges for all Support Services and Service Options to be invoiced:
 - (i) 100% in advance if the Services are for less than a year; and
 - (ii) annually in advance if the Services are for one or more years.

- 9.2 Cancellation of any Intrinsic resource with less than 7 calendar days' notice may incur a charge (up to 100% of the cost for the resource cancelled). Any such charge will be invoiced at the time of such cancellation.
- 9.3 All Charges will be subject to the addition of Value Added Tax and all other similar taxes which may be applicable thereto (which shall be added to the Charges at the rate prevailing at the date of the invoice).
- 9.4 All Charges will be payable by the Customer within 14 calendar days of the invoice date; provided that in the event that an invoice has to be credited and re-issued, the re-issued invoice will be payable by the date on which the original invoice was due. All Charges will be payable by BACS or cheques (unless the Quote says otherwise). No payment shall be deemed to have been received until Intrinsic has received cleared funds from the Customer.
- 9.5 By giving the Customer 25 calendar days' notice in writing, Intrinsic may increase the Charges for Support Services at the end of the Initial Term and on each anniversary thereafter.
- 9.6 The Charges are based on Services being provided during Standard Business Hours, except where the 365 x 24 level of service is chosen, and on the assumption that Intrinsic will not be delayed in gaining access to the Hardware Location. If Intrinsic or Intrinsic's employees, agents or subcontractors are denied access to the Hardware, the Customer Hardware, the Software or the Customer Software for 2 hours or more following arrival at the Customer's premises then Intrinsic may charge an additional fee based upon Intrinsic's rates for professional services prevailing at that time. In addition, if Intrinsic attends the Customer's site at the Customer's request for what turns out to be neither a fault nor a defect then Intrinsic may charge an additional fee based upon Intrinsic's rates for professional services prevailing at that time.
- 9.7 If the Customer reports a fault or requests any action required to resolve the loss or partial loss of service beyond the Service Description or to a faster performance than the level set out in the Quote, Intrinsic reserves the right to charge an additional fee based on Intrinsic's rates for professional services prevailing at that time.
- 9.8 If Intrinsic attends the Hardware Location or provides replacement hardware in relation to an item of Hardware that has been reported (using its serial number) by the Customer as failed and the item of Hardware that has failed proves not to be on the Quote, Intrinsic will have the right to charge the Customer additional fees for the replacement hardware and the engineering time and expenses.
- 9.9 The Customer also agrees to pay for:
- (a) any additional work that Intrinsic agrees to undertake which is not covered by the Contract; and
 - (b) visits to the Hardware Location for maintenance that proves to be unnecessary; and
- the Customer agrees that any work undertaken which is not covered by the Contract will be charged at Intrinsic's rates for professional services prevailing at that time.
- 9.10 If the Charges are not paid by the due date set out in Clause 9.4 Intrinsic reserves the right to charge interest on any sums outstanding at the rate of 2.5% above the base rate from time to time of the HSBC Bank plc accruing on a daily basis until payment is made (whether before or after judgment).
- 9.11 If an invoice remains unpaid for a further 30 calendar days after the payment due date, Intrinsic has the right to suspend the Services until Intrinsic has received full cleared funds payment from the Customer, at which point the Services will be re-instated.
- 9.12 Intrinsic reserves the right to terminate the Contract if the Charges are not paid within 90 calendar days of the due date set out in Clause 9.4. If Intrinsic elects to terminate in such circumstance the Customer must pay all outstanding Charges (plus interest), any additional charges for work provided outside the Contract and all costs, losses, claims, damages and expenses incurred by Intrinsic in recovering monies owed by the Customer.
- 9.13 The Customer agrees to waive any and all existing and future claims and set-offs against any payment due under the Contract and agrees to pay the Charges and any additional payments due pursuant to the Contract regardless of any set-off or cross-claim the Customer may have.

10. ALTERATIONS, ADDITIONS AND REDUCTIONS

- 10.1 The Customer agrees to inform Intrinsic if the Customer intends to make any alterations to any of the Supported Assets and understands that the Charges may be increased immediately to reflect any increased costs. Any alteration to the Charges will be reasonable.

- 10.2 Unless Intrinsic specifically confirms its agreement in writing, Intrinsic will accept no liability whatsoever for any alterations carried out to any of the Supported Assets, unless such alterations are performed by Intrinsic.
- 10.3 Hardware and/ or Software may be added to the Quote by mutual agreement and Intrinsic will issue a new Quote, which will also set out the relevant Charges for the additional Hardware and/ or Software (as the case may be).

11. DURATION AND TERMINATION

- 11.1 The Contract commences on the Contract Commencement Date and (subject to Clauses 11.2 and 11.3) shall:
- (a) if the Contract is for the supply of Hardware and/ or Software only, continue in force until the end of any warranty period;
 - (b) if the Contract is for the supply of Implementation Services (and Hardware and/ or Software) only, continue in force until the completion of the Implementation Services; or
 - (c) if Support Services are being supplied, continue in force until the end of the Initial Term; and automatically continue in force after the expiry of the Initial Term unless either Party terminates the Contract by giving the other Party at least three months' written notice such notice to expire at the end of the Initial Term or on any anniversary of the end of the Initial Term.
- 11.2 The Contract may be terminated immediately by written notice by either Party if the other Party has a receiver or administrative receiver appointed of it or over any part of its undertakings or assets, passes a resolution for winding up otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction (or a court of competent jurisdiction makes an order to that effect), enters into any voluntary arrangement with creditors, becomes subject to administration order or ceases to carry on business.
- 11.3 The Contract may be terminated immediately by written notice by either Party if the other Party is in material breach of any of its obligations hereunder and having been given thirty calendar days written notice to remedy the breach has failed to do so.
- 11.4 Termination of the Contract shall discharge the parties from any liability for further performance of their respective obligations under the Contract save for any obligation included in clauses 12, 13, 14 and 16 which shall survive any termination of the Contract. Upon termination of the Contract:
- (a) Intrinsic shall be entitled to enter the Customer's premises and recover any hardware, Intrinsic Documentation, software and materials which are the property of Intrinsic; and
 - (b) the Customer shall immediately pay any unpaid Charges and expenses.

12. LIMITATION OF LIABILITY

- 12.1 Nothing in the Contract excludes or limits the liability of either Party for:
- (a) death or personal injury caused by such Party's negligence; or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) any other matter which it would be illegal for such Party to exclude or attempt to exclude its liability.
- 12.2 In no event shall either Party be liable in contract, tort (including negligence), breach of statutory duty or otherwise howsoever for: (a) any loss of profit, loss of business, loss of goodwill, loss of contracts, loss of revenues or loss of anticipated savings; or (b) any increased costs or expenses; or (c) loss of, damage to or corruption of software or data; or (d) any special, indirect or consequential loss or damage of any nature whatsoever, whatever the cause thereof arising out of or in connection with the Contract even if such Party has been advised of the possibility of such damages.
- 12.3 Subject to Clauses 12.1 and 12.2, Intrinsic's liability under the Contract for any tangible property loss of the Customer directly arising from Intrinsic's negligence shall be limited to £500,000 per event or series of connected events and to £1,000,000 in total. Data and software shall not be tangible property.
- 12.4 Subject to Clauses 12.1, 12.2 and 12.3, Intrinsic's total liability to the Customer arising for any defective Hardware or Software shall be limited to 100% of the value of the item of defective Hardware or Software.
- 12.5 Subject to Clauses 12.1 and 12.2, Intrinsic's total liability to the Customer arising directly from any breach of clause 16 by Intrinsic shall be limited to £500,000 per event or series of connected events and to £1,000,000 in total.

- 12.6 Subject to Clauses 12.1 and 12.2, Intrinsic's total liability to the Customer arising directly from the Customer's use, possession or receipt of Hardware or Services for the purposes for which any such item was supplied (an **"Infringing Item"**) infringes the Intellectual Property rights of any third party (an **"IPR Claim"**) shall be limited to £500,000 per event or series of connected events and to £1,000,000 in total; provided that if any person makes an IPR Claim, or in either Party's reasonable opinion an IPR Claim is likely to be made, then Intrinsic may, at its option, either:
- (a) procure for the Customer the right to continue using, possessing or receiving the Infringing Item free from any IPR Claim;
 - (b) modify the Infringing Item so that the Customer's use, possession or receipt of the Infringing Item ceases to infringe the rights of the relevant third party; or
 - (c) replace the Infringing Item with a non-infringing substitute item that complies with Intrinsic's obligations under the Contract.
- 12.7 Subject to Clauses 12.1, 12.2, 12.3, 12.4, 12.5 and 12.6, Intrinsic's liability for all other loss or damage under the Contract shall be limited to a maximum of the Charges paid to Intrinsic for the Services provided in the six months immediately preceding the event that caused such loss.

13. CONFIDENTIALITY

- 13.1 Each Party ("Recipient") undertakes to the other Party ("Discloser") not to use, disclose, publish or otherwise enable any third party to become aware of (whether directly or indirectly) of any of the Discloser's Confidential Information other than for the purposes of the Contract. In the event of such disclosure, binding agreements shall firstly be obtained from the third party to maintain the Discloser's Confidential Information in strict confidence.
- 13.2 Any Confidential Information shall remain subject to the terms of this Clause 13 notwithstanding termination or expiry of the Contract.
- 13.3 The provisions of Clause 13.1 shall not prevent the disclosure or use of any information;
- (a) which becomes public knowledge (through no fault of the Recipient); or
 - (b) to the extent that such disclosure is required by law.
- 13.4 Intrinsic may refer to the Customer and to the services that Intrinsic provides to the Customer in Intrinsic's marketing material.

14. NON-SOLICITATION

- 14.1 The Customer agrees and undertakes that during the term of the Contract or at any time during the period of 12 months following its termination or expiry the Customer will not employ, solicit or endeavour to entice away (or engage others to do so) from Intrinsic any member of its staff, any of its employees, or any of its directors, involved in and/or in relation to the subject matter of the Contract.
- 14.2 If the Customer breaches the provisions of Clause 14.1 then, without prejudice to any other rights or remedies Intrinsic may have under the Contract, the Customer shall pay to Intrinsic by way of liquidated damages an amount equal to 100% of the annual salary payable to the staff, employee or director solicited or enticed at the time the breach occurred.

15. NOTICES

- 15.1 Any notice to be given pursuant to the Contract must be given in writing and may be served personally or by pre-paid recorded delivery post to the address of the other party given in the Contract (or such other address as may be notified from time to time in writing).
- 15.2 If a notice is delivered personally it shall be deemed to have been given when delivered by hand and if sent by pre-paid recorded delivery post it shall be deemed to have been given two Business Days after posting.

16. DATA PROTECTION AND CUSTOMER DATA

- 16.1 Each party will do all that is necessary to comply with the Data Protection Act 1998 and agrees to indemnify the other against any claim arising from its own failure to do so.
- 16.2 The following shall apply in respect of Customer data and privacy:
- (a) Customer acknowledges that Intrinsic, and its respective agents may, by virtue of the provision of Services, Hardware or Software, come into possession of Customer Data.
 - (b) Intrinsic shall implement appropriate technical and organisational measures to protect Customer Data against accidental or unlawful destruction loss, alteration, unauthorised

disclosure or access and against other unlawful forms of processing. The Customer acknowledges that, with respect to Customer Data that is regulated by law or regulation as “personal data” where Intrinsic or its respective agents come into possession of such Customer Data, the Customer has a right to access such Customer Data upon written notice and have any agreed errors in such Customer Data rectified.

- (c) The Customer acknowledges and agrees that Intrinsic and its respective agents, may use, process and/or transfer Customer Data (including intragroup transfers and transfers to entities in countries that do not provide statutory protections for personal information):
 - (i) in connection with the provision of Services, Hardware or Software under the Contract;
 - (ii) to incorporate Customer Data into databases controlled by Intrinsic for the purposes of administration, provisioning, billing and reconciliation, verification of the Customer’s identity and solvency, maintenance, support and product development, fraud detection and prevention, sales, revenue and customer analysis and reporting, market and customer use analysis; and
 - (iii) to communicate to the Customer regarding products and services of Intrinsic or its subcontractors by voice, letter, fax or email.
- (d) The Customer may withdraw consent for such use, transfer or processing of Customer Data as set out above, unless it is required to (i) provision, manage, account and bill for the Services, Hardware or Software; (ii) carry out fraud detection; or (iii) comply with any statutory obligation, regulatory requirement or court or other public authority order, by sending written notice to Intrinsic.

17. SERVICE UNITS

17.1 In the event that the Customer purchases Service Units the following shall apply:

- (a) Service Units can be bought or added to the Contract at any time and must be purchased at the then applicable current Intrinsic rate;
- (b) Service Units that have not been used automatically expire on the termination, expiry or renewal of the Contract irrespective of when the Service Units are purchased;
- (c) Where a two or three year contract has been agreed, (to a maximum of a 3 year Initial Term), Service Units can be carried forward to subsequent years however any remaining Service Units expire at the end of the Initial Term;
- (d) Service Units can only be exchanged for the Service Options available at the time of request;
- (e) Service Units are exchanged at the tariff prescribed by Intrinsic and Intrinsic shall deduct the specified Service Units from the existing balance;
- (f) Services provided in exchange for Service Units are subject to availability and agreed scheduling; and
- (g) In the event of any dispute or inconsistency relating to Service Units, the decision of Intrinsic is final.

18. GENERAL

18.1 Headings in these Terms & Conditions are for guidance only and are not binding.

18.2 Neither Party shall assign or transfer the benefit of the Contract in whole or in part without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

18.3 Save as expressly stated herein or the enforcement of any intellectual property rights the parties hereby expressly exclude the provisions of the Contracts (Rights of Third Parties) Act 1999.

18.4 The Customer agrees to give Intrinsic feedback on the quality of the Services whenever Intrinsic reasonably asks for the Customer’s views.

18.5 Excepting the Customer’s obligation to pay Intrinsic’s validly submitted invoices, neither party shall be responsible for any failure to perform these obligations for reasons beyond its reasonable control.

18.6 No failure or delay of either party in exercising any right, power, or privilege under the Contract (and no course of dealing between the Parties) shall operate as a waiver thereof.

18.7 If any provision of the Contract or any part of such provision is held invalid or unenforceable, the remainder of the provisions contained herein will not be affected thereby and each remaining provision or part thereof will be valid and enforceable to the full extent permitted by law.

18.8 The Contract is not intended to create a joint venture or partnership between the Parties and neither Party is authorised to act as the agent of the other.

- 18.9 The Contract, including all documents expressly incorporated, constitutes the entire agreement between the parties relating to the Hardware, Software and Services and supersedes all prior and contemporaneous oral and written communications, pre-contract representations, proposals, agreements and understandings in respect thereof. No other rights are granted hereunder except as expressly set forth in the Contract.
- 18.10 All disputes between the Parties arising hereunder shall be promptly referred to the other Party's representative. The representatives shall meet and attempt to resolve the dispute within a period of thirty (30) calendar days from the date of referral of the dispute to them.
- 18.11 The Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby agree to submit to the exclusive jurisdiction of the English Courts. Notwithstanding the foregoing either party may take action in any jurisdiction to protect its confidential information and intellectual property rights.