

Terms of Business

The following Terms of Business ("**Terms**") shall apply to all Services and Product provided by ITHQ Ltd with company number 12269978 and registered office is at 12 Greenway Farm, Bath Road, Wick, Bristol, BS30 5RL, UK ("**ITHQ**") to you ("**Client**"). In accepting a quotation from ITHQ for the supply of Services and/or Products, signing a Statement of Work or issuing a Purchase Order you are entering into a Contract with ITHQ, and you (Client) hereby agree to be bound by the following Terms and acknowledge that these Terms shall take precedence over any terms and conditions set out in any Client Purchase Order.

1. Interpretation

1.1 Definitions

In these Terms, the words and expressions set out below shall have the following meanings:

"Business Day" means any day other than a Saturday, a Sunday, or a public holiday in the area where the principal place of business of the parties is located;

"Charges" means the charges for the Services as set out in each Statement of Work. Where such Charges include a time and/or materials element, such element shall be based on ITHQ rate card in force at the relevant time. Please note, any portion of time worked less than a full hour will be treated as a complete hour for billing purposes. For instance, if a task takes one and a half hours, it will be rounded up and billed as two hours. This principle of rounding up ensures that all time invested in delivering the Services, including fragmented time, is fairly compensated.

"Client" means the company or other body purchasing the Products and/or Services from ITHQ pursuant to a Contract;

"Commencement Date" means the date on which the Statement of Work is signed by both parties, or as otherwise agreed by the parties in writing.

"Confidential Information" means all information, technical data or know how which is created, imparted or obtained under or in connection with this Contract or any Statement of Work on, before or after the Commencement Date in confidence (whether in writing, verbally or by other means and whether directly or indirectly) including Personal Data, research, products, services, customers markets, software, developments, inventions, processes, designs, drawings, engineering, marketing or finances, which is reasonably deemed to be confidential or proprietary. Confidential Information includes the information of a third party that is in the possession of one of the Parties and is disclosed to the other Party in confidence;

"Consultant(s)" means consultant and/or engineer (as applicable in the circumstances) personnel or sub-contractors of ITHQ who will be providing the Services to Client under these Terms and any relevant Statement of Work;

"Contract" means the contract entered into between ITHQ and Client which is governed by the provisions of these Terms;

"Data" means all data and information received or processed by ITHQ from or on behalf of Client in performing the Services;

"Data Processing Agreement" means the document required by Article 28(3) (and equivalent provisions) of the General Data Protection Regulation (Regulation (EU) 2016/679);

"Data Processor" means the definition in the Data Protection Laws;

"Data Protection Laws" means the Data Protection Act 2018 and, with effect from 25 May 2018, the General Data Protection Regulation (Regulation (EU) 2016/679), and any amendment, re-enactment and replacement enforceable in the UK from time to time;

"Data Subject" means the definition in the Data Protection Laws;

"Delivery Date" means the date upon which ITHQ intends to make delivery of the Products as set out in the relevant Statement of Work;

"Due Date" means the date 30 calendar days after the date of the relevant invoice;

"Employees" means the employees of ITHQ and its agents and subcontractors;

"EULA" means the end user licence agreement applicable to the relevant Product, as stipulated by the Manufacturer of that Product;

"Fees" means sums payable by the Client to ITHQ pursuant to a Contract;

"Good Industry Practice" means the degree of skill and care which it is reasonable to expect of a typical provider of services similar to the Services being provided under the relevant Contract;

"Hardware" means any information technology and/or computer and communications hardware to be supplied to the Client and / or its affiliates by ITHQ;

"Intellectual Property Rights" means any current and future intellectual property rights, including:

- a) copyrights, trademarks, trade names, domain names, rights in logos and get-up, inventions, confidential information, trade secrets and know-how including commercial know-how, design rights, patents, utility models, semi-conductor topographies, all rights of whatsoever nature in computer software and data, rights in databases, privacy rights; and
- b) all intangible rights and privileges of a nature similar, analogous or allied to any of the above in every case in any part of the world and whether or not registered, including in relation to the above:
- c) all granted registrations and all applications for registration;
- d) all renewals, reversions or extensions;
- e) all forms of protection of a similar nature which may subsist anywhere in the world;

"ITHQ Annuity Services" means the support and managed services provided by ITHQ to the Client on an ongoing, renewable basis pursuant to a Contract;

"ITHQ Services" means the services and ITHQ Annuity Services set out in each Statement of Work provided by ITHQ to Client and / or its affiliates;

"Live Date" means the date that the Services are first made available for use in a live running environment;

"Location" means Client's premises as specified in the Statement of Work, ITHQ's written quotation or Client's purchase order (as applicable);

"Manufacturer" means the manufacturer, developer, distributor or licensor of the relevant Product, as applicable;

"Monthly Time Limits" means the maximum amount of time in aggregate allocated to a Client under a Statement of Work;

"Particular Losses" means without limitation, pure economic loss, loss of profit, loss of revenue, loss of data, loss of business (including business opportunities and contracts), loss of goodwill, loss of anticipated savings, legal costs and any indirect, consequential, special or punitive loss;

"Party" means either ITHQ or the Client, together the **Parties**;

"Personal Data" means the 'personal data' (as defined in the Data Protection Laws) over which the Client is the Data Controller;

"Price" means the price for the Product (or part thereof, as the case may be) to be provided under this Contract as specified in the relevant Statement of Work and, in the event there is no Statement of Work applicable to this case, as specified in ITHQ written quotation which has been accepted by Client or by way of the Client issuing a purchase order in respect of the same, or otherwise;

"Processing" as defined in the Data Protection Laws (and Process & Processed shall be interpreted accordingly);

"Product" means the Hardware, Software, Manufacturer support / maintenance agreements or other goods specified in the relevant Statement of Work, ITHQ quotation or Client purchase order (as

applicable) and all items delivered to Client and / or its affiliates by ITHQ under these Terms in conjunction with the Services;

"Project" means the project as defined in a Statement of Work;

"Protected Data" has the meaning set out in Clause 10;

"Services" means ITHQ Services and Third Party Services;

"Service Credits" means service credits set out in a Statement of Work, payable by ITHQ to Client if the ITHQ Services fail to meet the Service Levels;

"Service Level Agreement" means the Service Level Agreement (if any), appended to a Statement of Work, setting out the required performance for the ITHQ Services pursuant to that particular Statement of Work;

"Service Levels" means the level of performance to be attained in respect of the provision of the ITHQ Services as set out under the relevant Service Level Agreement;

"Software" means pre-packaged software, electronic licence and software-as-a-service (SaaS) provided by the Manufacturer under licence supplied to the Client and / or its affiliates. The use and warranty of the provided software are subject to terms and conditions outlined in the Manufacturer's EULA;

"Specification" means the summary of the technical abilities, functionality and limitations of the Product and/or Services;

"Statement of Work" means a work order setting out the agreed Services and / or Products, the Fees to be charged and all other information relevant to be delivered to Client by ITHQ in accordance with these Terms;

"Terms" means these standard Terms of Business of ITHQ;

"Third Party Annuity Services" means services set out in the Third Party Services Section of each Statement of Work supplied on an ongoing, renewable basis pursuant to a Contract;

"Third Party Services" means services and Third Party Annuity Services set out in the Third Party Services Section of each Statement of Work;

"VAT" means value added tax pursuant to either the Value Added Tax Act 1994 or the EU Sixth Directive 77/388 or any similar law or regulation that may be in effect in any other jurisdiction;

"Working Hours" means the hours of 9.00 a.m. to 5.00 p.m. during a Business Day;

1.2. In these Terms:

- a) any act or regulation, will be construed as referring also to any amendment or re-enactment of such act or regulation (whether before or after the date of the Contract);
- b) references to any party will, where relevant, be deemed to be references to or include, as appropriate, their lawful successors, assigns and transferees,
- c) use of the singular is deemed to include the plural;
- d) the headings will not affect interpretation;
- e) references to a "month" are to a calendar month, unless otherwise stated; and
- f) reference to a Clause, unless the context otherwise requires, is a reference to a Clause of these Terms.
- g) any phrase introduced by the words "including", "includes", "in particular" or "for example", or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words
- h) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- i) Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

- i) ITHQ's policy is to supply Products and Services only to business clients (i.e. those who are not private consumers). In accepting these Terms, the Client warrants that it is not purchasing the Products or Services as a private consumer.

2. Ordering Products and Services

- 2.1 Prior to any Services being carried out and any deliverables supplied to Client by ITHQ under this Contract, a Statement of Work in respect of the same, will be signed by both parties. All Services shall be provided to Client in accordance with the signed Statement of Work and shall be governed by the provisions set out in these Terms.
- 2.2 Product may be provided by ITHQ to Client under a Statement of Work or by acceptance by Client of a quotation from ITHQ, or by the issuing by Client of a purchase order in respect of the same.
- 2.3 In respect of all Services and/or Product provided by ITHQ to Client the provisions of these Terms shall apply to the same, unless varied in writing and signed by ITHQ and Client.
- 2.4 No Contract which has been accepted by ITHQ may be cancelled by the Client unless written agreement is obtained from an authorised representative of ITHQ. Should ITHQ allow the Client to cancel or reschedule a delivery of either a Product or Service, the Client acknowledges and agrees to a fee. The specific amount of this fee shall be determined and agreed between Client and ITHQ prior to the cancellation or rescheduling of delivery.
- 2.5 All descriptions, Specifications, photographs, weights, dimensions, capacities, prices, performance ratings and other information quoted (whether online or in hard copy format) or otherwise provided by ITHQ or included in any sales literature, price list, acknowledgement of order, invoice or other document are to be deemed approximate only (except where stated in writing to be exact) and shall not form part of the Contract other than as approximations. Any typographical, clerical or other error or omission in any sales literature, Fees, price list, acknowledgement of order, invoice or other document (whether hard or electronic copy) or any other information issued by ITHQ shall be subject to correction by ITHQ without liability.

3. Statement of Works

- 3.2 No Services shall be provided by ITHQ to Client until both parties have signed a Statement of Work. Each Statement of Work will include all or some of the following:
 - a) Reference to these Terms and such reference shall be deemed to incorporate all applicable provisions of these Terms;
 - b) Name of the project or service overview and the contact of each party;
 - c) Commencement, Service Delivery, Subscription and / or Delivery Dates;
 - d) Description of the Services and Product to be so provided, including the location at which such Services and Product are to be provided;
 - e) Description of the responsibilities of each party in respect of the Services and Product including Service Levels and Service Credits;
 - f) Charges payable in respect of the Services and the Price of Products;
 - g) Any additional terms applicable to the Services and Products.
- 3.3 If Client wishes to postpone the commencement of the provision of Services for any reason in a relevant Statement of Work, the following shall apply:
 - a) In the event that Client wishes to postpone the commencement of the provision of Services under the relevant Statement of Work:
 - i) more than one week before the agreed-upon commencement date, the Client will be liable to cover all reasonable administration expenses incurred by ITHQ; or

- ii) within one week prior to the agreed upon commencement date, the Client will be charged for 70% of the Charges related to scheduled work up to one week after the commencement date of the work;
 - b) Client hereby acknowledges that such postponement payment (as the case may be) is made to cover the cost of ITHQ resource which cannot be re-allocated to a new project at such short notice and does not constitute a penalty.
- 3.4 If ITHQ shall undertake any work at Client's request which is not the subject of a Statement of Work then, unless the parties otherwise agree in writing, the provisions of these Terms shall apply to such work (so far as the same are capable of applying) and that the work is undertaken on a best efforts basis without the proper design and scrutiny that would be expected as part of Good Industry Practice and, as such, ITHQ excludes any warranty and liability for any flaws or shortcomings that might occur in the delivery of such service. If no fee is agreed upfront for such work ITHQ shall raise Charges on a quantum meruit basis.
- 3.5 If ITHQ shall provide any Products at Client's request which is not the subject of a Statement of Work, then, unless the parties otherwise agree in writing, the provisions of these Terms shall apply to such Products (so far as the same are capable of applying) and if no Price is agreed for such Product, ITHQ shall charge Client in accordance with its standard list price for such Product from time to time in force.
- 3.6 ITHQ may make any changes to the Specifications of Products or Services to conform to any applicable health and safety or legal requirement, or which do not materially negatively affect their quality or performance.

4. Provision of the Services

- 4.1 ITHQ shall, in accordance with the provisions of these Terms:
 - a) from the Commencement Date of each Statement of Work provide the Services in accordance with the provisions of these Terms and the Statement of Work;
 - b) keep detailed records of all work done and accounts of all expenses incurred in relation to the provision of any Services and at the reasonable request of Client will make such records and accounts available for inspection by Client;
 - c) implement and maintain appropriate security procedures to prevent the unauthorised disclosure, destruction, damage, loss or alteration of Data;
 - d) be responsible for complying with any applicable laws, statutes, regulations and codes of practice, relating to the provision of the Services and all of its other obligations under these Terms;
 - e) comply with all reasonable and lawful policies and procedures of Client;
 - f) deliver ITHQ Annuity Services not to exceed the Monthly Time Limits set out in the Statement of Work.
- 4.2 Where Consultant(s) will be providing the Services (or part thereof) on-site at Client's premises, Client shall pay for all the Consultant's travel time and reasonable expenses including hotel accommodation as more particularly defined in each Statement of Work.
- 4.3 In the event that Client should require Consultant(s) to work overtime after the end of any Business Day or on a weekend or bank holiday, Client should agree this in writing in advance with ITHQ or such work should be agreed in advance in the Statement of Work.
- 4.4 In respect of overtime Client shall pay ITHQ the hourly Charges at time and a half in respect of evening and Saturday overtime and double time in respect of Sunday and Bank Holiday overtime.

Client shall also reimburse ITHQ in respect of any reasonable expenses incurred by ITHQ or its Consultant(s) as a result of Consultant(s)' having to work such overtime.

- 4.5 In addition to its obligations set out elsewhere in these Terms, Client shall:
- a) upon request of ITHQ, make available to ITHQ such office and technology facilities as may be necessary for ITHQ and/or their designated Consultant(s) to perform any Services under these Terms;
 - b) ensure that its employees and any sub-contractors and other independent contractors co-operate fully with ITHQ in relation to the provision of the Services and that such employees and any such sub-contractors will be qualified to carry out any tasks which they may be assigned in relation to any Project;
 - c) promptly furnish ITHQ with such information and documents as ITHQ may reasonably require for the proper performance of the Services under these Terms and be responsible for ensuring that such information is true, accurate, complete, and not misleading in any material respect;
 - d) obtain all third party consents, licenses and rights reasonably required in order to allow ITHQ to perform the Services and be responsible for complying with any applicable laws, statutes, regulations and codes of practice, relating to the Client in connection with the Services and all of its other obligations under these Terms; and
 - e) implement and maintain appropriate security procedures to prevent the unauthorised disclosure, destruction, damage, loss or alteration of Data.
- 4.6 Should Client fail to perform any of its obligations under these Terms or fail to provide data and/or information required by ITHQ in order for ITHQ to provide the Services, or should Client provide ITHQ with data and/or information which is inaccurate and/or incomplete, then ITHQ will not be responsible for any delay, cost increase or other consequences arising from such failure. In the event that any failure to perform on the part of the Client in accordance with this Clause 4.6 causes ITHQ to incur additional expense, Client shall reimburse ITHQ in full in respect of the same. Any further additional costs or expenses will be agreed between the Parties and will become the subject of a new Statement of Work.

5. Service Levels and Performance

- 5.1 ITHQ shall perform the ITHQ Services set out in a Statement of Work in accordance with the Service Level Agreement (if any) set out in the relevant Statement of Work.
- 5.2 If ITHQ fails to meet the Service Levels, Service Credits may apply if such regime is agreed as part of the Statement of Work.
- 5.3 ITHQ shall not be liable for any failure to achieve the required Service Levels and shall not incur Service Credits to the extent that such failure results from:
- a) a breach by Client of any of its obligations under these Terms;
 - b) a failure attributable solely to the use of public telecommunications links between ITHQ and Client; or
 - c) an event of Force Majeure falling within the scope of Clause 24 (Force Majeure).
- 5.4 Without prejudice to any other right or remedy of Client under these Terms, if ITHQ fails to meet any of the Service Level Commitments or fails to meet any of its obligations under these Terms, ITHQ will use all reasonable commercial endeavours to remedy such failures, which will include:
- a) immediately investigating the cause of the failure or problem and discussing investigation results with Client;
 - b) taking necessary remedial measures and continuing to do so until the failure or problem has been rectified or a solution acceptable to Client has been provided; and
 - c) regularly advising Client of the status of all remedial efforts.

- 5.5 In the event that the failure to achieve the required Service Levels is only partially the result of any matter falling within Clause 5.3, the actual performance of ITHQ in relation to the required Service Levels shall be adjusted to such levels as the parties agree would have been achieved, but for the impact of such matters. In the event that the parties are unable to agree upon the appropriate adjustment, the matter shall be referred to an expert for determination pursuant to Clause 33 (Dispute Resolution).

6. Delivery of Products

- 6.1 ITHQ shall use its reasonable endeavours to deliver the Products (if any) to the Location (and/or, in the case of electronic delivery of Products, to the email address or other electronic location as agreed) and/or to supply the Services by any Delivery Date estimated by ITHQ.
- 6.2 Whilst ITHQ shall endeavour to deliver the Product to Client on the Delivery Date, Client hereby acknowledges that such Delivery Date is only an approximate date and the time of delivery of the Product shall not be of the essence of this Contract and ITHQ will not accept any liability if any Delivery Date is not met. Failure by ITHQ to deliver on the Delivery Date stated shall not be sufficient cause for Client to terminate this Contract and ITHQ shall in no circumstances be liable to the Client for any losses, damages or charges (including Particular Losses) incurred by the Client due to the late delivery of Products and/or Services.
- 6.3 In circumstances where ITHQ has agreed to deliver the Product to Client in instalments, any delay in delivering one or more of such instalments shall not entitle Client to refuse to accept any remaining instalments.
- 6.4 Client shall not refuse to accept delivery of any Product due to any shortage or defect in any other delivery.
- 6.5 The Client agrees that it will inspect the Products immediately upon delivery or collection and in all cases shall:
- a) not sign to accept the Products if the types/quantities of Products are incorrect or the Products and/or their packaging are damaged in any way; and/or
 - b) inform ITHQ in writing within 7 days of delivery of any damage, shortages, defects or non-delivery of the Products which was not apparent at the time of delivery/collection, and, where the Client fails to do so, they shall be deemed to have accepted the Products.
- 6.6 If the Client fails to take delivery of or, where agreed, collect the Products or fails to give ITHQ adequate delivery instructions at the time stated for delivery (save for circumstances beyond the Client's reasonable control or by reason of ITHQ's fault) then without prejudice to any other rights or remedies available to it ITHQ may at its sole discretion:
- a) store the Products until actual delivery and charge the Client for the reasonable costs (including insurance) of storage; and/or
 - b) sell the Products at the best price readily available and charge the Client any shortfall below the Fees under the Contract.

7. Returns Policy

- 7.1 Subject to Clause 7.2 below, if the Products or any part thereof is damaged or missing upon delivery to Client, ITHQ will at its sole option either replace such Product or such part thereof or refund Client the Price in respect of the same. Such replacement or refund shall be ITHQ's sole liability to Client in such respect.
- 7.2 In no circumstances shall ITHQ be liable to Client to replace or refund Client in accordance with Clause 7.1 above:
- a) in respect of any shortages or damaged Product unless the Product is inspected by Client on arrival in the presence of the carrier or the Consultant (as applicable). If on such inspection

- any Product is damaged or missing the consignment note must be endorsed by Client accordingly and Client shall notify ITHQ in writing of any such damage or missing Product, attaching a copy of the endorsed consignment note, within 7 days of such Delivery.
- b) in respect of the non-Delivery of a whole consignment of the Product unless Client informs ITHQ in writing in respect of the same within 7 days of being notified that the Delivery has taken place.
- 7.3 In the event that ITHQ receives written notice from Client in accordance with Clause 7.2 above, ITHQ shall confirm to Client in writing, receipt of the same within 7 days from the date upon which it received Client's notification.
- 7.4 Software licences provided electronically (other than in physical format) are non-refundable.
- 7.5 Client shall not be entitled to return the Product or any part thereof to ITHQ for credit unless previously confirmed by ITHQ to Client in writing. Where returns are permitted by our supply chain, ITHQ will consider allowing Clients to return unopened Products within 7 days of delivery; however, all returns are at ITHQ's sole and absolute discretion, will depend on our suppliers' returns policies and may be subject to reasonable restocking fees or other conditions.
- 7.8 Under no circumstances will ITHQ accept returns of opened Products unless those Products are faulty, and the following provisions are followed:
- a) The Client must observe the requirements of the Manufacturer's DOA policy and/or warranty, including notifying ITHQ of a defect in the Products within the Manufacturer's time limit;
 - b) Although ITHQ may make reasonable endeavours to troubleshoot any problems the Client experiences with the Products, the Client acknowledges that ITHQ is not the Manufacturer of the Products and that ITHQ may be contractually limited by that Manufacturer as to the extent of the assistance they are permitted to provide. Accordingly, the Client may be required to contact the Manufacturer's technical department to troubleshoot and/or to obtain DOA authorisation (which shall be retained by the Client, along with any call/case reference numbers, and presented to ITHQ upon request);
 - c) In the case where it is established that Products are faulty or defective within the relevant Manufacturer warranty or DOA period, ITHQ will arrange with the Client to have the Products collected or returned. In some instances, the Manufacturer's warranties require the Client to contact a repair agent directly. If this is the case, ITHQ will inform the Client and provide the contact details for the relevant Manufacturer to discuss such collection or return;
 - d) Where ITHQ has indicated to the Client that the return of a Product is permitted, the Client is responsible for ensuring that the Products are returned to ITHQ (or the relevant third party) in their original packaging together with all disks, manuals, cables and any other peripherals, accessories, consumables and other parts or items with which they were boxed or inseparably supplied so as to ensure satisfaction of the Manufacturer's DOA policy and/or warranty stipulations (as appropriate), safe transit and ease of identification. The external packaging must not be damaged or defaced so it is recommended the goods are re-boxed for transport;
 - e) The Products will be tested on receipt. If no fault is found the Products shall be returned to the Client at the Client's cost. If a fault is found and the applicable Manufacturer's DOA period is exceeded, then the Products will be repaired and/or replaced under the terms of the Manufacturer's warranty, to the extent that such warranty remains in force at that time;
 - f) In the event that the Manufacturer's DOA cover and/or warranty have lapsed, expired, been invalidated or did not apply, ITHQ shall have no liability to the Client for such Product(s).

8. ITHQ Warranties

- 8.1 In respect of the Products and Services ITHQ warrants to Client that:
- a) the Products supplied under these Terms will conform substantively to any Specifications given in relation to them;
 - b) ITHQ Services will be performed in a timely and professional manner and in accordance with Good Industry Practice for similar services and will be provided with reasonable skill and care;
 - c) it has the right to provide or procure the provision of the Products and Services;
 - c) the provision of the Services and any work produced by ITHQ, its employees and subcontractors as a result of the provision of the Services and provided to or used by or on behalf of Client under these Terms will not infringe the Intellectual Property Rights or any other rights of any third party;
 - d) it has the power to enter into and to execute, deliver and perform the obligations contained in these Terms; and
 - e) save in respect of software for which no specific license is required, it is the legal and beneficial owner and/or rightful licensee (as appropriate) of all Intellectual Property Rights in all software provided to Client pursuant to these Terms.
- 8.2 Any Product will be subject to the Manufacturer's warranty, details of which will be included by the Manufacturer along with the operating manual with the Product. Clients may obtain further warranty cover by purchasing an extended warranty and/or an advanced product replacement guarantee where available from the Manufacturer of the Product. The Client will be responsible for ascertaining the terms of such guarantee and/or warranty and ensuring that any conditions in respect of the same are complied with in full. ITHQ is happy to provide assistance to Client in dealings with the Manufacturer in this respect but accepts no liability in respect of any defect or breakdown of Product.
- 8.3 ITHQ does not give any warranty that the Product is fit for any particular purpose unless that purpose is specifically advised to ITHQ in writing by Client and ITHQ confirms in writing that the Product can fulfil that particular purpose.
- 8.4 ITHQ does not give any warranty the Client's use of any Products or Services will be uninterrupted and error-free.
- 8.5 The express terms of this Clause 8 are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

9. Client's Obligations and Warranties

- 9.1 In order to enable the delivery by ITHQ of its obligations under a Contract, the Client shall, at its own expense:
- a) comply with, and use the Products and Services in accordance with these Terms and all applicable laws, and observe the requirements of ITHQ's Acceptable Use Policy, available on the ITHQ website, as may be updated from time-to-time, and shall ensure users of the Products and Services are adequately trained to use them;
 - b) undertakes to promptly provide ITHQ with co-operation, assistance and/or accurate and complete responses to requests for information (which shall include sufficient detail in that information) that ITHQ may reasonably require from time to time to enable ITHQ to proceed with the performance of the Contract without undue delay or impediment;
 - c) allow ITHQ or its subcontractors (as applicable) to exercise such right of entry as required over any relevant premises to deliver the Products and/or Services, provide ITHQ with any relevant policies and procedures in relation to such premises (and, where such policies and procedures

- require time and/or materials over and above what would be normally expected to permit entry to the average business premises, provide these to ITHQ before the Statement of Work is prepared, or make payment or reasonable additional costs and expenses which arise in meeting the requirements of such policies and procedures), and take all reasonable precautions to protect the health and safety of ITHQ personnel whilst at that/those premises
- d) unless otherwise provided by ITHQ, implement effective and appropriate backup and other procedures for the protection of its data;
 - e) observe any other obligations or requirements set out in the relevant Statement of Work;
 - f) otherwise respond to and comply with ITHQ's reasonable requests.

9.2 Client warrants to ITHQ:

- a) any of its representatives who commit the Client to these Terms and any Contract with ITHQ have the Client's authority to do so and that the Client will take responsibility for any employee, ex-employee or other person who holds themselves out to be the authorised representative of the Client;
- b) that it has the power to enter into and to execute, deliver and perform the obligations contained in these Terms;
- c) it will comply with and use the Products and Services in accordance with the Contract and all applicable laws;
- d) it has and shall maintain all necessary licences, permits, rights, consents, registrations, approvals and titles necessary for ITHQ to use or host any software, hardware, documentation or other materials provided by the Client for use in the provision of the Products or Services to the Client; and
- e) any information and materials supplied by the Client in connection with a Statement of Work or Contract shall be accurate and complete, and ITHQ's use of such shall not cause ITHQ to infringe the rights, including any Intellectual Property Rights, of any third party.
- f) that it has not been induced to enter into the Contract by any prior representations or warranties, whether oral or in writing, except as specifically contained in these Terms and Client hereby irrevocably and unconditionally waives any right it may have to claim damages for any misrepresentation not contained in these Terms or for breach of any warranty not contained herein (unless such misrepresentation or warranty was made fraudulently and was relied upon by Client) and/or to rescind the Contract.

10. Data Protection

10.1 Each Party warrants that it shall comply with the Data Protection Laws when performing its respective obligations under the Contract. ITHQ further commits to observe the requirements of the Privacy Policy available on the ITHQ website as required.

10.3 Without prejudice to the generality of Clause 10, in respect of Protected Data disclosed to ITHQ (if any) in connection with the Contract (and whether disclosed by Client, data subjects or otherwise), ITHQ shall ensure that it only processes such Protected Data for purposes notified to it by Client and/or the relevant data subjects.

10.4 ITHQ will

- a) operate safety and security measures and procedures consistent with Good Industry Practice for the prevention of unauthorised access or damage to any and all locations in which Personal Data is stored and/or Processed by ITHQ; and
- b) take appropriate technical and organisational measures to protect Personal Data Processed by ITHQ against unauthorised or unlawful Processing and accidental loss, destruction,

alteration or disclosure and ensure that, having regard to the state of technological development and their cost of implementation, those measures ensure a level of security appropriate to

- i) the harm that might result from such Processing, loss, destruction or damage; and
- ii) the nature of such Personal Data.

10.5 Where the Client intends to, or might, include Personal Data in their use of the Products and/or Services purchased from ITHQ, they will inform ITHQ at the time a Statement of Work is requested. Where so informed, ITHQ will identify whether ITHQ or a third party is the Data Processor for the purposes of the Processing, communicate that to the Client at the point of a Statement of Work, and;

a) to the extent that ITHQ itself Processes Personal Data on behalf of the Client, ITHQ will:

- i) enter into a Data Processing Agreement with the Client where required by the Data Protection Laws
- ii) process such Personal Data only in accordance with the Client's instructions in that Data Processing Agreement, or as required by law or regulation; and
- ii) promptly inform the Client if it receives a request or notice from a Data Subject seeking to exercise their rights under the Data Protection Laws in respect of such Personal Data, and (at the Client's cost) comply with the Client's reasonable instructions with respect to that request or notice; or

b) to the extent that a third party performs Processing activities as the result of a purchase by the Client from ITHQ of the Products or Services of that third party, ITHQ will, strictly at the Client's request, facilitate the conclusion of a Data Processing Agreement between those parties, on the basis that the Processing relationship exists between the Client and the third party (so that the third party is the direct Data Processor to the Client's Data Controller).

10.6 In order to meet its obligations under a Contract (and, prior to that, to be able to obtain relevant information to enable a Statement of Work to be prepared), ITHQ will need to provide certain of the Client's Personal Data to their supply chain, specifically the names and contacts details of the individuals at the Client who are responsible for the subject matter of that Contract (or Statement of Work). Where the Client is purchasing certain Products or Services, it may also be necessary to provide the names and contacts details of the individual users of those Products or Services. Unless stated otherwise in a Data Processing Agreement between ITHQ and the Client, this will be the extent of ITHQ's Processing of Personal Data on behalf of the Client. Where required, the Client confirms that it has obtained the necessary consents to share this Personal Data and authorises ITHQ to undertake the activities set out in this Clause 10 to enable the creation or performance of a Contract.

10.7 The Client authorises and instructs ITHQ to take the steps in this Clause 10 (and any additional steps set out in a Statement of Work, but not any actions required by the Data Processing Agreement, for which authority is contained therein) in the Processing of Personal Data on its behalf as ITHQ reasonably considers necessary to the performance of its obligations under the Contract (or with the intention of creating such a Contract), and authorises ITHQ to give equivalent instructions to any relevant subcontractor on its behalf, warrants that it is and will remain entitled to give the instruction and authorisation in this Clause 10, and confirms it will advise ITHQ if that position changes in respect of any of the Personal Data.

10.7 Each Party will promptly inform the other if:

- a) it has reason to believe that the activities of the other Party are in breach of the Data Protection Laws; and/or
- b) it suspects or uncovers any breach of security in any respect which could impact the Personal Data or Confidential Information of the other Party, and the Party which has been breached

will use all commercially reasonable endeavours to verify and, if verified, promptly remedy such breach.

10.8 The obligations in this Clause 10 shall survive the termination of any Contract.

11. Acceptance

11.1 Client shall be deemed to have accepted the Services once the Client commences live running of the whole or any part of the Product and Services.

11.2 In the event that Client requires the Services to be subject to acceptance testing, then the testing will need to be detailed in the Statement of Work and will form part of the Services.

12. Supervision and Change Control

12.1 The Client contact named on the Statement of Work shall have full authority to take all necessary decisions regarding each Project.

12.2 ITHQ and Client's representative shall meet at regular intervals during the continuance of each Project to discuss the progress of the same.

12.3 In the event that any change to the nature or scope of the Services being performed under this Contract or any Statement of Work is identified as being desirable by either ITHQ or Client, a request may be submitted to the other party to effect such change. Any such request shall be sufficiently detailed to enable the other party to assess the impact of the proposed change. No such change will become effective until agreed in writing between the parties.

13. Intellectual Property Rights

13.1 Each Party grants to the other a non-exclusive, limited, revocable licence to use its Intellectual Property Rights solely to the extent necessary for the other Party to perform its obligations under the Contract. The Parties agree that all Intellectual Property Rights which existed prior to the date of the Contract in relation to any items used in the performance of any Services shall remain the property of the existing owner of those Intellectual Property Rights

13.2 ITHQ shall own and be entitled to use any Intellectual Property Rights, including skills, techniques, materials, concepts or know-how acquired, developed or used in the course of performing any Services and any improvements made or developed during the course of Services. For the avoidance of any doubt, this shall include any improvements or modifications to Products during the duration of the Contract. Nothing herein shall be construed or shall give effect to any transfer of right, title or interest in the Client's or ITHQ's Intellectual Property Rights.

13.3 The title to and the Intellectual Property Rights in the Product(s) and Service(s) does not pass to the Client. The Client is licensed to use such Product(s) and Service(s) in accordance with these Terms and / or the EULA applicable to those Product(s) and Service(s), and by entering into these Terms and any Contract pursuant to them, the Client agrees to enter into and comply with the terms of such EULA(s).

13.4 The Client shall not sub-license, assign or otherwise transfer the rights granted in Clause 13.3 without the written consent of ITHQ.

14. Intellectual Property Rights Indemnity

14.1 ITHQ will indemnify Client and keep Client fully and effectively indemnified on demand against all costs, claims, demands, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that the normal use of the ITHQ Services infringes the UK Intellectual Property Rights of any unaffiliated third party, subject to the following conditions:

- a) Client shall promptly notify ITHQ in writing of any allegations of infringement of which it has notice and will not make any admissions without ITHQ's prior written consent nor take any step (or omit to take any step) which would prejudice ITHQ's defence of the claim;
 - b) Client, at ITHQ's request and expense, shall allow ITHQ to conduct and/or settle all negotiations and litigation resulting from any such claim;
 - c) Client shall, at the request of ITHQ, afford all reasonable assistance with such negotiations or litigation.
- 14.2 The indemnity given under Clause 14.1 above will not apply to infringement arising out of the use of Services or any part thereof in combination with any Product and/or Software not supplied or approved by ITHQ for use with the Services or by reason of any modification or alteration made to such Products and/or Software other than by ITHQ or with ITHQ's prior written consent.
- 14.3 If Client's normal use of ITHQ Services is held by a court of competent jurisdiction to constitute an infringement of a third party's intellectual property rights or if ITHQ is advised by legal counsel that such use or possession is likely to constitute such an infringement then ITHQ shall promptly at its discretion and at its own expense:
- a) procure for Client the right to continue using the Services; or
 - b) modify or replace the Services (without detracting from its overall performance) so as to avoid the infringement; or
 - c) if (a) or (b) cannot be accomplished on reasonable terms, cease provision of ITHQ Services and refund to Client any Charges paid in advance by Client to ITHQ in respect of ITHQ Services which have not yet been provided by ITHQ to Client and which ITHQ will be unable to provide in the future.
- 14.4 The foregoing states ITHQ's entire liability to Client in respect of the infringement of the intellectual property rights of any third party.
- 14.5 The provisions of this Clause 14 shall survive the termination of the Contract.

15. Fees and Payment

- 15.1 The Fees payable by the Client for the supply of Product(s) or Services shall be that which is set out and agreed between the Client and ITHQ each time ITHQ accepts a Contract placed by the Customer and as specified in the Statement of Work as appropriate (unless varied by the Contract and ITHQ's acceptance). All Fees quoted are deemed exclusive of value added tax, unless expressly stated to the contrary.
- 15.2 Unless otherwise agreed between the Parties in a Statement of Work, invoices will be raised and dated by ITHQ on or after the date of dispatch of the Products, or on signing of the Statement of Work for Services. Where both Products and Services are supplied against the same Contract, a separate invoice may be raised for each of those two elements..
- 15.3 If Service Credits are payable in accordance with Clause 5.2 then these will be deducted from the Fees for the period following that to which they relate and will be shown as such on the relevant invoice(s) covering that period. If Service Credits are payable but no further Charges are due from Client, ITHQ will pay the same to Client.
- 15.4 The Client shall pay each invoice in full (unless the invoice is the subject of a bona fide dispute), together with any VAT at the appropriate rate and other expenses, by the Due Date directly into ITHQ's bank account details of which will be provided to Client from time to time. The time of payment shall be of the essence.
- 15.5 Nothing in these Terms shall entitle Client to withhold or delay any payment due to ITHQ after the Due Date or in any way prejudice or affect ITHQ's rights in relation to this non-payment. If the Client fails to pay any sums due by the Due Date or does not comply with an obligation under the Contract, then without prejudice to any other right or remedy available to ITHQ, ITHQ shall

- be entitled to withhold or suspend the supply of any Products and/or Services to the Client until such payment is made or the Client complies with its obligations to ITHQ's reasonable satisfaction.
- 15.6 Without prejudice to ITHQ's other rights and remedies, ITHQ reserves the right to charge interest to the Customer on any Fees which are not paid by the Due Date, at a rate of four per cent per annum above the Bank of England base rate or the prevailing rate pursuant to statute (whichever is the greater) from time to time, such interest to accrue on a daily basis from the Due Date to the date of actual payment (both dates inclusive). Such interest shall be paid by Client on demand by ITHQ.
- 15.7 Where the Fees for a Contract are not all invoiced at the same time (e.g. where the Fees for each year of a multi-year Contract are invoiced at the start of that year) the Client is committing to continue to make those payments over the entire period agreed in the Contract. Whilst ITHQ will make reasonable endeavours to meet the reasonable administrative requests of the Client, the Client accepts that they have committed to the entire duration agreed and ITHQ will invoice the Client for each period in line with the Contract, regardless of whether a purchase order is received from the Client for a specific period.
- 15.8 Where the Fees for a Contract are stated in the Statement of Work to be based on consumption (e.g. where the Fees are based on the volume of storage used in gigabytes, or number of concurrent users etc.):
- a) the Client is committing to pay ITHQ the Fees on that periodic basis for all retrospective consumption under that Contract, regardless of whether the relevant Statement of Work was based on a different level of consumption anticipated at that time or purchase orders are received for a different specific consumption/period than actually occurred (and if purchase orders are incorrect or not received, ITHQ shall rely on the Client's initial commitment to purchase pursuant to the Contract, and will automatically invoice the Fees related to actual consumption in line with the Contract); and
 - b) the Client understands that the Fees stated in a Statement of Work are based on an estimate of expected consumption (which ITHQ has calculated based on information provided by the Client) but the Client will be invoiced for the quantity and duration of actual consumption (subject in each case to any minimum commitment in respect of both factors, as set out in the Contract) according to their nature, and any reductions or increases in consumption will be payable in line with the Contract as invoiced.
- 15.9 If the Statement of Work provides that the Fees or any part of the Fees shall be split across the duration of a Service or the lifecycle of a Product, or are payable in arrears, then ITHQ may withdraw or vary such arrangements, and issue an invoice for any Fees which have yet to be invoiced under the Contract, if:
- a) ITHQ serves a notice of termination of the Contract;
 - b) there is a material adverse change in the creditworthiness of the Client; or
 - c) the Customer fails to pay any amount which is due and payable.
- 15.10 ITHQ or its agent shall deliver the Products to any premises (whether in the United Kingdom or in any country) agreed in the Contract and the Price shall include the cost of standard packaging and carriage within the United Kingdom at normal goods rates unless otherwise agreed between Client and ITHQ in writing. Client shall pay ITHQ an amount in addition to the Price in respect of any special packaging or carriage arrangements required. If any deduction or withholding from the Fees is required by way of tax, excise, customs or otherwise from a jurisdiction other than the United Kingdom, the Client agrees to pay as Fees to ITHQ any additional amounts necessary to ensure that the net amount that ITHQ receives, after any deduction and withholding, equals the amount ITHQ would have received if no deduction or withholding had been required.

- 15.11 The Client acknowledges that ITHQ sources some Products and Services from outside the United Kingdom and may purchase in a currency other than pounds sterling. Where this occurs, the Fees proposed to the Customer in a Statement of Work are based on the currency exchange rates (including any applicable commissions for currency conversion) on the day of that Statement of Work. If there is a sudden fluctuation in the currency exchange rate that materially alters the Fees proposed in such a Statement of Work, then ITHQ reserves the right to withdraw any non-executed Statement of Work and reissue the Fees using the currency exchange rates.
- 15.12 The Client shall not be entitled to make a set-off or counter-claim or claim a lien in respect of any amounts owed to ITHQ and shall pay all amounts due without making a deduction of any kind. ITHQ shall be entitled to set-off any amounts owed to it by the Client against any sums ITHQ owes to the Client.
- 15.13 The Client acknowledges that ITHQ is not a finance provider and, where Products and/or Services are paid for by way of a lease or other financial product, it is likely the agreement for the purchase of those Products and/or Services exists directly between the Client and the finance provider; ITHQ is not a party to such agreement and neither ITHQ nor the Client shall have any rights or obligations to each other in respect of Products and/or Services transacted in this manner.

16. Risk and Title

- 16.1 Risk of damage to, or loss of, Products shall pass to the Client at the earlier of:
- a) the time at which Products are delivered to the Client or the Client collects the Products; or
 - b) the time when ITHQ has attempted to deliver the Products to the Client and have been unable to complete delivery due to the actions or omissions of the Client.
- 16.2 Notwithstanding when risk in the Products passes to the Client, title in the Products shall not pass to the Client until the earlier of:
- a) ITHQ has received cleared and full payment of the Fees for the Products and all other Products and Services (if applicable) supplied to the Client for which payment is then due; or
 - b) in the event that the Client fails to meet the terms of payment for those Products, immediately prior to ITHQ bringing legal action for payment of the Fees.
- 16.3 Until such time as title in the Products pass to the Client:
- a) the Client shall keep the Products separate from other goods and properly stored, protected, insured and identified as ITHQ's property; and
 - b) after the Due Date, ITHQ shall be entitled to require the Client to deliver up the Products to ITHQ and if the Client fails to do so immediately the Client shall allow (or procure permission for) ITHQ or its agents or representatives to enter upon the Client's premises (or any other premises where the Products are stored) and repossess the goods.

17. Limitation of Liability

- 17.1 Nothing in these Terms shall limit ITHQ's liability to the Client for liabilities which cannot be limited or excluded as a matter of law including death or personal injury (where resulting from the negligence of ITHQ, its employees, agents or subcontractors), fraud, fraudulent misrepresentation, Intellectual Property infringements and breach of confidentiality obligations.
- 17.2 Notwithstanding anything else contained in these Terms, ITHQ shall not be liable to Client for any Particular Losses, whether direct, indirect or consequential, even if a Party has been advised of the possibility of such losses.
- 17.3 The maximum liability of either party to the other, whether in contract, negligence or other torts or otherwise arising out of or in connection with each Contract, shall not exceed greater of the

Fees paid by the Client in the last 12 months in respect of the Products or Services to which the claim(s) relate; or the sum of £1,000,000.

- 17.4 The Client shall indemnify and keep ITHQ indemnified in respect of any losses, costs, damages, claims and/or expenses incurred by ITHQ due to any claims by any third party arising out of any use of, access to or modification of the Client's systems by ITHQ on the Client's instructions and/or use of any materials supplied to ITHQ by the Client (including, but not limited to, actions in line with Clause 9.2(e)). This indemnity shall survive termination or expiry of a Contract to which it relates.
- 17.5 In the event that the Client (including the Client's agents and subcontractors) fails for any reason to meet their obligations under a Contract including delaying delivery of Products and/or Services, the Client accepts and will pay all reasonable costs sustained or incurred by ITHQ as a result of that delay. Any agreed time schedules shall be deferred to a reasonable period of time (no less than the resulting period of the delay).
- 17.6 Unless ITHQ undertakes Services with an expressly stated outcome of advising a Client in writing on the Products and/or Services which it recommends to meet a particular requirement, the Client acknowledges that it is relying solely upon its own skill and judgement, and not that of ITHQ, in determining the suitability of any Products and/or Services and their fitness for any general or specific purpose.
- 17.7 Where ITHQ makes recommendations and suggests potential Products, or undertakes Services, the Client accepts that they are best placed to know what information may be relevant in respect of their existing and anticipated infrastructure/circumstances. ITHQ shall not be liable for any advice, conclusions or reports which are erroneous or incomplete as a result of the Client's (or their agent's) failure to supply complete and correct information, including any information which may be relevant, but which has not been specifically requested by ITHQ (or their subcontractors).

18. Confidentiality

- 18.1 Each party undertakes to the other that during the Term and thereafter for a period of three (3) years it will keep secret and will not without the prior written consent of that other party disclose to any third party except for a party's legal and professional advisors any Confidential Information learned by the recipient party or disclosed to the recipient party by another party pursuant to or otherwise in connection with this Contract or any Statement of Work, except where any Confidential Information:
- a) comes into the public domain otherwise than through unauthorised disclosure by ITHQ or anyone on its behalf;
 - b) is already known to the recipient party prior to the commencement of the Services;
 - c) is independently developed by the recipient party;
 - d) is lawfully acquired from a third party who owes no duty of confidence to the disclosing party;
- or
- e) is required by any court of competent jurisdiction or by a governmental or regulatory authority to be disclosed or where there is a legal right, duty or requirement to disclose, provided that where possible and without breaching any such requirements two days' notice are given to the disclosing party of any such disclosure.
- 18.2 To the extent that it is necessary to implement the provisions of these Terms the recipient party may disclose Confidential Information to its employees and/or sub-contractors as may reasonably be necessary provided that the recipient party will:
- a) before disclosure, make such employees and/or sub-contractors aware of their obligations of confidentiality under these Terms;

- b) at all times take all reasonable steps to procure compliance with such obligations of confidentiality; and
- c) if requested by the disclosing party, procure named employees to execute a confidentiality agreement directly in favour of the disclosing party.

18.3 Each party acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Clause 18. Accordingly, without prejudice to any other rights and remedies it may have, the disclosing party shall be entitled to the granting of equitable relief including an injunction or specific performance for any threatened or actual breach of any of the provisions of this Clause 18. Nothing in this clause shall relieve either party of liability for fraudulent misrepresentations.

18.3 The provisions of this Clause 18 shall survive the termination of the Contract.

19. Personnel

- 19.1 Client shall have the right to request that ITHQ replaces any person assigned by ITHQ to perform the Services if ITHQ reasonably considers the performance of that person unacceptable or his or her attitude is incompatible with the proper performance of the Services in accordance with the Service Levels.
- 19.2 Client shall not at any time during the term of this Contract to the expiry of twelve months after the date of termination or expiration of the same (as the case may be) solicit, induce to terminate employment or otherwise entice away whether directly or indirectly through another firm or company, employ or attempt to employ any person who is, or shall at any time between the Commencement Date and the date of such termination or expiration of the Contract be one of the ITHQ employees engaged in providing the Services.
- 19.3 If the Client breaches the terms of this undertaking and employs or engages a staff member (without our prior consent), ITHQ reserves the right to charge a fee of 50% of the staff members' annual earnings.

20. Term

The Contract shall take effect as of the Commencement Date and shall continue until completion of the Services or termination in accordance with Clause 21 below.

21. Termination

- 21.1 ITHQ shall be entitled to terminate any Contract and suspend all or any work on current or future deliveries and instalments of Products or the provision of any Services and on written notice to the Client shall be entitled to cancel the undelivered or unperformed portion of the Contract between ITHQ and the Client and deem that the whole of the Fees payable under the Contract or any other agreement shall be payable immediately in the event of:
 - a) the Client ceasing or threatening to cease to carry on business;
 - b) any distress, execution or other legal process being levied upon any of the Client's assets;
 - b) the Client having a receiver or administrative receiver appointed over it or any part of its undertaking or assets or shall pass a resolution for winding up (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction making an order to that effect or Client entering into any voluntary arrangement with its creditors or shall become subject to an administration order, or anything analogous in any jurisdiction in which the Client is located;

- c) if Client is in material breach of these Terms (including a failure to pay any Fees by the relevant Due Date) which is not capable of remedy or which it fails to remedy within 14 days (or as otherwise agreed by ITHQ), or other repeated breaches of the Contract by the Client; or
 - d) ITHQ reasonably anticipating that any of the events mentioned above is about to occur
- 21.2 In the event of termination pursuant to Clause 21.1 above ITHQ shall, for the avoidance of doubt, be entitled to:
- a) recover as damages from the Client all reasonable costs which ITHQ sustains due to such termination; and
 - b) where the Client is being provided with ongoing Services, ITHQ shall be entitled to cease provision of those Services and invoice any Fees which would have been payable over the anticipated period of delivery of those Services.
 - c) In the event of such termination, should the Client have failed to make payment in full for any Software, then the Client shall immediately cease use of all Software (and any updates of same) and, at its own expense, remove from all computers, communications systems and other electronic devices under its control all copies of the Software (and updates) and return or destroy them (certifying in writing to ITHQ that such destruction has taken place).
- 21.3 Client may terminate any Contract by written notice to ITHQ:
- a) in the manner specified in such Statement of Work;
 - b) if not specified in such Statement of Work, by giving ITHQ no less than twelve (12) months' written notice;
 - d) if ITHQ is in material breach of its obligations under that Contract or Statement of Work and ITHQ shall have failed to remedy the breach within thirty (30) days of notice from Client specifying the breach and requiring its remedy.
- 21.4 Upon expiry or termination of the Contract under Clause 21.3:
- (a) ITHQ shall, at the request of Client, complete any work to be performed under any existing Statement of Work and Client shall pay ITHQ for all unpaid fees and reimbursable expenses accrued up to the date of termination;
 - b) where Client is being provided with ongoing Services, ITHQ shall cease provision of these Services;
 - c) upon termination of the Contract, ITHQ agrees to give all reasonable assistance to enable the transition of any of the Services then ongoing or otherwise to an alternative third party service provider (if applicable) as notified to ITHQ by Client. Unless the termination was due to a material breach by ITHQ, the Client is liable to compensate ITHQ for implementing such a service transition on a time and materials basis at ITHQ's standard rates.
- 21.5 Any termination under Clause 21.1 shall entitle ITHQ to enter any of Client's premises and recover any Products and materials which remain the property of ITHQ (and so that Client hereby irrevocably licenses ITHQ, its employees and agents to enter any such premises for that purpose) and also to be paid a reasonable sum for any work carried out by it prior to such termination.
- 21.6 Any termination of this Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party, nor shall it affect the coming into force or the continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.
- 21.7 The exercise of the rights conferred by this Clause 21 shall be without prejudice to any other right enjoyed by ITHQ pursuant to these Terms or by law.

22. Sub Contracting

ITHQ shall be entitled to appoint sub-contractors without the prior written consent of Client. Any sub-contracting by ITHQ will not relieve or discharge ITHQ from any of its obligations or responsibilities under these Terms.

23. Assignment

Client will not assign, transfer, charge or otherwise deal with its rights or obligations under these Terms or any Statement of Work under it or attempt to do any of the above without the prior written consent of ITHQ.

24. Force Majeure

24.1 Neither Party shall be liable to the other Party in any manner whatsoever for any failure or any delay or for the consequences of any delay in performing its obligations under a Contract (save in respect of any obligation to pay money) due to any cause beyond the reasonable control of the Party in question, which for the avoidance of doubt (and without prejudice to the generality of the foregoing) shall include governmental actions, war, riots, civil commotion, fire, flood, epidemic, labour disputes including labour disputes involving the work force or any part thereof of the Party in question, restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials, currency restrictions and acts of God.

24.2 Neither non-payment of Fees by the Customer, nor non-payment of the Customer by their customers, shall be considered a Force Majeure event for the purposes of this clause 24.

25. Non-Waiver

25.1 Any failure or delay in enforcing an obligation or exercising a right, under these Terms, does not amount to a waiver of that obligation or right.

25.2 The waiver of a breach of a term of these Terms does not amount to a waiver of any other term.

26. No Partnership

ITHQ is an independent contractor of Client and nothing in these Terms will be construed as to deem ITHQ, or Consultants to be an employee, servant, partner or joint venture of Client.

27. Remedies Not Exclusive

No remedy conferred by any provisions of these Terms is intended to be exclusive of any other remedy and each and every such remedy will be cumulative.

28. Severability

If any provision of these Terms is declared invalid or unenforceable by any court or authority of competent jurisdiction all other provisions of these Terms will remain in full force and effect and will not in any way be impaired; and the parties will meet to agree a replacement provision which is as close as is legally permissible to the provision found invalid, or unenforceable.

29. Entire Agreement

29.1 These Terms constitutes the whole agreement and understanding between the parties with respect to the subject matter of the Contract and supersede all prior agreements, negotiations and discussions between the parties relating to the subject matter of the Contract.

29.2 These Terms prevail over any conflicting or additional terms of any purchase order, ordering document, acknowledgement or confirmation or other document issued by Client, even if signed and returned.

29.2 Client acknowledges that, save for fraudulent misrepresentation, it has not entered into the Contract in reliance on any statement or representation, whether or not made by ITHQ, except in so far as the representation has been incorporated into these Terms.

29.3 Both parties irrevocably and unconditionally waive any right they may have to claim damages and/or to rescind the Contract by reason of any misrepresentation (other than a fraudulent misrepresentation) not contained in these Terms.

30. Order of Precedence

In the event of any conflict or inconsistency between the various documents forming part of these Terms the following order of precedence shall apply:

- a) the Statement of Works;
- b) the Clauses to these Terms.

31. Notices

Any demand, notice or other communication shall be in writing and may be served by hand or recorded delivery to the registered address of the intended recipient.

32. Variations

No amendment to these Terms will be effective unless made in writing and signed by the parties or their duly authorised representatives. Notwithstanding the foregoing, ITHQ reserves the right to alter these Terms at such time and in such manner as it sees fit and shall publish the current version on the ITHQ website. The version of the Terms which is current at the time of the commencement of a Contract shall apply to that Contract, unless otherwise agreed in writing. ITHQ will supply a hard copy of these Terms on Client request.

33. Dispute Resolution

33.1 Except where expressly provided otherwise in these Terms or any Statement of Work under it, any dispute, performance related issue or other problem arising out of or in connection with the Contract or any Statement of Work under it shall be resolved in accordance with the following Dispute Resolution Procedure.

33.2 Neither party may commence court proceedings in respect of a dispute under the Contract or any Statement of Work under it unless that party has first complied with Clauses 33.3 to 33.5. A party is not required to comply with Clauses 33.3 to 33.5 if the other party fails to comply with, or to give effect to, those Clauses.

33.3 All disputes between the parties arising out of or relating to the Contract or a Statement of Work under it shall be referred, by either party, to the designated contacts (as defined in the relevant Statement of Work) for resolution.

33.4 If any dispute has not been resolved by the designated contacts within a maximum of fourteen (14) days after it has been referred under Clause 33.3, that dispute shall be referred to the Chief Executives (or executive with equivalent authority) of both parties.

33.5 If the dispute has not been resolved by the Chief Executives (or executive with equivalent authority) of both parties in accordance with Clause 33.4 within a maximum of fourteen (14) days after it has been referred under that Clause, either party shall be free to commence court proceedings in accordance with Clause 35.

33.6 Both parties acknowledge that, notwithstanding the provisions of this Clause 33, nothing in these Terms or any Statement of Work under it shall prevent either party from bringing proceedings to protect the Intellectual Property Rights or rights of confidentiality of that party without having first complied with Clauses 33.3 to 33.5.

34. Third Party Rights

The parties agree that the Contracts (Rights of Third Parties) Act 1999 do not apply to the Contract or any Statement of Work under it. No term of the Contract or any Statement of Work under it will be enforceable by any person who is not a party to it (whether in accordance with that Act or otherwise) and this Clause will prevail in the event of any conflict between it and anything else in these Terms or any Statement of Work under it.

35. Law and Jurisdiction

The Contract is governed by the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.