

# BCN Group Ltd

## Terms and Conditions

### PARTIES

(1) **BCN Group Ltd** a company incorporated in England and Wales under number 06893253 whose registered office is at Trident 3, Trident Business Park, Styal Road, Manchester Airport, M22 5XB (**BCN Group**); and

(2) The company, limited liability partnership, partnership, individual or other business entity named as the Customer in Schedule 9 (**Customer**) (each of BCN Group and the Customer being a **party** and together BCN Group and the Customer are the **parties**).

### BACKGROUND

A. BCN Group is an experienced provider of Information Technology managed services.

B. The Customer wishes to appoint BCN Group to provide and manage certain Information Technology managed services to support its business operation.

### THE PARTIES AGREE:

#### 1. Definitions and interpretation

**1.1.** Words shall have the meanings given to them in this Agreement, including without limitation as set out below:

<b>Associate</b>	means in relation to a party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with that party from time to time;
<b>Authorised Contact</b>	means each authorised representative appointed by each of the Customer and BCN Group whose details are set out in Schedule 9, or as otherwise notified to the other party in writing;
<b>Business Day</b>	means a day other than a Saturday, Sunday or bank or public holiday in England;
<b>Contractual Change Request</b>	means a note which details the impact a proposed contractual change will have on any part of this Agreement in the form prescribed in Schedule 10;
<b>Confidential Information</b>	means any and all confidential information, (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed by one party to the other or otherwise obtained by one party relating to the other's business, finance or technology, Know-how, Intellectual Property Rights, assets, strategy, products and customers, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any Associate, person, firm, or organisation associated with that party;

<b>Contractor</b>	means any direct or indirect contractor of BCN Group;
<b>Contract Year</b>	means each consecutive period of 12 months commencing from the Commencement Date;
<b>Contracts</b>	means the contracts between the Customer and third parties in existence immediately prior to the Commencement Date and relating to functions that form part of the Services;
<b>Control</b>	means the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the management of the company and <b>Controls</b> and <b>Controlled</b> shall be interpreted accordingly;
<b>Customer Data</b>	means all data, information and other materials in any form relating to the Customer (or its customers) and which may be accessed, generated, collected, stored or transmitted by BCN Group (or any BCN Group contractor) in the course of the performance of the Services;
<b>Customer Materials</b>	means any Customer Policies and Procedures, Software, Customer Data, calculations, algorithms, methods, information and other materials created or supplied by the Customer and made available to BCN Group for use in the Services;
<b>Customer Responsibilities</b>	means the responsibilities of the Customer specified in Schedule 8;
<b>Dispute Resolution Process</b>	means the internal process set out in Schedule 9 for resolution of disputes related to this Agreement;
<b>Equipment</b>	means all components, materials, plant, tools, test equipment, hardware, firmware, computing and data communications equipment and where appropriate Software and any related documentation used in the provision of the Services;
<b>Existing Customer Equipment</b>	means Equipment used in the provision of services by the Customer prior to Service Go-Live;
<b>Exit Period</b>	means the period during which BCN Group shall provide Exit Services as specified in Schedule 11;
<b>Exit Services</b>	means the services identified as such in Schedule 11;
<b>Fees</b>	means the fees payable by the Customer to BCN Group for the provision of the Services set out in Schedule 7;
<b>Force Majeure</b>	means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from performing its obligations hereunder, including

	without limitation war, revolution, terrorism, riot or civil commotion, or reasonable precautions against any such; strikes, lock outs or other industrial action, whether of the affected party's own employees or others; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire, corrosion, flood, natural disaster, or adverse weather conditions. Force Majeure does not include inability to pay, mechanical difficulties, shortage or increase of price of raw materials, over-commitment or market or other circumstances which may make the terms of this Agreement unattractive to a party;
<b>Group</b>	in relation to a company means that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company;
<b>Installation Services</b>	means the services identified as such in Schedule 1;
<b>Initial Term</b>	has the meaning given in clause 2.1;
<b>Intellectual Property Rights</b>	means copyright, patents, rights in inventions, rights in confidential information, Know-how, trade secrets, trademarks, service marks, trade names, design rights, rights in get-up, database rights, rights in data, semi-conductor chip topography rights, mask works, utility models, domain names, rights in computer software and all similar rights of whatever nature and, in each case: (i) whether registered or not, (ii) including any applications to protect or register such rights, (iii) including all renewals and extensions of such rights or applications, (iv) whether vested, contingent or future and (v) wherever existing;
<b>Know-how</b>	means inventions, discoveries, improvements, processes, formulae, techniques, specifications, technical information, methods, tests, reports, component lists, manuals, instructions, drawings and information relating to customers and suppliers (whether written or in any other form and whether confidential or not);
<b>Managed Contract</b>	means a Contract designated as such pursuant to Schedule 5;
<b>Managed Services</b>	means the services identified as such in Schedule 2;
<b>New Employer</b>	means BCN Group (or where the Relevant Transfer is to a Contractor, such Contractor);
<b>Quality Standards</b>	means the quality standards set out in clause 4;
<b>Relevant Employee</b>	means any employee of BCN Group or of any Contractor;

<b>Relevant Transfer</b>	means any relevant transfer of any Relevant Employee to or to any Contractor for the purposes of TUPE;
<b>Replacement Supplier</b>	means any person (including the Customer itself) who replaces BCN Group to provide services to the Customer of a similar nature to the Services (or any part thereof);
<b>Retained Contracts</b>	means all Contracts that are not Managed Contracts or Transferred Contracts;
<b>Scheduled Go-Live</b>	means the date on which the Managed Services are scheduled to go live, as set out in Schedule 1;
<b>Service Level Default</b>	means a failure to meet a Service Level which is not excused pursuant to paragraph 3 of Schedule 4;
<b>Service Levels</b>	means the standards of performance to which the Services are to be performed, as specified in Schedule 4;
<b>Services</b>	means the services referenced in clause 3;
<b>Software</b>	means any computer program (in object code or source code form), program interfaces and any tools or object libraries embedded in that software;
<b>BCN Group Personnel</b>	means an employee, worker, consultant or subcontractor of BCN Group tasked with undertaking duties in connection with this Agreement;
<b>Support and Maintenance Services</b>	means the services identified as such in Schedule 3;
<b>Supplied Equipment</b>	means any new Equipment supplied to the Customer by BCN Group
<b>Term</b>	means the Initial Term, together with any renewals granted in accordance with clause 2;
<b>Termination Costs</b>	means those amounts identified as such in Schedule 7;
<b>Transferred Contract</b>	means a Contract designated as such pursuant to Schedule 5;
<b>Transferring Equipment</b>	means any Existing Customer Equipment to be transferred to BCN Group for the performance of the Services; and
<b>VAT</b>	means value added tax, as defined by the Value Added Tax Act 1994.

## 1.2. Interpretation

In this Agreement:

1.2.1. a reference to this Agreement includes its schedules, appendices and annexes (if any);

1.2.2. words in the singular include the plural and vice versa;

1.2.3. any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions shall be construed as illustrative only and shall not limit the sense of any word, phrase, term, definition or description preceding those words;

1.2.4. the table of contents, background section and any clause, schedule or other headings in this Agreement are included for convenience only and shall have no effect on the interpretation of this Agreement; and

1.2.5. a reference to legislation is a reference to that legislation as amended, extended, re-enacted or consolidated from time to time.

## **2. Duration**

**2.1.** This Agreement commences on the Commencement Date and shall continue for 36 months (**Initial Term**) at which point it shall be renewed automatically for successive periods of 12 months, unless terminated earlier:

2.1.1. for convenience by the Customer at any time within the first three months of the Initial Term or on not less than *six months'* written notice to BCN Group, provided that:

- (a) such notice may not be issued until after the end of the initial term; and
- (b) The Customer shall pay the Termination Costs to BCN Group;

2.1.2. in accordance with clause 20; or

2.1.3. *[identify any other specific early termination rights (e.g. if any specified contingencies or conditions precedent have not been satisfied).]*

## **3. Services**

**3.1.** BCN Group shall use its reasonable endeavors to provide to the Customer the Installation Services in accordance with Schedule 1.

**3.2.** BCN Group shall use its reasonable endeavors to provide to the Customer the Managed Services set out in Schedule 2.

**3.3.** BCN Group shall use its reasonable endeavors to provide to the Customer the Support and Maintenance Services as set out in Schedule 3.

**3.4.** BCN Group shall use its reasonable endeavors to provide to the Customer the Exit Services set out in Schedule 11.

**3.5.** BCN Group may from time to time temporarily withdraw or make alterations to the Services or to the Software for the technical, security, maintenance and other operational reasons. BCN Group shall use its reasonable endeavors to give the Customer reasonable advance notice of any such downtime or alterations, but the Customer acknowledges and agrees that on occasion such downtime or alterations, for technical, security, maintenance or other reasons, may have to be made on short notice (or without notice). BCN Group shall use its reasonable endeavors to minimize any negative impact of such changes upon the Services, and upon the Customer's business. And will wherever reasonably possible seek to avoid any reduction in core functionality of the Software and the Services.

## **4. Quality Standards**

4.1. BCN Group shall provide the Services in accordance with the Service Levels and the following quality standards:

4.1.1. *ISO27001*

## **5. BCN Group warranties**

**5.1.** BCN Group warrants and represents to the Customer that:

5.1.1. BCN Group has the right, power and authority to enter into this Agreement, to grant to the Customer the rights (if any) contemplated in this Agreement and to supply the Services;

5.1.2. the Services do not and shall not infringe the Intellectual Property Rights of any third party; and

5.1.3. the Services will be performed:

(a) with all due skill, care and diligence;

(b) in compliance with the Service Levels and the Quality Standards;

(c) in compliance with such Customer Policies and Procedures as are relevant to BCN Group's provision of the Services;

(d) so as to conform with all statutory requirements and applicable regulations relating to the provision of the Services; and

(e) in a manner which shall not cause any unanticipated interruption to the Customer's business (other than any agreed and unavoidable interruption which is required in order to perform the Services in a proper and efficient manner).

**5.2.** BCN Group will not be liable under this clause or be required to remedy any problem arising from or caused by the Customer's use of the Services in a manner other than as directed by BCN Group.

**5.3.** BCN Group does not warrant or represent that the Services will be free from errors and interruptions.

**5.4.** The warranties and representations specified in this clause above are subject to the Customer giving notice to BCN Group as soon as it is reasonably able to upon becoming aware of the breach of warranty or representation. When notifying BCN Group of a breach the Customer shall use its reasonable endeavors to provide BCN Group with such documented information, details and assistance as BCN Group may reasonably request.

**5.5.** All other BCN Group warranties and representations whether statutory or implied, are hereby excluded to the fullest extent permitted by law. This does not exclude any liability for fraudulent misrepresentation.

## **6. Customer warranties**

**6.1.** The Customer warrants and represents to BCN Group that:

6.1.1. The Customer has the right, power and authority to enter into this Agreement, to grant to BCN Group the rights contemplated in this Agreement and to receive the Services;

6.1.2. any Customer Materials do not and shall not infringe the Intellectual Property Rights of any third party;

6.1.3. it has in place appropriate virus protection and information security measures and it acknowledges and accepts that BCN Group in providing the Services may cause damage or interruption to the Customer's Equipment, Software and any related systems; and

6.1.4. It will use its best endeavors to follow all reasonable instructions and requests made by BCN Group in relation to the provision of the Services in a timely fashion.

## **7. Customer responsibilities**

**7.1.** BCN Group's non-performance of its obligations under this Agreement shall be excused if and to the extent:

7.1.1. such BCN Group non-performance results from the Customer's failure to perform one or more of the Customer Responsibilities;

7.1.2. BCN Group provides the Customer with written notice of such non-performance; and

7.1.3. BCN Group uses commercially reasonable efforts to perform its obligations notwithstanding the Customer's failure to perform (with the Customer reimbursing BCN Group for its reasonable and demonstrated additional expenses for such efforts provided such expenses are notified to the Customer before they are incurred).

## **8. Equipment and Software**

**8.1.** BCN Group shall be fully responsible for the operation and maintenance of the Supplied Equipment and Software in order to provide the Services to the Service Levels including (where agreed and at the cost of the Customer):

8.1.1. maintaining the Supplied Equipment in good operating condition, subject to normal wear and tear; and

8.1.2. undertaking repairs and preventative maintenance on the Supplied Equipment in accordance with the manufacturer's instructions, including warranty terms and conditions, to maintain the Supplied Equipment to its published specifications; and

8.1.3. applying patches, fixes or other temporary repairs and preventative maintenance to the Software to maintain the Software to the licensor's published specifications.

**8.2.** In the event the Customer deems it necessary to transfer any Existing Customer Equipment to BCN Group, the Customer shall transfer or procure the transfer of the ownership of the Transferring Equipment to BCN Group provided always that BCN Group deem such Equipment to be fit for the purpose of delivering the Services.

**8.3.** BCN Group acknowledges that if any Existing Customer Equipment is transferred to BCN Group it shall be done so in its 'as is' condition at the date of transfer. Any warranties, conditions or other terms that would otherwise be implied in relation to the Existing Customer Equipment, whether by statute, common law, custom, trade usage, course of dealing or otherwise, are hereby excluded to the fullest extent permitted by law. BCN Group confirms that it has satisfied itself in relation to each item of the Existing Customer Equipment (including any that may transfer to BCN Group) as to whether it is suitable for use in providing the Services.

**8.4.** BCN Group shall manage all third-party providers of the Existing Customer Equipment (if any) in order for the Existing Customer Equipment to remain properly maintained and capable of providing the Services to the Service Levels and shall immediately notify the Customer where a third party provider is not performing its obligations in accordance with its agreement with the Customer.

**8.5.** The Customer grants to BCN Group during the Term and any Exit Period the rights of access to, and use of any Existing Customer Equipment not transferred to BCN Group (**Retained Equipment**) solely to the extent necessary for performing the Services, and BCN Group agrees in relation to the same that:

8.5.1. it has no legal or equitable claim to the Retained Equipment and agrees not to contest ownership of such Retained Equipment;

8.5.2. throughout the Term and thereafter for the purposes of performing the Exit Services, BCN Group shall keep any Retained Equipment that it uses to provide the Services separate from the property of BCN Group and of third parties and properly identified as the Customer's property; and

8.5.3. it shall not purport to pledge or in any way charge by way of security any of the Retained Equipment which shall at all times remain the Customer's or the applicable third-party lessor's property and shall waive any rights that may arise to take a lien over the Retained Equipment for any sums due to BCN Group pursuant to this Agreement.

**8.6.** BCN Group shall acquire or supply the Supplied Equipment, including modifications, upgrades, enhancements, additions and replacements of Existing Customer Equipment, as necessary or appropriate to provide the Services. Such Supplied Equipment shall be acquired in the name of BCN Group and title shall vest in BCN Group except as set out in clauses 8.8 and 8.9. Unless otherwise agreed all warranties provided in relation to the Supplied Equipment will be limited to those supplied by the manufacturer.

**8.7.** Modifications, upgrades or enhancements of the Retained Equipment shall be acquired in the name of the Customer (and title shall vest in the Customer) or, in the event that such Retained Equipment is leased or rented by the Customer, shall be governed by the terms of the relevant lease or rental agreement.

**8.8.** With respect to acquisitions of Supplied Equipment identified or agreed in writing to be treated as such, acquisition costs shall be treated as a pass-through expense, and such Supplied Equipment or assets shall be purchased or leased in the name of the Customer unless the Customer requires otherwise in writing. In all other cases the costs of acquiring or leasing equipment in connection with or related to the provision of the Services incurred by BCN Group shall be for BCN Group's account and no additional costs beyond the Fees shall be borne by the Customer.

**8.9.** BCN Group shall be responsible for installing, operating and maintaining any Equipment at the cost of the Customer.

**8.10.** BCN Group shall be responsible for the risk of loss of, and damage to, any property, systems or materials used by it to provide the Services, except to the extent that any loss of, or damage to, any such property, systems or materials is caused by an intentional wrongful act or omission of the Customer or its personnel.

## **9. Third party contracts**

The parties shall manage any third-party contracts under which a third party furnishes or provides services to the Customer that are associated with the Services in accordance with Schedule 5.

## **10. Safeguarding of data**

**10.1.** Customer Data shall be and remain the property of the Customer.

**10.2.** Customer Data shall promptly be returned to the Customer or, if the Customer so elects, shall be destroyed upon any of the following:

10.2.1. at the Customer's request;

10.2.2. upon the termination or expiration of this Agreement (or, if later, the expiry of the Exit Period); or

10.2.3. when Customer Data is no longer required by BCN Group in order to render the Services.

**10.3.** BCN Group shall not utilize Customer Data for any purpose other than that of rendering the Services under this Agreement.

**10.4.** BCN Group shall neither possess or assert liens or other rights against, nor use, disclose, sell, assign, lease, or provide to third parties, Customer Data without the



Customer's prior written approval (which may be withheld or withdrawn by the Customer at its sole discretion).

**10.5.** BCN Group shall establish and maintain safeguards against the destruction, loss, or alteration of Customer Data in BCN Group's possession that are no less rigorous than the Customer's and that are no less rigorous than those maintained by BCN Group for BCN Group's own information of a similar nature.

**10.6.** BCN Group shall comply with all the Customer Policies and Procedures relevant to the safeguarding of Customer Data that it is made aware of from time to time.

**10.7.** BCN Group Personnel shall not attempt to access, or allow access to, Customer Data to which they are not entitled or that is not required for the performance of the Services by BCN Group Personnel.

**10.8.** BCN Group shall institute industry best practice systems and security measures to guard against the unauthorized access, alteration, destruction or loss of Customer Data.

**10.9.** BCN Group shall perform secure back-ups of all Customer Data, shall ensure that up-to-date back-ups are stored off-site and that such back-ups are available to the Customer at all times upon request.

**10.10.** BCN Group shall ensure that any system on which BCN Group holds any Customer Data, including back-up data, is a secure system that complies with the Customer's security policies.

**10.11.** The provisions of this clause 10 are in addition, and without prejudice, to BCN Group's additional obligations (and the Customer's additional rights) pursuant to Schedule 12.

## **11. Data protection**

**11.1.** Each party shall comply with its respective obligations, and may exercise its respective rights and remedies, under Schedule 14.

## **12. Fees, expenses and other charges**

**12.1.** The Fees, expenses and other charges payable by the Customer in respect of the Services are set out in Schedule 7 and Schedule 11

**12.2.** All amounts due under this Agreement are exclusive of VAT, sales or other tax applicable which shall be paid in addition by the Customer at the rate and in the manner for the time being prescribed by law.

## **13. Invoicing, payment and suspension**

**13.1.** BCN Group shall invoice the Customer *monthly in advance* for all sums due under this Agreement.

**13.2.** The Customer shall pay sums due in full within 14 days from the date of invoice or on the due date for payment specified in this Agreement if earlier. Time shall be of the essence in relation to all payments to BCN Group under this Agreement.

**13.3.** The Customer acknowledges that all sums owing under this Agreement are owed on an all monies basis and that BCN Group may at its absolute discretion suspend access to any or all of the Services if it has not received full payment by the due date, until such payment is received, together with any accrued interest in accordance with clause 13.5.

**13.4.** Amounts payable to BCN Group under this Agreement shall be paid into BCN Group's bank account by BACS or CHAPS unless otherwise notified by BCN Group to the Customer in writing in accordance with this Agreement:

**13.5.** If sums due under this Agreement are not paid in full by the due date:

13.5.1. BCN Group may, without limiting its other rights, charge interest on such sums at 4% a year above the base rate of Barclays Bank Plc. from time to time in force, and

13.5.2. interest shall accrue on a daily basis and apply from the due date for payment until actual payment in full, whether before or after judgment.

#### **14. Contractual Change Requests**

**14.1.** Where the Customer or BCN Group wishes to make a change to this Agreement, whether in order to include an additional service, function or responsibility to be performed by BCN Group for the Customer under this Agreement, to amend the Services or the Service Levels or otherwise, the Customer may at any time request, and BCN Group may at any time recommend, such change and a Contractual Change Request shall be submitted by the party requesting the change to the other party. Such change shall be agreed by the parties only once the Contractual Change Request is signed by both parties.

**14.2.** Each Contractual Change Request shall conform to the requirements of Schedule 10.

**14.3.** Until a change is made in accordance with this clause, the Customer and BCN Group shall, unless otherwise agreed in writing, continue to perform this Agreement in compliance with its terms prior to such change.

#### **15. Intellectual Property Rights**

**15.1.** Except for as expressly stated in this clause no Intellectual Property Rights of either party are transferred or licensed as a result of this Agreement.

**15.2.** BCN Group hereby irrevocably assigns to the Customer, with full title guarantee, absolutely and free from all encumbrances, all its right, title and interest in any and all Intellectual Property Rights in or relating to any Customer Data or Customer Materials modified by BCN Group in performance of the Services under this Agreement.

**15.3.** Subject to any other terms expressly agreed by the parties, each party grants the other a license of such of its Intellectual Property Rights as are necessary to enable the other party to fulfil its obligations under this Agreement or make use of the Services supplied under this Agreement but not otherwise.

#### **16. Intellectual Property Rights indemnity**

**16.1.** BCN Group shall indemnify the Customer from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Customer as a result of or in connection with any action, demand or claim that the Customer's use of the Services infringes the Intellectual Property Rights of any third party.

**16.2.** The Customer shall indemnify BCN Group from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by BCN Group as a result of or in connection with any action, demand or claim that the proper use or possession of any Customer Materials (excluding those Intellectual Property Rights to be assigned to the Customer pursuant to clause 16.2), infringes the Intellectual Property Rights of any third party.

**16.3.** The indemnifier in each case shall have no such liability if the other party:

16.3.1. does not notify the indemnifier in writing setting out full details of the relevant action, demand or claim (**IPR Claim**) of which it has notice as soon as is reasonably possible;

16.3.2. makes any admission of liability or agrees any settlement or compromise of the relevant IPR Claim without the prior written consent of the indemnifier (which shall not be unreasonably withheld or delayed);

16.3.3. does not let the indemnifier at its request and own expense have the conduct of or settle all negotiations and litigation arising from IPR Claim; or

16.3.4. does not, at the indemnifier's request and own expense, give the indemnifier all reasonable assistance in the circumstances described above.

## **17. Confidentiality**

**17.1.** Each party agrees that it may use the other party's confidential information only in the exercise of its rights and performance of its obligations under this Agreement and that it shall not disclose the other party's Confidential Information including all knowhow, trade secrets, financial, commercial, technical, tactical or strategic information of any kind except in accordance with this clause.

**17.2.** Subject to clause 18.5, each party may disclose the other party's Confidential Information to those of its employees, officers, advisers, agents or representatives who need to know the other party's Confidential Information in order to exercise the disclosing party's rights or perform its obligations under this Agreement provided that the disclosing party shall ensure that each of its employees, officers, advisers, agents or representatives to whom Confidential Information is disclosed is aware of its confidential nature and complies with this clause 18 as if it were a party.

**17.3.** Each party may disclose any Confidential Information required by law, any court, any governmental, regulatory or supervisory authority (including any regulated investment exchange) or any other authority of competent jurisdiction.

**17.4.** To the extent any Confidential Information is Protected Data as defined in Schedule 12 such Confidential Information may be disclosed or used only to the extent such disclosure or use does not conflict with any of Schedule 12. This clause 18.5 prevails over the remainder of this clause 18 to the extent of any conflict.

## **18. Liability**

**18.1.** BCN Group shall accept liability for any losses or claims suffered by the Customer (including any reasonable professional costs) arising from:

18.1.1. death or personal injury arising from BCN Group's negligence or that of any of its subcontractors or Associates;

18.1.2. fraud or fraudulent misrepresentation;

18.1.3. the breach by BCN Group, its Associates or any of its subcontractors of the duties of confidentiality contained in this Agreement;

18.1.4. the breach by BCN Group, its Associates or any of its subcontractors of the data protection obligations contained in this Agreement and/or any claim under the indemnity in paragraph 3 of Part A of Schedule 12;

18.1.5. any claim made under clause 17; and

18.1.6. any liability that cannot be excluded under applicable law.

**18.2.** Subject always to clause 18.1 and 18.3, under no circumstances shall either party have any liability for:

18.2.1. loss of profits or revenues; or

18.2.2. loss of contract or business opportunities; or

18.2.3. loss of goodwill; or

18.2.4. any indirect, special or consequential loss or damage.

**18.3.** The exclusions in clause 18.2 shall not exclude liability for:

18.3.1. the costs of procuring and implementing an alternative to the Services as provided (or not provided) by BCN Group;

18.3.2. the cost of restoring lost or damaged data; or

18.3.3. additional wages, overtime and expenses incurred by the Customer and/or its subcontractors or agents in performing or rectifying defective Services and/or managing a third party's performance of the same; or

18.3.4. *[[add any deal specific classes of loss that you consider necessary to identify individually.]]*

**18.4.** Subject to clauses 18.1 and 18.2, BCN Group's maximum liability for claims arising under or in connection with this Agreement shall be the greater of £1,000,000 or the Fees paid in any 6 month period.

## **19. Termination**

**19.1.** Either party may without prejudice to its other rights and remedies by notice in writing to the other party immediately terminate this Agreement if the other:

19.1.1. is in material or persistent breach (which shall mean a minimum of 3 notified breaches in accordance with this clause 19.1.1 within any 30 day period) of any of its obligations under this Agreement and if that breach is capable of remedy and the other has failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or

19.1.2. is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986) or becomes insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of the assets of the other or the other enters into or proposes any composition or arrangement with its creditors generally or any analogous event occurs in any applicable jurisdiction. For the avoidance of doubt the Customer acknowledges that for the purpose of this clause that the Services are not viewed as essential services and there is no obligation on BCN Group to continue providing the Services unless full payment has been received and that BCN Group are entitled to suspend the Services in accordance with clause 13.

19.1.3. the Customer shall immediately pay to BCN Group all outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, BCN Group may submit an invoice, which shall be payable immediately on receipt

**19.2.** The Customer may without prejudice to its other rights and remedies by notice in writing to BCN Group immediately terminate this Agreement if BCN Group ceases carrying on business in the United Kingdom.

**19.3.** In the event of termination of this Agreement for any reason, each party shall (without prejudice to any additional obligations under Schedule 12):

19.3.1. within *fourteen* days of such termination return (or, at the other party's option, destroy) all Confidential Information of the other party in its possession or under its control and all copies of such information; and

19.3.2. perform their exit management obligations as set out in Schedule 11.

**19.4.** 1.1. Termination of this Agreement for whatever reason shall not operate to affect any provisions that expressly or by implication survive termination.

## **20. TUPE Indemnity**

**20.1.** If at any time any Relevant Employee(s) claim(s) that they have been the subject of a Relevant Transfer at any time and for whatever reason, the Supplier shall indemnify and hold the New Employer harmless against all of the following:

20.1.1. all costs of dismissing such Relevant Employee(s), provided that BCN Group undertakes to dismiss such Relevant Employee(s) (or where the Relevant Transfer is to a Contractor, to ensure that such Contractor dismisses such Relevant Employee(s) within 30 days of becoming aware of the Relevant Transfer;

20.1.2. all Employment Liabilities accrued immediately prior to the Relevant Transfer, which transfer to the New Employer as a result of such Relevant Transfer;

20.1.3. any liability that the New Employer may incur under TUPE as a result of any failure to inform or consult the Relevant Employees in relation to the Relevant Transfer; and

20.1.4. any other liabilities incurred by the New Employer as a result of the Relevant Transfer.

## **21. Third party rights**

For the purposes of the Contracts (Rights of Third Parties) Act 1999, this Agreement does not give any person who is not a party to it any right to enforce any of its provisions.

## **22. Entire agreement**

**22.1.** The parties agree that this Agreement constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

**22.2.** Each party acknowledges that it has not entered into this Agreement in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in this Agreement. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in this Agreement.

## **23. Personnel**

BCN Group Personnel shall at all times remain the employees or subcontractors of BCN Group and shall remain under the overall control of BCN Group. BCN Group and the Customer acknowledge and agree that BCN Group Personnel are not employees of the Customer, nor shall anything in this Agreement deem them employees of the Customer.

## **24. Non-solicitation**

**24.1.** Neither party shall (except with the written consent of the other) directly or indirectly solicit or entice away from the employment of the other (or attempt to do so) any person employed or engaged by the other party in the provision or receipt of the Services under this Agreement at any time during the term of this Agreement or for a period of 12 months after the termination or expiry of this Agreement.

**24.2.** If a party breaches the above clause, it will pay to the other party as compensation an amount equal to 12 months' salary of the relevant employee or contractor (as the case may

be), and the parties acknowledge that this represents a genuine pre-estimate of the loss likely to be suffered through breach of this clause.

**24.3.** If the periods above are held by a court or tribunal of competent jurisdiction to be void or unenforceable, such provisions will apply with such modification to the relevant wording as required to make them valid and enforceable.

## **25. Force Majeure**

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the event continues for a continuous period of more than 3 months, either party may terminate this Agreement by written notice to the other party.

## **26. Notices**

**26.1.** Notices under this Agreement shall be in writing and sent to a party's address as set out in this Agreement. Notices may be given, and shall be deemed received:

26.1.1. by recorded first-class post: *two* Business Days after posting;

26.1.2. by recorded airmail: *seven* Business Days after posting;

26.1.3. by hand: on delivery.

**26.2.** This clause does not apply to notices given in legal proceedings or arbitration.

**26.3.** A notice given under this Agreement is not validly served if sent by email.

## **27. Insurance**

**27.1.** Each party must for the duration of this Agreement maintain appropriate insurance cover with a reputable insurance company against all relevant liabilities and indemnities that may arise under this Agreement in respect of that party.

**27.2.** Without limitation to the above clause, BCN Group shall maintain in effect for the duration of this Agreement and for a period of three years after termination or expiry of this Agreement:

adequate public liability insurance cover with a reputable insurance company to a minimum indemnity limit of £2,500,000 per claim, and £5,000,000 in aggregate;

27.2.1. adequate professional indemnity insurance cover with a reputable insurance company to a minimum indemnity limit of £2,500,000 per claim, and £5,000,000 in aggregate;

27.2.2. adequate employer's liability insurance cover with a reputable insurance company to a minimum indemnity limit of £2,500,000 per claim, and £5,000,000 in aggregate;

27.2.3. adequate product liability insurance cover with a reputable insurance company to a minimum indemnity limit of £2,500,000 per claim, and £5,000,000 in aggregate; and

27.2.4. adequate cyber risks liability insurance cover with a reputable insurance company to a minimum indemnity limit of £2,500,000 per claim, and £5,000,000 in aggregate.

**27.3.** Each party will provide to the other upon request sufficient evidence of the insurance cover that it is obliged to have and maintain under this Agreement.

## **28. Announcements**

No announcement or other public disclosure concerning this Agreement or any of the matters contained in it shall be made by, or on behalf of, a party without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed), except as required by law, any court, any governmental, regulatory or supervisory authority (including any recognized investment exchange) or any other authority of competent jurisdiction.

## **29. No partnership or agency**

Nothing in this Agreement constitutes, or shall be deemed to constitute, a partnership between the parties nor make any party the agent of another party.

## **30. Severability**

**30.1.** Each clause of this Agreement is severable and distinct from the others. If any clause in this Agreement (or part thereof) is or becomes illegal, invalid or unenforceable under applicable law, but would be legal, valid and enforceable if the clause or some part of it was deleted or modified (or the duration of the relevant clause reduced):

3.1.1. the relevant clause (or part thereof) will apply with such deletion or modification as may be required to make it legal, valid and enforceable; and

3.1.2. without limiting the foregoing, in such circumstances the parties will promptly and in good faith seek to negotiate a replacement provision consistent with the original intent of this Agreement as soon as possible.

## **31. Compliance with law**

Each party shall comply and (at its own expense unless expressly agreed otherwise) ensure that in the performance of its duties under this Agreement, its employees, agents and representatives will comply with all applicable laws and regulations, provided that neither party shall be liable for any breach of this clause 30 to the extent that such breach is directly caused or contributed to by any breach of this Agreement by the other party (or its employees, agents and representatives).

## **32. Assignment**

**32.1.** Subject to clause 32.2, the Customer may not assign, subcontract or encumber any right or obligation under this Agreement, in whole or in part, without BCN Group's prior written consent.

**32.2.** Notwithstanding clause 32.1, the Customer may perform any of its obligations and exercise any of its rights granted under this Agreement through any Associate, provided that it gives BCN Group prior written notice including the identity of the relevant Associate. The Customer acknowledges and agrees that any act or omission of its Associate in relation to the Customer's rights or obligations under this Agreement shall be deemed to be an act or omission of the Customer itself.

## **33. Variation**

No variation of this Agreement shall be valid or effective unless it is in writing, refers to this Agreement and is duly signed or executed by, or on behalf of, each party.

## **34. Waiver**

No failure, delay or omission by either party in exercising any right, power or remedy provided by law or under this Agreement shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right or remedy. No single or partial exercise of any right, power or remedy provided by law or

under this Agreement shall prevent any future exercise of it or the exercise of any other right, power or remedy.

### **35. Set off**

Each party must pay all sums that it owes to the other party under this Agreement without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

### **36. Conflicts within agreement**

**36.1.** In the event of any conflict or inconsistency between different parts of this Agreement, the following descending order of priority applies:

36.1.1. the terms and conditions in the main body of this Agreement and Schedule 12;

36.1.2. the other Schedules.

**36.2.** Subject to the above order of priority between documents, later versions of documents shall prevail over earlier ones if there is any conflict or inconsistency between them.

### **37. Dispute resolution**

**37.1.** If any dispute arises between the parties out of or in connection with this Agreement, the parties shall use their reasonable endeavors to resolve it in accordance with the process in Schedule 9.

**37.2.** If the dispute is not resolved in accordance with the process in Schedule 9, the parties may resolve the matter through mediation in accordance with the London Court of International Arbitration Mediation Rules.

**37.3.** Until the parties have completed the steps referred to in clauses 36.1 and 36.2, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief.

### **38. Counterparts**

This Agreement may be signed in any number of counterparts and by the parties on separate counterparts, each of which when signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement. This Agreement shall not be effective until each party has signed one counterpart.

### **39. Governing law**

This Agreement and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

### **40. Jurisdiction**

The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this Agreement, its subject matter or formation (including non-contractual disputes or claims).