

## ANCORIS LIMITED - TERMS & CONDITIONS

### 1. INTERPRETATION

In these terms & conditions, unless the context otherwise requires, the following words have the following meanings:

- 1.1. "Ancoris", "We/Us/Our" means Ancoris Limited, a company incorporated in England and Wales (Company Number 4830784), having its trading address at Lily Hill House, Lily Hill Road, Bracknell, Berkshire RG12 2SJ and its registered office at 5A Frascati Way, Maidenhead, Berkshire SL6 4UY;
- 1.2. "Charges" means the charges for the Services or Cloud Services, as set out in the Contract;
- 1.3. "Cloud Services" means those items detailed in the Contract which are cloud services, cloud computing services, hosted services or internet services;
- 1.4. "Cloud Services Agreement" means the agreement provided by the operator of, or service provider for the Cloud Services governing the access and use by the Customer of the Cloud Services;
- 1.5. "Confidential Information" means materials, data, information and know-how, regardless of form, transmitted to either party that the disclosing party has identified as being proprietary and/or confidential or which, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential;
- 1.6. "Contract" comprises the Services Schedule, Statement of Work and/or product schedule which refers to these Terms or to which these Terms are attached for the sale and purchase of the Goods and the provision of the Services or Cloud Services and those documents referred to in Clause 2 below;
- 1.7. "Customer", "You/You/Your" means the person, organisation or company who submits an order for Goods, Cloud Services or Services as set out in the Statement of Work.
- 1.8. "Customer Personal Data" means the personal data processed by or on behalf of Ancoris pursuant to a Contract;
- 1.9. "Data Incident" means (a) any unlawful access to Customer Personal Data stored in the Services, Cloud Services operated by or systems, equipment, or facilities of Ancoris or its subprocessors, or (b) unauthorized access to such Services, systems, equipment, or facilities that results in loss, disclosure, or alteration of Customer Personal Data;
- 1.10. "Data Protection Laws" means any applicable law, statute, regulation or sub-ordinate legislation and all policies, codes of conduct, direction, policy rule or order issued by any regulatory body having jurisdiction over a party that is from time to time in force including the Information Commissioner's Office, relating to data protection, privacy and the processing of Personal Data, including:
  - (a) the Data Protection Act 2018;
  - (b) Privacy and Electronic Communications (EC Directive) Regulations 2003;
  - (c) the GDPR; and
  - (d) any corresponding or equivalent national laws or regulations to any of the above and any applicable laws replacing, amending, extending, re-enacting or consolidating any of the above from time to time.
- 1.11. "Data Subject Requests" means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Laws;
- 1.12. "End User Licence Agreement" means the end user licence agreement applicable to those Goods which are software products;
- 1.13. "GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing EU Directive 95/46/EC;
- 1.14. "Goods" means those goods detailed in the Contract, including licences for software products or hardware products as appropriate;
- 1.15. "Personal Data" has the meaning given to it by the Data Protection Laws;
- 1.16. "Price" means the price for the Goods as set out in the Contract;
- 1.17. "Services" means the services detailed in the Contract (consisting of some or all of the following: installation, implementation, Training Course, support, maintenance services, consultancy, software development and/or customisation services) provided by Ancoris or its subcontractors;

- 1.18. "Statement of Work" or "SOW" means the document referred to in the Services Schedule which sets out the implementation, consultancy, development and/or customisation services;
- 1.19. "these Terms" means these terms & conditions;
- 1.20. "Training Course" means any training course as detailed in a Statement of Work;
- 1.21. "Training Course Date" means the date on which a Training Course will commence as set out in the Statement of Work;
- 1.22. "Transfer Solution" means a solution, that enables the lawful transfer of personal data to a third country in accordance with Article 45 or 46 of the GDPR (for example, the EU-U.S. Privacy Shield).
- 1.23. The terms "Personal Data", "processing", "controller" and "processor" shall have the meanings ascribed to them in the Data Protection Laws.
- 1.24. The headings in these Terms are for convenience only and shall not affect their interpretation.
- 1.25. Where these Terms state that Ancoris will 'sell' or the Customer will 'purchase' software products (or similar words), what is meant is that the Customer is being granted a licence to use the software products and will not have any ownership of the software products other than the medium on which they are supplied.
- 1.26. Where these Terms state that Ancoris will 'sell' or 'provide' or the Customer will 'purchase' Cloud Services (or similar words), what is meant is that the Customer is being licensed to use the Cloud Services for the specified period of subscription under the terms and conditions of the Cloud Services Agreement.

## **2. ORDERS**

- 2.1. Ancoris agrees to sell the Goods and to provide those Services and Cloud Services to the Customer as set out in the Contract.
- 2.2. Ancoris acknowledges that those Goods comprising software products are licensed in accordance with the Contract and the End User Licence Agreement.
- 2.3. The quantity, quality and description of, and/or any specification for, the Goods, Services and Cloud Services shall be those set out in the Contract.
- 2.4. Customer acknowledges that access to and use of the Cloud Services are provided in accordance with the Contract and the Cloud Services Agreement.
- 2.5. The Customer is responsible for ensuring that the Goods and/or Cloud Services are suitable to meet its requirements and Ancoris makes no representation or warranty that the Goods, Services or Cloud Services will meet a particular requirement of the Customer.
- 2.6. Any terms & conditions put forward by the Customer in any order which conflict with these Terms or the content of the Contract are rejected.
- 2.7. No order accepted by Ancoris may be cancelled by the Customer. Acceptance of an order by Ancoris takes place when Ancoris receives a signed Services Schedule from the Customer and either Ancoris signs the Services Schedule or, if sooner, supplies the Goods and/or commences the provision of Services in accordance with the Terms of the contract.

## **3. DELIVERY, INSTALLATION & ACCEPTANCE OF THE GOODS**

- 3.1. Ancoris will use reasonable efforts to deliver the Goods by the date quoted for delivery but such date is not guaranteed nor shall the time for delivery be of the essence. The Goods may be delivered by Ancoris in advance of the quoted delivery date upon giving reasonable notice to the Customer, and by instalments.
- 3.2. Each delivery shall be subject to these Terms and failure to make any one delivery shall not vitiate the Contract as to others.
- 3.3. The Customer will allow Ancoris such access to the Customer's premises as is necessary for the purpose of installing the Goods, providing the Services and/or Cloud Services and will make available such electrical connections, secure environment and other facilities as are necessary to enable Ancoris to perform the Contract. The Customer will provide a healthy and safe working environment that complies with all Health & Safety laws and regulations for Ancoris's employees and/or subcontractors at the Customer's premises. The Customer will provide all assistance required by Ancoris to enable it to carry out the installation of the Goods, Services and Cloud Services in accordance with the Statement of Work.

## **4. CLOUD SERVICES**

- 4.1. Customer acknowledges that, unless stated otherwise, Ancoris is not the operator or service provider of the Cloud Services and Ancoris's sole responsibility is as their agent to collect payment on behalf of the operator or provider of the Cloud Services.
- 4.2. Customer acknowledges that the use by Customer of the Cloud Services is subject to the Cloud Services Agreement between Customer and the operator or service provider of such services.
- 4.3. Ancoris will use reasonable efforts to arrange provisioning of the Cloud Service by the date quoted for provisioning but such date is not guaranteed nor shall the time for provisioning be of the essence.

## **5. SERVICES**

- 5.1. Ancoris agrees to provide the Services to the Customer with reasonable skill and care.
- 5.2. Software support, maintenance and/or software updates are provided in accordance with Ancoris' or software publisher's then prevailing Maintenance or Support Policy and (unless stated) pricing is based on an annual period.
- 5.3. Ancoris will use reasonable endeavours to provide Training Courses on the Training Course dates but all dates are only estimated and not guaranteed.
- 5.4. Ancoris will use reasonable endeavours to provide the Services on the dates set out in the Statement of Work but time is not of the essence and all dates are only estimated and not guaranteed.
- 5.5. Unless agreed otherwise in the Statement of Work all Services are provided on a time and materials basis only.
- 5.6. Customer will allow Ancoris employees, agents and/or subcontractors access to sufficient and adequate facilities, equipment, power supplies, computers and systems to allow us to provide the Services in accordance with the Contract.
- 5.7. Customer will take all reasonable steps to provide a safe working environment that complies with all health and safety laws and regulations for Ancoris employees and/or subcontractors at the Customer's Premises.
- 5.8. Services ordered are non-cancellable and non-refundable. Where delivery dates for Training Courses and/or consulting days have not been fixed in the Services Schedule, Services must be taken up or delivery requested within six (6) months from the date of order after which they expire and are non-cancellable and non-refundable.

## **6. RESCHEDULING TRAINING**

- 6.1. Ancoris has the right at any time to cancel or reschedule the provision of any Training Course and will endeavour to provide reasonable notice of the cancellation or change, except in an emergency or where the cancellation or change arises as a result of a event of Force Majeure.
- 6.2. In the event of cancellation by Ancoris of any part or all of the Training Course, We will endeavour to reschedule the provision of the Training Course. Customer will not be entitled to a refund of the Charges for any Training Course cancelled by Ancoris unless We are unable to reschedule the Training Course to another date.
- 6.3. Customer may request to reschedule the provision of any Training Course by giving Ancoris at least 14 days' written notice prior to the Training Course Date.
- 6.4. If Customer reschedules the provision of any Training Course with less than 14 days and more than 7 days written notice prior to the Training Course Date, Customer will be required to pay an additional rescheduling charge of 50% of the Charges for the relevant Training Course.
- 6.5. If Customer reschedules the provision of any Training Course with less than 7 days written notice prior to the Training Course Date Customer will be required to pay an additional rescheduling charge of 100% of the Charges for the relevant Training Course.
- 6.6. Customer may not reschedule any Training Course later than 6 months after the date of the order for the Training Course.

## **7. PRICE AND CHARGES**

- 7.1. The Customer will pay to Ancoris the Price for the Goods and Charges for the Services and Cloud Services in accordance with the Contract.
- 7.2. Ancoris reserves the right to alter the Price and/or Charges to reflect any increase in the cost to Ancoris which is due to any factor beyond the control of Ancoris.

## **8. TERMS OF PAYMENT**

- 8.1. Subject to any special terms agreed in writing between the Customer and Ancoris, Ancoris will invoice the Customer for the Price on delivery of the Goods; Charges for Cloud Services on provisioning; Charges for Services are invoiced on receipt of order, unless otherwise stated in the Contract or Statement of Work.

- 8.2. The Customer shall pay all invoices in full without deduction or set off in pounds sterling and cleared funds, 30 days from the date of the invoice (the "Due Date").
- 8.3. If the Customer fails to pay Ancoris any sum due by the Due Date, in addition to any other remedies, Ancoris shall be entitled to:
  - 8.3.1. subject always to clause 12.3.1, terminate the Contract in whole or in part, and/or suspend provision of the Services or Cloud Services and/or suspend any further deliveries to the Customer under the particular Contract or any other contract then in force between the parties;
  - 8.3.2. appropriate any payment made by the Customer to such of the Goods, Cloud Services and Services (or the goods or services supplied under any other contract between the parties) as Ancoris may think fit; and
  - 8.3.3. charge interest on the balance outstanding of any invoice in accordance with the provisions of and at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998 from the Due Date until payment is received (before or after judgment) and Ancoris may in addition charge the Customer the cost of recovery action.
- 8.4. Notwithstanding that title to the Goods has not passed, Ancoris will be entitled to an action on the Price.

## 9. TITLE TO GOODS

- 9.1. Risk of damage to or loss of the Goods shall pass to the Customer:
  - 9.1.1. in the case of Goods to be delivered at Ancoris's premises, at the time when Ancoris notifies the Customer that the Goods are available for collection; or
  - 9.1.2. in the case of Goods to be delivered otherwise than at Ancoris's premises, at the time of delivery or, if the Customer fails to take delivery of the Goods, the time when the delivery of the Goods is attempted, and the Customer should make arrangements to insure accordingly.
- 9.2. Notwithstanding delivery and the passing of risk in the Goods, title to the Goods shall not pass to the Customer until Ancoris has received in cash or cleared funds payment in full of the Price and all sums due in respect of any other Goods sold or provided by Ancoris to the Customer for which payment is then due.
- 9.3. Until such time as title to the Goods passes to the Customer, the Customer shall hold the Goods as Ancoris's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected, insured and identified as Ancoris's property.
- 9.4. In the event of insolvency of the Customer or termination of the Contract, Ancoris's consent to the Customer's possession of the Goods is automatically withdrawn and the Customer shall neither use nor install the Goods until payment in full is received by Ancoris.
- 9.5. Until such time as title to the Goods passes to the Customer (and provided that the Goods are still in existence and have not been resold) Ancoris shall be entitled at any time to require the Customer to deliver up the Goods to Ancoris and, if the Customer fails to do so immediately, to enter any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

## 10. WARRANTIES

- 10.1. So far as it is possible to do so and subject to the manufacturer's warranty terms Ancoris passes to the Customer the benefit of all manufacturers' warranties in respect of the Goods as set out in the End User Licence Agreement or otherwise. For the avoidance of doubt, Ancoris provides no warranties whatsoever in respect of the Goods and shall be under no liability in respect of such warranties as may be set out in the End User Licence Agreement or otherwise given by the manufacturer in respect of the Goods.
- 10.2. So far as it is possible to do so and subject to the Cloud Services Agreement Ancoris passes to the Customer the benefit of all manufacturers' warranties or service level agreements in respect of the Cloud Services as set out in the Cloud Services Agreement or otherwise in writing. For the avoidance of doubt, Ancoris provides no warranties whatsoever in respect of the Cloud Services and shall be under no liability in respect of such warranties set out in the Cloud Services Agreement or otherwise given by the service provider or operator in respect of the Cloud Services.
- 10.3. Subject as expressly provided in these terms & conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

## 11. LIABILITY

- 11.1. If Ancoris fails to deliver the Goods for any reason, its liability shall be limited to the Price to the Customer (in the cheapest available market) of similar goods to repair or replace the Goods not delivered.
- 11.2. The parties agree that:
  - 11.2.1. where repair or replacement of the Goods does not remedy the direct loss suffered by the Customer in connection with the Contract, Ancoris's liability shall not in any event exceed the Price in each particular instance of the Goods giving rise to each incidence or series of related incidents causing the loss or damage;
  - 11.2.2. Ancoris's liability in respect of loss or damage caused by Ancoris's breach of contract or negligence in providing the Service or Cloud Services shall not in any event exceed 125% of the Charges paid by the Customer for the relevant Services or Cloud Services giving rise to the incidence or series of related incidents causing the loss or damage; and
  - 11.2.3. each party's maximum liability in contract, tort or otherwise for physical damage to the other party's tangible personal property resulting from its negligence shall not exceed £1,000,000 sterling.
- 11.3. Ancoris shall not have any liability in respect of:-
  - 11.3.1. any part not provided by Ancoris which is incorporated in the Goods, except that any benefit obtainable or enforceable by Ancoris from or against the manufacturer of such part (without legal or other expenses whatsoever) shall be passed to the Customer;
  - 11.3.2. any defect caused by accident, misuse, neglect, tampering with or unauthorised modification of the Goods or any attempt at internal adjustment or repair by any person not authorised in writing by Ancoris;
  - 11.3.3. any defect in the Goods found after the expiry of any warranty period;
  - 11.3.4. any representation (other than fraudulent misrepresentation) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract; and
  - 11.3.5. any loss of income or profit, damage, costs, expenses or anticipated savings or indirect, special or consequential loss or other claims of any kind howsoever arising which arise out of or in connection with the Contract and/or the provision of the Services or Cloud Services, the supply of the Goods or their use by the Customer, except as expressly provided in these terms & conditions or the Contract.
- 11.4. Ancoris does not seek to limit its liability in respect of death or personal injury caused by Ancoris's negligence.
- 11.5. The parties agree the provisions of this clause are reasonable and a fair apportionment of risk bearing in mind the amount being charged by Ancoris for the Goods, Cloud Services and Services.

## 12. TERMINATION

- 12.1. Either party may terminate the Contract immediately upon written notice to the other party in the event of any material breach of these Terms or the Contract by the other party provided any such breach is not remedied (if remediable) within 30 days after the service of written notice requiring the breach to be remedied.
- 12.2. Ancoris may terminate the Contract immediately upon written notice to the Customer if the Customer becomes insolvent or enters into liquidation passes a resolution for its winding up, has a receiver, manager, trustee or similar officer appointed over the whole or any part of its business or assets, or enters into administration or makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt, or ceases or threatens to cease to trade.
- 12.3. Ancoris may by giving not less than 14 days' notices terminate:
  - 12.3.1. the Contract or all or any part of the Services or provision of the Cloud Services or any Statement of Work if the Customer fails to pay the Price or the Charges by the Due Date.
  - 12.3.2. the Contract or any Statement of Work in the event the Customer breaches any of the terms of the Cloud Services Agreement or End User Licence Agreement.
- 12.4. On the termination of the Contract all rights and obligations of the parties under these Terms shall automatically terminate except for such rights of action as shall have accrued prior to such termination and any obligations which expressly or by implication are intended to come into or continue in force on or after such termination.
- 12.5. On termination of the Contract the Customer will pay Ancoris all sums due or otherwise invoiced and not yet due.

- 12.6. Should the Customer's licence to use the software products or Cloud Services terminate for any reason preventing Ancoris from performing any of the Services or continued provision of the Cloud Services as set out in the Contract the Customer shall not be entitled to a refund of any Charges paid in advance and will indemnify Ancoris for any loss it suffers as the result of such early termination.

### **13. CONFIDENTIAL INFORMATION**

- 13.1. Each party shall retain in confidence and require its employees, agents and contractors, to retain in confidence all Confidential Information.
- 13.2. The receiving party shall retain Confidential Information in as secure a manner as reasonably possible, but in no event less secure than the receiving party retains its own Confidential Information. Confidential Information shall remain the sole property of the disclosing party and shall not be disclosed to any third party without the express written consent of the disclosing party (except, solely for the receiving party's internal business needs, to consultants who are bound by a written agreement with the receiving party to maintain the confidentiality of such Confidential Information in a manner consistent with this Agreement).
- 13.3. Confidential Information shall not include any information that:
  - 13.3.1. is at the time of disclosure or subsequently becomes publicly available without the receiving party's breach of any obligations owed to the disclosing party; or
  - 13.3.2. the receiving party can demonstrate was known to it prior to the disclosing party's disclosure of such information to the receiving party; or
  - 13.3.3. became known to the receiving party from a source other than the disclosing party other than by the breach of an obligation of confidentiality owed to the disclosing party; or
  - 13.3.4. is independently developed by the receiving party; or
  - 13.3.5. is produced in compliance with applicable law or a court order, provided the other party is given reasonable notice of such law or order and an opportunity to attempt to preclude or limit such production.
- 13.4. This clause shall survive termination of the Contract.

### **14. DATA PROCESSING AGREEMENT**

- 14.1. Customer warrants that it shall comply with all provisions of the Data Protection Laws, including without limitation, that Customer has, as appropriate, obtained all necessary consents from relevant individuals whose personal data Customer requests Ancoris to process from time to time.
- 14.2. For the purposes of the provision of Services and in respect of Customer Personal Data, the parties agree that Customer shall be the controller and Ancoris shall be a processor. Ancoris shall comply with its obligations as a processor under the Data Protection Laws.
- 14.3. If the Data Protection Laws apply to the processing of Customer Personal Data and Customer is a processor, Customer warrants to Ancoris that Customer's instructions and actions with respect to that Customer Personal Data, including its appointment of Ancoris sub-processor, has been authorized by the relevant controller.
- 14.4. The parties agree and acknowledge that the Data Protection Laws apply to the processing of personal data
- 14.5. For the avoidance of doubt, where Customer purchases a licence for Cloud Services from Ancoris, and Ancoris is acting as reseller and is not the service provider, then Ancoris is not a processor under the terms of the Data Protection Laws with respect to any Customer Personal Data held or otherwise processed in the Cloud Services but the relevant Cloud Services provider shall be the processor.
- 14.6. Ancoris shall process such Customer Personal Data as is necessary for Ancoris to provide the Services, which will be more specifically described in the Statement of Work; and in accordance with obligations of data processors under the Data Protection Laws, as follows:
  - 14.6.1. Ancoris will process Customer Personal Data only in accordance with Customer's documented instructions as set out in this Clause 14 and in the Statement of Work as updated in writing from time to time;
  - 14.6.2. Ancoris will implement and maintain technical and organizational measures including its CyberEssentials Plus Certification to protect Customer Personal Data against accidental loss, destruction of or damage to Customer Personal Data, such measures to be appropriate to the harm that might result from the unauthorised or unlawful processing or accident loss, destruction or damage and the nature of the data to be protected having regard to the state of technological development and the cost of implementing any measures; Ancoris may update or modify the security measures from time to time provided

that such updates and modifications do not result in the degradation of the overall security of Customer Personal Data.

- 14.6.3. Ancoris will take appropriate steps to ensure security of processing by its employees, contractors and subprocessors to the extent applicable to their scope of performance, including ensuring that all persons authorized to process Customer Personal Data have entered into written obligations of confidentiality or are under an appropriate statutory obligation of confidentiality.
- 14.7. Subprocessors. Customer authorises Ancoris to appoint subprocessors where the subprocessor is capable of providing the level of protection for Customer Personal Data required by these Terms and the processing is governed by a written contract including terms which offer at least the same level of protection for Customer Personal Data as those set out in these Terms and meet the requirements of article 28(3) of the GDPR; and any Transfer Solution. A list of current subprocessors are at [www.ancoris.com/subprocessors](http://www.ancoris.com/subprocessors). Customer consents to Ancoris engaging such sub-processors provided that Ancoris:
  - 14.7.1. provides to Customer details of any new sub-processor appointed during the lifetime of the Contract;
  - 14.7.2. notifies Customer in advance of any change in a sub-processor. Customer may object to any change in the sub-processor where it has reasonable grounds for doing so and in such circumstances Ancoris shall be entitled to address the objection through one of the following options at its sole discretion:
    - 14.7.2.1. cease to use the relevant sub-processor;
    - 14.7.2.2. take steps suggested by Customer to address the objection; and
    - 14.7.2.3. cease to provide the particular Services which involves the relevant sub-processor.
- 14.8. Data Subject Requests. If Ancoris receives a Data Subject Request in relation to Customer Personal Data, Ancoris will promptly refer it to Customer, and Customer will be responsible for handling the Data Subject Request at Customer's cost. Ancoris will provide reasonable assistance to Customer in fulfilling any obligation to respond to Data Subject Requests in accordance with its obligations under Data Protection Laws taking into account the nature of processing and the information available to Ancoris;
- 14.9. Data Deletion and Data Export. Unless otherwise required by law, Ancoris will either delete or return all personal data to Customer at the termination or expiry of the Contract. If Customer reasonably requests the return of Customer Personal Data, Ancoris may charge a fee (based on Ancoris' reasonable costs) for any data export if such costs are not specifically provided for in the Contract. Ancoris will provide Customer with further details of any applicable fee, and the basis of its calculation, in advance of any such review or audit.
- 14.10. Data Protection Impact Assessment and Prior Consultation. Ancoris will at the cost of Customer provide reasonable assistance to Customer with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Customer reasonably considers to be required in accordance with Data Protection Laws, in each case solely in relation to processing of Company Personal Data by, and taking into account the nature of the processing and information available to, Ancoris.
- 14.11. Audits. Ancoris will allow Customer or an independent auditor appointed by Customer to conduct audits (including inspections) to verify Ancoris' compliance with its obligations under this Clause 14. Ancoris may charge a fee (based on Ancoris' reasonable costs) for any audit. Ancoris will provide Customer with further details of any applicable fee, and the basis of its calculation, in advance of any such review or audit. Customer will be responsible for any fees charged by any third party appointed by Customer to execute any such audit.
- 14.12. Data Incidents. If Ancoris becomes aware of a Data Incident, Ancoris will: (a) notify Customer of the Data Incident promptly and without undue delay; and (b) promptly take reasonable steps to minimize harm and secure Customer Personal Data. Ancoris will not assess the contents of Customer Personal Data in order to identify information subject to any specific legal requirements. Customer is solely responsible for complying with Data Incident notification requirements applicable to Customer under Data Protection Laws and fulfilling any third party notification obligations related to any Data Incident(s). Ancoris' notification of or response to a Data Incident will not be construed as an acknowledgement by Ancoris of any fault or liability with respect to the Data Incident.

- 14.13. Customer's Security Assessment. Customer is solely responsible for evaluating for itself whether the Cloud Services, the Services, the Security Measures and Ancoris' commitments under this Clause 14 will meet Customer's needs, including with respect to any security obligations of Customer under the Data Protection Laws or other legislation as applicable. Customer acknowledges and agrees that (taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of Customer Personal Data as well as the risks to individuals) the Security Measures implemented and maintained by Ancoris provide a level of security appropriate to the risk in respect of the Customer Data.
- 14.14. Customer shall indemnify and keep indemnified Ancoris against any third party claim in relation to the processing of Customer Personal Data by Ancoris, including arising from any breach by Customer of Data Protection Laws or any fine or levy imposed by a Supervisory Authority.

## **15. INTELLECTUAL PROPERTY RIGHTS**

- 15.1. All Intellectual Property Rights in any software developed or other deliverables provided by Ancoris as part of the Services belongs to Ancoris. Ancoris grants to Customer a non-exclusive, non-transferable, licence to use the software or deliverables for Customer's own internal business purposes:
- 15.1.1. a limited period of use as specified in the Contract in which case all software or deliverables shall be deleted by Customer on expiry of the specified term; or
- 15.1.2. where the software is developed for delivery to Customer as a managed service or Cloud Service limited to the period and subject to the terms of the specific Cloud Services Agreement provided by Ancoris.
- 15.2. Customer is prohibited from copying, amending, and/or modifying any part or all of the software or deliverables without Ancoris' express prior written consent.

## **16. FORCE MAJEURE**

- 16.1. Ancoris shall not be liable for any delay or for the consequences of any delay in performing any of its obligations under the Contract if such delay is due to any cause whatsoever beyond its reasonable control (which shall include but not be limited to default of suppliers or sub-contractors, power or telecommunications failures or outages, equipment failure) and Ancoris shall be entitled to a reasonable extension of the time for performing such obligations. If such delay or failure persists for more than six (6) weeks then either party may terminate the Contract without further liability.
- 17.1. The Contract is personal to Customer and Customer shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

## **18. NOTICES**

- 18.1. Any notice to a party under these Terms shall be in writing, signed by or on behalf of the party giving it, and shall, unless delivered to a party personally, be left at, or sent by prepaid first class post, prepaid recorded delivery or email to the address of the party as set out in the Contract or as otherwise notified in writing from time to time and shall have effect 2 days after posting or or after one (1) day if sent by email.

## **19. NON-POACHING OF STAFF**

- 19.1. Customer shall not, during the term of the Contract, and for a further period of six (6) months after the termination or expiry of the Contract, hire any person employed by Ancoris who has been actively involved in the performance of the Services without the express prior written consent of Ancoris. In addition to Ancoris's other rights and remedies, Customer shall pay Ancoris as liquidated damages a sum equivalent to 30% of the gross annual salary and all benefits and emoluments of the employee, representing the recruitment and training costs to Ancoris of replacing the employee and anticipated loss of profit or other loss attributable to the departure of the employee.

## **20. VARIATION**

- 20.1. No variation of these Terms shall be binding unless agreed in writing between the authorised representatives of Ancoris and Customer.

## **21. WAIVER OF REMEDIES**

- 21.1. No failure or delay by either party in exercising any of its rights under these Terms shall be deemed to be a waiver of that right, and no waiver by either party of any breach of these Terms by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.

## **22. SEVERABILITY**



22.1. In the event that all or any part of these Terms shall be determined by any competent authority shall be invalid, unlawful or unenforceable to any extent such term, condition or provision shall to that extent be severed from the remaining Terms which shall continue to be valid and enforceable to the fullest extent permitted by law.

**23. EXCLUSION OF THIRD PARTIES RIGHTS**

23.1. The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.

**24. GOVERNING LAW AND JURISDICTION**

24.1. English law shall be the applicable law of these Terms and the parties agree to submit to the exclusive jurisdiction of the English courts.

Edition 4.2 – May 2018