

# **Matrix Telecoms Limited t/a Enigma I.T**

## **Terms and Conditions For the Supply of Goods and Services**

### **1. Introduction and Contract Formation**

- 1.1.** Unless otherwise agreed in writing by Enigma I.T , these Terms and Conditions (as revised or replaced under Condition 1.8) apply to all goods and services supplied by Enigma I.T to the exclusion of any other terms and conditions. That exclusion applies to any terms and conditions proposed by the Customer or included in any purchase order issued by the Customer.
- 1.2.** Enigma I.T is a limited company registered in England and Wales with the company number 09429604. Its registered office is at 7 Church Plain, Great Yarmouth, Norfolk, NR30 1PL.
- 1.3.** Following a request from a prospective Customer to provide goods or services, Enigma I.T normally issues a quotation. That quotation is open to acceptance by the prospective Customer for 30 days after its date.
- 1.4.** If the Customer accepts Enigma I.T quotation within that 30 day period, a contract between the Customer and Enigma I.T will be formed for the supply of the goods and services listed in that quotation and, unless otherwise agreed in writing by Enigma I.T , that contract will be subject to these Terms and Conditions.
- 1.5.** If the Customer: asks Enigma I.T to proceed to supply any of the goods and services listed in a quotation; gives Enigma I.T delivery instructions for any goods or services; or issues any purchase order for any goods or services, the Customer will be deemed to have accepted Enigma I.T quotation.
- 1.6.** If a prospective Customer does not accept Enigma I.T quotation within that 30 day period, but later purports to accept it, the purported acceptance will be an offer to treat. If a prospective Customer places an order with Enigma I.T without Enigma I.T first having issued a quotation, that order will be an offer to treat. In either of those circumstances a contract will only come into existence if and when Enigma I.T accepts the Customer's offer. Enigma I.T may decline the Customer's offer as Enigma I.T sees fit.
- 1.7.** Each offer made by the Customer and accepted by Enigma I.T and each quotation issued by Enigma I.T and accepted by the Customer will form a separate contract.
- 1.8.** Enigma I.T may revise these Terms and Conditions at any time by publishing new or revised Terms and Conditions on its website. If a quotation for any goods and services is accepted by the Customer after the new or revised Terms and Conditions have been published on Enigma I.T website, those new or revised Terms and Conditions will apply to the supply of those goods and services.
- 1.9.** If the contract for the supply of any Service is renewed or extended beyond the Initial Term, Enigma I.T Terms and Conditions in force at the time of renewal or extension will apply to the supply of that Service after the end of the Initial Term.
- 1.10.** If there is any conflict or inconsistency between these Terms and Conditions and any Enigma I.T quotation, the quotation will prevail; if there is any inconsistency between these Terms and Conditions and any other content on Enigma I.T website, these Terms and Conditions will prevail.

### **2. Definitions and Interpretation**

- 2.1.** In these Terms and Conditions the following expressions have the meanings set below:

Acceptance	takes place when the Website or the Equipment (as the case may be) passes the acceptance tests or is deemed to do so under Condition 14;
the Bandwidth	the amount of bandwidth (if any) specified in the Quotation;
Enigma I.T Facilities	the software, systems and infrastructure used by Enigma I.T from time to time to provide the Services, as updated, reconfigured and upgraded by Enigma I.T from time to time;
the Charges	the charges for the provision of a Service or the sale of the Hardware set out in a Quotation (or in the absence of a

Quotation, as set out on Enigma I.T website from time to time), as revised from time to time in accordance with Condition 13.5;

Confidential Information	any information (regardless of the form in which it is stored or disclosed) relating to either Enigma I.T or the Customer's customers or technology;
a Contract	a contract between Enigma I.T and the Customer formed as described in Clause 1.4, 1.5 or 1.6;
the Contract Support Hours	the number of support hours per month included in the Support Charge as set out in the Quotation;
the Consultancy Services	the consultancy, requirements analysis, system specification, system architecture, system testing, system accessibility auditing and reporting, technical writing, database design and administration, system set up and configuration, application programming, design development, training and project management services (if any) provided by Enigma I.T to the Customer;
Content	any and all information, data, graphics, pictures, photographs, images (moving and still), documents, text, literary or artistic work, software, designs, music, broadcasts (sound and visual), and any other material that is, from time to time, provided by the Customer to Enigma I.T, published on the Website, inputted by the Customer or any User into any system that Enigma I.T hosts for the Customer, or sent to or from any such system;
the Customer	the person that accepts the Quotation, and where that person is an individual acting on behalf of a company or organisation, the Customer is that company or organisation;
the Customer's System	the software, systems and infrastructure owned by the Customer or leased or licensed to the Customer and accommodated at Enigma I.T premises;
a Defect	a failure to comply in a material respect with the Specification and "defective" is to be construed accordingly;
a Disaster	an accident, act of God or other unexpected or unplanned event that renders the Website inaccessible or un-useable;
the Disaster Recovery Services	the disaster recovery services (if any) listed in the Quotation;
the Equipment	any equipment that Enigma I.T sells to the Customer;
a Force Majeure Event	an act of God or other accident or any occurrence that is beyond the reasonable control of the party whose ability to perform is adversely affected by that event including, without limitation, any fault or failure in the internet or any other communications network;
a Harmful Element	any virus, worm, time bomb, time lock, drop dead device, trap and access code or anything else that might disrupt, disable, harm or impede the operation of any information system, or that might corrupt, damage, destroy or render inaccessible any software, data or file on, or that may allow any unauthorised person to gain access to, any information system

	or any software, data or file on it;
the Hosting Services	the hosting services (if any) listed in the Quotation;
the Initial Term	the minimum duration of any service as set out in the Quotation, beginning on the Commencement Date;
Intellectual Property Rights	any patent, trademark, service mark, registered design, copyright, design right, right to extract or exploit information from a database, database rights, know-how, confidential information or process, any application for any of the above and any other intellectual property right recognised in any part of the world, whether or not now existing or applied for, and all accrued rights of action in respect of any such right;
the Location	the premises to which the Equipment is to be delivered;
a Naming Authority	ICANN or any equivalent body; any registry responsible for any type of domain name; and any registry gateway provider responsible for any type of domain names;
the Price	the fixed price (if any) to be paid for any goods or services as stated in the Quotation or (if there is no Quotation) as stated on Enigma I.T website from time to time;
the Quotation	the quotation issued by Enigma I.T to the Customer;
the Rates	Enigma I.T standard rates of charge in force from time to time plus VAT;
the Recurrent Charges	any Service Charges to be paid by the Customer periodically for the Services as specified in the Quotation, as amended from time to time under Condition 13.3;
a Service	a service that Enigma I.T supplies to the Customer;
the Service Commencement Date	the date on which Enigma I.T starts to provide a Service, and where more than one Service is to be provided, there may be different Commencement Dates for each Service;
a Software Product	any software product that Enigma I.T supplies to the Customer, excluding any Website Software;
a Stage	a stage or time for payment as set out in the Quotation;
a Support Incident	a request for Support Services submitted by the Customer;
the Support Services	the support services (if any) listed in the Quotation;
a Support Year	12 months beginning on the Commencement Date for the Support Services, or an anniversary of that date;
the Specification	if a specification has been agreed between the Customer and Enigma I.T , that specification as amended by the written agreement of the Customer and Enigma I.T from time to time, and otherwise Enigma I.T description of the relevant goods and services on Enigma I.T website from time to time;
these Terms and Conditions	these terms and conditions;
a User	any individual employed or engaged by the Customer, any individual allowed by the Customer to use any Software Product

or to post any Content on the Website, and anyone who has access to any Software Product or the Website by using any of the Customer's passwords or IDs;

the Website

any website (including any web applications, extranets and intranets) developed or hosted for the Customer by Enigma I.T ;

the Website Software

Enigma I.T software that Enigma I.T incorporates in a website developed by it for the Customer;

Working Hours

means 9am to 5pm on Mondays to Fridays, excluding English bank holidays and the period between Christmas and New Year.

2.2 Any reference in these Terms and Conditions to a statute or regulation is to be construed as a reference to that statute or regulation as amended or re-enacted from time to time.

2.3 The Interpretation Act 1978 applies to these Terms and Conditions as if they were an enactment.

2.4 A reference to a Condition or a Section is to a condition or section of these Terms and Conditions.

2.5 The headings in these Terms and Conditions are for ease of reference only; they do not affect their interpretation or construction.

### **3. Right to Cancel**

**3.1.** This Section 3 applies ONLY if the Customer is in the European Union, is purchasing as a consumer (that is, not in the course of its business) and the Contract has been formed solely by distance means. In those circumstances the Customer has the right to cancel its order for any goods within seven clear working days after the date those goods are delivered, and to cancel its order for any services within seven clear working days after placing that order. This right of cancellation does NOT apply to: i) any software where the seal on the product has been broken; or ii) any service once Enigma I.T has begun to perform that service.

**3.2.** If the Customer wishes to exercise its right to cancel, it must contact its account manager at Enigma I.T .

**3.3.** After Enigma I.T receives notice of the cancellation of any order under Condition 3.1, Enigma I.T will refund any of the Price or Charges the Customer has already paid for any cancelled product or service, together with its normal postage or delivery charge. Enigma I.T does not refund any priority, express or courier component of the postage or delivery charge.

### **4. Software Products**

**4.1.** This Section 4 applies ONLY in relation to Software Products ordered or acquired from Enigma I.T . Conditions 4.3 – 4.8 inclusive apply only where the licence to use the Software Product is granted by Enigma I.T.

**4.2.** With effect from the delivery of a Software Product to the Customer, Enigma I.T will grant the Customer an indefinite, personal, non-exclusive and non-transferable licence to use the Software Product, in executable code or the owner of the Software Product will grant a licence to the Customer to use the Software Product on its terms and conditions.

**4.3.** The Customer may not sub-license the use of Software Product, make it available to anyone else (except its employees), share its use, or use it for the purposes of providing a bureau service, or any application service.

**4.4.** The Customer may not copy the Software Product except incidentally to use it in accordance with these Terms and Conditions, or to make a reasonable number of back-up copies. The Customer may only use a back-up copy by substituting it for the original copy of the Software Product, and each back-up copy must be kept in a secure place, in the Customer's possession and under its control at all times.

**4.5.** The Customer must ensure that each and every copy of any of the Software Product that the Customer makes bears the copyright and other proprietary notices on the original copy

of the Software Product supplied by Enigma I.T. Those notices must not be removed, obliterated or modified.

- 4.6.** The Software Product must not be modified or incorporated in any other software. If the Software Product is modified by anyone except Enigma I.T , Enigma I.T will have no liability or responsibility in relation to it.
  - 4.7.** Except as permitted under the European Software Directive or any legislation implementing that directive, the Software Product may not be reverse engineered or decompiled to determine any design structure, concepts or methodology behind it, or to incorporate the software in any other software or product, or for any other purpose.
  - 4.8.** The licence granted in Condition 4.2 will immediately terminate if the Customer exercises its right to cancel under Condition 3.1 or if any of the circumstances in Condition 18.1 arises. On the termination of that licence the Customer must stop using the Software Product and must delete all copies of it from its systems and destroy all back-up copies.
  - 4.9.** Enigma I.T makes no representation and gives no warranty that the Software Product is error free or that it will run without interruption. If the Customer finds any Defect in the Software Product, it must let Enigma I.T know immediately by contacting its account manager. If Enigma I.T verifies that there is a Defect, Enigma I.T will provide a replacement copy of the Software Product but Enigma I.T does not warrant that any Defect can or will be corrected. The provision of a replacement copy of the Software Product is the Customer's sole and exclusive remedy if there is any Defect in the Software Product.
  - 4.10.** The Customer must independently verify the results of using the Software Product before relying on them. The Software Product is not intended to address any particular requirements; and is not intended to be relied upon when making (or refraining from making) any decision. The use of the Software Product is not a substitute for the exercise of professional judgment. If the Customer or any User is not qualified or experienced enough to make that judgment, it should take professional advice.
  - 4.11.** The Customer is responsible for ensuring that its computer systems are suitable to access and use the Software Product. Enigma I.T does not warrant that the Software Product will be free from Harmful Elements. The Customer is responsible for implementing sufficient antivirus and other security checks to ensure the accuracy of data input and output.
  - 4.12.** If the Software Product is defective, the Customer may return it to Enigma I.T , within 30 days after it is delivered to the Customer. Enigma I.T will not accept the return of any Software Product unless it is defective. If the Customer does not return any Software Product within that 30 day period, the Customer will be deemed to have accepted it.
  - 4.13.** The Customer will be responsible for the costs of returning the Software Product to Enigma I.T unless Enigma I.T has delivered it to the Customer in error, or unless it is defective. If the Customer has exercised its rights to cancel under Condition 3.1, but Enigma I.T does not receive the Software Product back from the Customer, Enigma I.T may arrange for collection of the Software Product from the Customer at the Customer's expense.
  - 4.14.** If the Customer returns any Software Product to Enigma I.T within the 30 day period mentioned in Condition 4.12 because it is defective, Enigma I.T will replace it with a new copy. The foregoing states Enigma I.T 's entire liability, whether in contract, tort (including negligence) or in any other way, for all and any Defects in the Software Product.
  - 4.15.** Enigma I.T will endeavour to deliver Software Products within 14 days after Enigma I.T accepts the Customer's order or, if the Customer pays by cheque, after the cheque has cleared (whichever is later), but time of delivery is not of the essence. If Enigma I.T fails to deliver any Software Product within 28 days, the Customer may cancel any part of its order not then delivered by contacting the Enigma I.T account manager.
  - 4.16.** Enigma I.T reserves the right to make partial deliveries and to charge for Software Products delivered, even though some items in an order may not have been delivered.
- 5. Domain Name Registration and Management**
- 5.1.** This Section 5 applies ONLY in relation to the registration, hosting on Enigma I.T 's Facilities, administration (such as email and web forwarding, changing registrants and contacts) and the renewal of domain names by Enigma I.T for the Customer.
  - 5.2.** Enigma I.T will use reasonable endeavours to register the domain name, but Enigma I.T does not warrant or represent that any proposed domain name will be registered by any Naming Authority or that it has not already been registered by anyone else. The Customer must ascertain for itself the availability of any proposed domain name.

- 5.3.** The Customer must check Enigma I.T 's notification of any newly registered domain name and notify Enigma I.T immediately if anything is incorrect. The Customer must not act in reliance on any domain name being registered before Enigma I.T confirms to the Customer in writing that registration has taken place.
  - 5.4.** The Customer warrants that the contact and other details it supplies to Enigma I.T will be accurate and complete and the Customer will keep those details up to date.
  - 5.5.** The Customer warrants that the domain name will not infringe and will not be used so as to infringe, the Intellectual Property Rights or other rights of any third party.
  - 5.6.** Enigma I.T may, at its discretion, take ownership of, dispose of, refuse to register, release or renew any domain name or cancel any registration if:
    - 5.6.1.** Enigma I.T believes or suspects that the domain name infringes the Intellectual Property Rights or other rights of any third party, is in any way unlawful, or is likely to lead to any third party instituting or threatening legal proceedings against Enigma I.T or anyone else;
    - 5.6.2.** the Customer is in breach of its obligations under these Terms and Conditions;
    - 5.6.3.** the Charges in respect of that domain name are overdue; or
    - 5.6.4.** Enigma I.T is required to do so by law or by any competent authority.
  - 5.7.** Enigma I.T is not obliged to make any refund of any Charges in relation to any domain name if the Naming Authority refuses to register it or if any of the circumstances in Condition 5.6 arises.
  - 5.8.** Enigma I.T 's Charges in relation to any domain name may be increased in line with any increases in fees or charges imposed by any domain name registry. Enigma I.T may charge the Customer at the Rates for any time spent by Enigma I.T in liaising with any domain name registry on behalf of the Customer.
  - 5.9.** Enigma I.T will host newly registered domain names on Enigma I.T 's Facilities unless the Customer instructs Enigma I.T otherwise. Enigma I.T will be set up as the billing and technical contact for a newly registered domain name and for any domain name hosted on Enigma I.T 's Facilities.
  - 5.10.** Enigma I.T will notify the Customer of any domain name renewal notice Enigma I.T receives. Enigma I.T will use reasonable endeavours to renew any domain name that the Customer requests Enigma I.T to renew, provided that request is made in writing at least 7 days before the renewal date and provided the Customer has paid Enigma I.T its Charges for renewing that domain name. Enigma I.T will not be obliged to renew any domain name if the Customer has not responded to its notification of the renewal notice.
  - 5.11.** The Customer is responsible (to the exclusion of Enigma I.T ) for renewing any domain name that is not hosted on Enigma I.T 's Facilities at the renewal date or in relation to which Enigma I.T does not receive any renewal notice for any reason.
  - 5.12.** If a domain name is no longer hosted on Enigma I.T 's Facilities: Enigma I.T may remove itself as billing, technical or other contact; any website at that domain may become inaccessible; any web and email forwarding services will cease and emails may be lost; and release Charges may be payable by the Customer in accordance with the Rates.
  - 5.13.** Enigma I.T is not liable for the action or omission of any Naming Authority.
  - 5.14.** The Customer will comply with all present and future applicable terms and conditions, eligibility requirements, specifications, procedures, rules and policies of any relevant Naming Authority. Any dispute in relation to a domain name is subject to the relevant Naming Authority's dispute resolution policy in force from time to time. The domain name may be suspended, cancelled or transferred (without refund) in accordance with applicable policies or procedures to correct mistakes in any registration or to resolve any domain name disputes.
- 6. Equipment Sale**
- 6.1.** This Section 6 applies ONLY where Enigma I.T sells equipment to the Customer.
  - 6.2.** Enigma I.T will deliver the Equipment or arrange for it to be delivered to the Location. Unless the Location is Enigma I.T 's premises, Enigma I.T is not under any obligation to provide any plant, power or labour required for unloading and transporting the Equipment at the Location.
  - 6.3.** Delivery will take place when the Equipment is delivered to the Location. Risk of loss or damage or wrong delivery will at that point pass to the Customer.
  - 6.4.** If the Customer does not accept delivery of the Equipment when it is ready for delivery,

Enigma I.T may store the Equipment or return it to the manufacturer or reseller, and the Customer will be liable for the costs and expenses Enigma I.T incurs in doing that.

- 6.5.** The Customer acknowledges that Enigma I.T does not insure the Equipment against loss or damage in transit; the Customer will obtain insurance to cover the full replacement value of the Equipment.
- 6.6.** Enigma I.T supplies the Equipment on the manufacturer's terms relating to warranties and returns. A copy is available from the manufacturer. The Customer agrees to those terms. Enigma I.T will, where possible, assign to the Customer the benefit of any warranty that Enigma I.T may receive from the manufacturer in relation to the Equipment.
- 6.7.** Enigma I.T does not warrant that the Equipment will meet the Customer's requirements. Unless Enigma I.T has selected the Equipment for the Customer, the Customer is responsible for the selection of the Equipment.
- 6.8.** Property in the Equipment will remain with Enigma I.T until Enigma I.T receives payment of the Price for the Equipment in full. Enigma I.T reserves the right to dispose of the Equipment as it sees fit until it has received the Price in full.
- 6.9.** Until property in the Equipment passes to the Customer, the relationship between Enigma I.T and the Customer will be that of bailor and bailee, and the Customer will store the Equipment so that it is easily identifiable as Enigma I.T 's property.
- 6.10.** If, before property in the Equipment passes to the Customer, the Customer sells the Equipment, the Customer will hold the proceeds of sale and the rights to the proceeds of sale as trustee for Enigma I.T and will keep those proceeds separate from the Customer's money.
- 6.11.** On the occurrence of any of the events mentioned in Condition 18.1, Enigma I.T may repossess the Equipment and may require the Customer to deliver up the Equipment. If the Customer fails to do so, Enigma I.T may enter any premises to repossess it.
- 6.12.** Although property in the Equipment may not have passed to the Customer, Enigma I.T may sue for the Price for the Equipment.
- 6.13.** Enigma I.T reserves the right to make partial deliveries and to charge for the Equipment delivered, even though some items in an order may not have been delivered.
- 6.14.** If the equipment sold by Enigma I.T is a complete system, Enigma I.T reserves the right to remotely disable any system if an invoice is more than 15 days overdue.

## **7. Colocation Services**

- 7.1.** This Section 7 applies ONLY where Enigma I.T accommodates hardware or systems belonging to or leased or licensed to the Customer.
- 7.2.** Enigma I.T will accommodate the Customer's System listed on the Quotation.
- 7.3.** The Contract for the Colocation Services will continue for the Initial Term and after the end of the Initial Term until the expiry of not less than 30 days' written notice of termination given by the Customer to Enigma I.T or vice versa (that notice to expire at the end of the Initial Term or any later anniversary of the Commencement Date) unless that Contract is terminated earlier in accordance with Condition 18.1.
- 7.4.** Enigma I.T will not be obliged to provide more facilities over and above those appearing in the Quotation.
- 7.5.** The Customer will comply with, and ensure that all Users comply with, the terms on which any software used on, or forming part of, the Customer's System is licensed and with any acceptable use policy or other terms imposed by any communications supplier.
- 7.6.** Except in relation to any parts of the Customer's System that the Customer is acquiring from Enigma I.T, the Customer will deliver or ensure that the Customer's System is delivered, in good working order, to Enigma I.T, install the Customer's System and hand it over to Enigma I.T ready for Enigma I.T to start providing the Colocation Services as from the Commencement Date.
- 7.7.** Where, in accordance with the Quotation, it is Enigma I.T 's responsibility to implement the same for the Customer, the Customer will provide to Enigma I.T all updates, fixes, new versions, revisions, enhancements and upgrades to the Customer's System, and give Enigma I.T at least two weeks' written notice of the Customer's wish to implement the same.
- 7.8.** The Customer will keep full and up to date security copies of all software used on the Customer's System and of the Content in accordance with the best computing practice.
- 7.9.** The Customer will obtain: all licences of any software, data and materials used or processed

on the Customer's System necessary for the disclosure and use of that software, data and materials to or by Enigma I.T ; and any consents and licences from any third party who has an interest in any part of the Customer's System for its hosting and operation by Enigma I.T.

- 7.10.** Unless Enigma I.T has agreed to insure the Equipment and the Customer re-imburses the insurance premium and pays Enigma I.T at the Rates for doing so, the Customer will keep the Customer's System insured against all usual risks for its full reinstatement value and have Enigma I.T 's name noted on the policy as co-insured.
- 7.11.** The Customer will make all payments due in respect of the purchase, leasing, licensing, maintenance and support of the Customer's System and in respect of communications fees and internet access fees incurred by the Customer in connection with the use of the Collocation Services, and will indemnify Enigma I.T against any third party claims in respect of the same.
- 7.12.** Unless Enigma I.T is providing Disaster Recovery Services to the Customer in relation to the Customer's System, the Customer will make reasonable business contingency or disaster recovery arrangements and, in the event of a Disaster, invoke and use those arrangements so as to minimise the effect of the Disaster on the Customer and Users.
- 7.13.** On the termination or expiry of the Contract for the Collocation Services the Customer will collect the Customer's System. If the Customer fails to remove the Customer's System within 7 days after the date of expiry or termination, Enigma I.T may remove the Customer's System from Enigma I.T 's premises and deliver it to the Customer. The Customer will reimburse to Enigma I.T the cost and expense of that delivery and any storage costs that Enigma I.T may incur because the Customer fails to collect or to take delivery of the Customer's System.
- 7.14.** The Customer may have access to Enigma I.T 's premises only insofar as reasonably necessary for the purpose of inspecting, maintaining or removing the Customer's System and only at times agreed with Enigma I.T.
- 7.15.** Whilst on Enigma I.T 's premises, the Customer will not cause any damage to those premises or to any equipment on them and will not do anything that might be or is dangerous, a nuisance, or an inconvenience or that disturbs anyone at those premises. The Customer will comply with all health and safety, security and other policies notified to the Customer.
- 7.16.** If requested by Enigma I.T , the Customer will procure that any contractor or supplier of the Customer that requires access to Enigma I.T 's premises enters into an agreement allowing access to those premises and the Customer's System on terms acceptable to Enigma I.T.

## **8. Website Development Services**

- 8.1.** This Section 8 applies ONLY where Enigma I.T develops a Website for the Customer.
- 8.2.** Enigma I.T will develop the Website for the Customer. Enigma I.T warrants that the Website will comply with the Specification in all material respects for a period of 90 days after Acceptance.
- 8.3.** Enigma I.T does not warrant that the Website will meet the Customer's requirements.
- 8.4.** The Customer grants Enigma I.T the right to copy and modify any Content for the purpose of developing and testing the Website.
- 8.5.** As from Acceptance or, if later, the termination of any Contract for the Hosting of the Website, Enigma I.T will grant the Customer a personal, non-exclusive, non transferable, indefinite licence to use a runtime version of the Website Software for the purpose of porting the Website to an alternative host platform and maintaining and publishing the Website, but for no other purpose.
- 8.6.** The Customer may not sub-license the use of the Website Software, make it available to anyone else (except its employees), or share its use.
- 8.7.** The Customer may not copy the Website Software except incidentally to use it in accordance with these Terms and Conditions, or to make a reasonable number of back-up copies. The Customer may only use a back-up copy by substituting it for the original copy of the Website Software, and each back-up copy must be kept in a secure place, in the Customer's possession and under its control at all times.
- 8.8.** The Customer must ensure that each and every copy of any of the Website Software that the Customer makes bears the copyright and other proprietary notices on the original copy of the Website Software supplied by Enigma I.T. Those notices must not be removed,



obliterated or modified.

- 8.9.** The Website Software must not be modified or incorporated in any other software. If the Website Software is modified by anyone except Enigma I.T , Enigma I.T will have no liability or responsibility in relation to it.
- 8.10.** Except as permitted under the European Software Directive or any legislation implementing that directive, the Website Software may not be reverse engineered or decompiled to determine any design structure, concepts or methodology behind it, or to incorporate the software in any other software or product, or for any other purpose.
- 8.11.** The licence granted in Condition 8.5 will immediately terminate if any of the circumstances in Condition 18.1 arises. On the termination of that licence the Customer must stop using the Website Software and must delete all copies of it from its systems and destroy all back-up copies.
- 8.12.** Enigma I.T makes no representation and gives no warranty that the Website Software is error free or that it will run without interruption. If the Customer finds any Defect in the Website Software, it must let Enigma I.T know immediately by contacting the account manager. If Enigma I.T verifies that there is a Defect, Enigma I.T will provide a replacement copy of the Website Software but Enigma I.T does not warrant that any Defect can or will be corrected. The provision of a replacement copy of the Website Software is the Customer's sole and exclusive remedy if there is any Defect in the Website Software.
- 8.13.** The Customer is responsible for ensuring that its computer systems are suitable to access and use the Website and, unless Enigma I.T is providing Hosting Services, to host the Website.

## **9. Website Hosting Services**

- 9.1.** This Section 9 applies ONLY where Enigma I.T hosts a Website for the Customer.
- 9.2.** Enigma I.T will host the Website on Enigma I.T 's Facilities (or where Enigma I.T also provides Colocation Services to the Customer on the Customer's System) and will provide the Bandwidth.
- 9.3.** The Contract for the Hosting Services will continue for the Initial Term and after the end of the Initial Term until the expiry of not less than 30 days' written notice of termination given by the Customer to Enigma I.T or vice versa, (that notice to expire at the end of the Initial Term or any later anniversary of the Commencement Date) unless that Contract is terminated earlier in accordance with Condition 18.1.
- 9.4.** Enigma I.T may at any time suspend provision of the Hosting Services for the purposes of repair, maintenance or support or, if Enigma I.T believes or suspects that any of the Content infringes the Intellectual Property Rights or other rights of any third party, or that the Content is in any way unlawful, or is likely to lead to any third party instituting or threatening legal proceedings against Enigma I.T or anyone else, or that the Customer is in breach of its obligations under these Terms and Conditions or that the Website is being used for any illegal or unlawful purpose.
- 9.5.** Enigma I.T may at any time and from time to time: remove or block any of the Content or add any disclaimer or notice to it; or suspend the Hosting Services if any person who appears to Enigma I.T to have reasonable grounds or cause for complaint requests Enigma I.T to do so.
- 9.6.** The Customer will ensure that all Content is at all times accurate, up-to-date and complete, and that it includes nothing which is pornographic, obscene, offensive, indecent, abusive, menacing, unlawful, blasphemous, an invasion of privacy, an infringement of Intellectual Property Rights or of any Data Protection legislation or principle, defamatory, a malicious falsehood or seditious libel, a contempt of court, or anything which is likely to incite or capable of inciting violence, racial hatred, sadism, cruelty, or which encourages any unlawful or illegal act or omission, or which is misleading, or causes annoyance, inconvenience or needless anxiety, or which is potentially damaging or harmful.
- 9.7.** The Customer will comply with all applicable advertising standards and codes of practice and the rules and regulations of any competent authority from time to time.
- 9.8.** The Customer will ensure that the Hosting Services and the Website are not used in any way which occupies capacity or bandwidth frivolously or vexatiously or in any way which may hinder anyone's use of the Internet.
- 9.9.** The Customer will keep all passwords and user IDs secure and confidential and will inform Enigma I.T immediately the Customer becomes aware of or suspects any unauthorised use

or breach of security. The Customer accepts that Enigma I.T may suspend or change any password or user ID and that Enigma I.T may suspend access to the Website in the event of any actual or suspected breach of security.

- 9.10.** The Customer will keep back ups of the Content and the Customer is responsible for the restoration of any of Content that is lost or spoiled.
- 9.11.** The Customer will ensure that the Website contains details of someone within the Customer's organisation who is responsible for dealing with queries and problems encountered by anyone visiting or wishing to visit the Website.
- 9.12.** The Customer will comply with any acceptable use policies imposed by Enigma I.T 's Internet Service Provider and with all applicable Internet protocols and standards from time to time.
- 9.13.** The Customer will ensure that all Users are aware of and comply with Conditions 9.6 - 9.14 inclusive.
- 9.14.** If the Customer requests any bandwidth in addition to the Bandwidth and Enigma I.T agrees to provide additional bandwidth, the Customer will pay Enigma I.T for the additional bandwidth in accordance with the Rates.
- 9.15.** Enigma I.T will endeavour to make the Website available for 99.5% of available time or more measured over a month in the Contract Year. If Enigma I.T fails to meet this target in any month, it will credit the Customer with the Hosting Charges payable for that month. That credit will be the Customer's sole and exclusive remedy for any failure to meet this target or for the Website not being available. For the purposes of this Condition the Website will be deemed to be available if its unavailability is attributable to a Force Majeure Event or any of the circumstances in Condition 19.1 or if the Website Hosting Services have been suspended in the circumstances allowed for in Condition 9.4.
- 9.16.** Following the termination or expiry of the Contract for the Hosting Services, Enigma I.T will be entitled to retain the Website on its servers until all monies due from the Customer have been paid. If the Customer has not paid all such monies within 14 days after the date of termination or expiry of that Contract, Enigma I.T may delete the Website.

## **10. Disaster Recovery Services**

- 10.1.** This Section 10 applies ONLY where Enigma I.T provides Disaster Recovery Services to the Customer.
- 10.2.** Enigma I.T will implement a back-up server that replicates the primary server, managed and owned by Enigma I.T and located at least 10 miles away from the primary server, with replication of files and databases between the primary and back up servers during normal operation and the ability to host the Website.
- 10.3.** The Contract for the Disaster Recovery Services will continue for the Initial Term and after the end of the Initial Term until the expiry of not less than 30 days' written notice of termination given by the Customer to Enigma I.T or vice versa (that notice to expire at the end of the Initial Term or any later anniversary of the Commencement Date) unless that Contract is terminated earlier in accordance with Condition 18.1.

## **11. Support Services**

- 11.1.** This Section 11 applies ONLY where Enigma I.T provides Support Services to the Customer.
- 11.2.** Enigma I.T will provide assistance to the Customer with or without a Support Contract.
- 11.3.** The Contract for the Support Services will continue for the Initial Term and after the end of the Initial Term until the expiry of not less than 30 days' written notice of termination given by the Customer to Enigma I.T or vice versa, (that notice to expire at the end of the Initial Term or any later anniversary of the Commencement Date) unless that Contract is terminated earlier in accordance with Condition 18.1.
- 11.4.** Enigma I.T will use reasonable endeavours to respond to each Support Incident within the response time (if any) stated in the Quotation. Should Enigma I.T fail to respond within that response time, the Enigma I.T will endeavour to resolve the Support Incident free of charge. That is the Customer's sole and exclusive remedy if Enigma I.T fails to meet any response time.
- 11.5.** All requests for Support Services must be made using the supplied support telephone number or by submitting support tickets.
- 11.6.** Every Support Incident is charged in 15 minute intervals at the standard rate unless the Customer as an on-going support contract for which this is included. Every out-call incident to a Customer premises there is a minimum charge of 90 minutes at the standard rate and

is charged in intervals of 15 minutes thereafter.

## **12. Consultancy Services**

- 12.1.** This Section 12 applies ONLY where Enigma I.T provides Consultancy services to the Customer.
- 12.2.** Enigma I.T will provide the Consultancy Services to the Customer as set out in the Quotation.
- 12.3.** Where Enigma I.T charges for Consultancy Services on a time and materials basis, Enigma I.T will keep records of the time spent by its employees and contractors in providing the Consultancy Services and will produce these to the Customer on request.

## **13. Charges**

- 13.1.** The Customer will pay the Price and the Recurrent Charges in the Stages or, if no Stages apply, within 14 days after the date of Enigma I.T 's invoice.
- 13.2.** If Enigma I.T is prevented or delayed from performing any of its obligations, or if it repeats any work or does any additional work because of any act or omission on the part of the Customer or on the part of any third party then, despite anything else in these Terms and Conditions or any Quotation:
  - 13.2.1.** if, as a result, the completion of any Stage is delayed, the Customer will immediately pay Enigma I.T the payment due to be paid on the completion of that Stage even though completion of that Stage has not taken place;
  - 13.2.2.** the Customer will pay Enigma I.T a reasonable sum in respect of all additional time spent and materials and computer time used by its employees and consultants resulting from the Customer's or any third party's act or omission including, without limitation, the provision of any incorrect or inadequate information or data;
  - 13.2.3.** the Customer will pay Enigma I.T all other reasonable costs, charges and losses sustained or incurred by Enigma I.T as a result of that act or omission and for which Enigma I.T is are not fully compensated under Condition 13.2.1 or Condition 13.2.2.
- 13.3.** Enigma I.T may increase the Rates and the Recurrent Charges at any time by giving the Customer not less than 30 days' written notice. Enigma I.T may increase the Charges to take account of any increased expense incurred by Enigma I.T in acquiring goods or services necessary to perform its obligations to the Customer.
- 13.4.** Except to the extent that any goods or services are to be provided for the Price or the Recurrent Charges, the Customer will pay Enigma I.T for all of the time it spends in providing the Services at the Rates. Enigma I.T may invoice the Customer monthly for any charges and expenses except the Recurrent Charges and the Price or any Charges due at a Stage. All invoices are payable within 14 days after the date of invoice.
- 13.5.** The Price, the Charges, the Rates and all other charges payable by the Customer are exclusive of value added tax, sales tax or similar taxes which the Customer will pay at the rate and in the manner from time to time prescribed by law.
- 13.6.** If any amount payable by the Customer is not paid on or before the due date then, without prejudice to Enigma I.T 's other rights and remedies, Enigma I.T may do either or both of the following: suspend the performance of Enigma I.T's obligations; and charge interest on the amount outstanding (as well after as before any judgment), from the date or last date for payment of that amount to the actual date of payment (both dates inclusive), and charge the Customer the costs of recovery in accordance with the Late Payment of Commercial Debts (Interest) Act 1998. The Customer will pay that interest and those costs to Enigma I.T on demand.
- 13.7.** The Customer will reimburse Enigma I.T for all travel, subsistence or other expenses incurred by its employees and contractors in connection with the provision of the goods and services to the Customer at the rates in the Quotation or (in the absence of a Quotation) at the rates set out on Enigma I.T 's website from time to time.
- 13.8.** Enigma I.T is not obliged to carry out any work except as specifically set out in the Quotation, but if it does so, the Customer will pay Enigma I.T for that work at the Rates, and these Terms and Conditions will apply to that work.
- 13.9.** Enigma I.T may make a reasonable charge for considering any amendment or alteration to the Services proposed by the Customer and for preparing any quotation or estimate and, if the Customer's request for any alteration is later withdrawn, but contributes to a delay in the performance of Enigma I.T 's obligations, Enigma I.T will not be liable for that delay and will be entitled to a reasonable extension of time at least equal to the period of the delay,

but also taking into account Enigma I.T 's other commitments.

**13.10.** Enigma I.T is not responsible for any third party charges which the Customer incurs.

#### **14. Testing and Acceptance**

**14.1.** Unless otherwise agreed between Enigma I.T and the Customer in writing, Enigma I.T will test the Website and the Equipment (as the case may be) in accordance with any test plan agreed with the Customer. The Customer will provide Enigma I.T with all test data and facilities (if any) included in that test plan.

**14.2.** The Customer will accept or be deemed to have accepted the Website or the Equipment (as the case may be) immediately after Enigma I.T confirms to the Customer in writing that it has passed those tests. Where no test plan is agreed with the Customer, the Customer will be deemed to have accepted the Website or the Equipment (as the case may be) within 7 days after Enigma I.T first delivers it or makes it available to the Customer.

**14.3.** If the Website or the Equipment fails to pass any acceptance tests, Enigma I.T will be given a reasonable opportunity to correct Defects or to replace it and to carry out repeat tests. This process will be repeated as often as is necessary until Enigma I.T confirms to the Customer that the Website or the Equipment (as the case may be) has passed those tests.

**14.4.** If at any time the Customer begins use of the Website or the Equipment (as the case may be) in a live or production environment, that is, if the Customer uses it for any purpose except testing or evaluation, the Customer will be deemed to have accepted it.

#### **15. Warranties**

**15.1.** Enigma I.T will investigate any Defects in the Website or any failure on Enigma I.T 's part to take reasonable skill and care in the performance of the Services reported to Enigma I.T by the Customer in writing provided the Customer gives Enigma I.T a copy of its data and anything else that Enigma I.T needs to reconstruct the problem, and Enigma I.T will provide avoidance or remedial information, or re-perform the Service. The Customer's rights under this Condition 15.1 in relation to the Website are limited to a period of 90 days immediately following Acceptance.

**15.2.** If Enigma I.T fails to comply with its obligations under Condition 15.1, Enigma I.T 's liability for that failure will not be greater than the amount paid by the Customer to Enigma I.T for the Website or the Service in question. The foregoing states Enigma I.T 's entire liability, whether in contract, tort (including negligence) or in any other way, for all and any Defects, deficiencies and errors in the Website or the Services.

**15.3.** Enigma I.T 's liabilities and obligations are subject to the Customer having complied with its obligations under these Terms and Conditions and to no alterations or modifications having been made to the Website, the Equipment or any Software Application by anyone except Enigma I.T .

**15.4.** When notifying Enigma I.T of a defect, error or deficiency the Customer must provide Enigma I.T with a documented example of that defect, error or deficiency and with all other information and materials Enigma I.T needs to reproduce it.

**15.5.** The express terms of these Terms and Conditions are in lieu of all other warranties, conditions, terms, undertakings and obligations on the part of Enigma I.T , whether express or implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are excluded to the fullest extent permitted by law.

**15.6.** The Customer warrants to Enigma I.T that the Customer has not been induced to enter into any Contract by any representation or by any warranty except those specifically contained in these Terms and Conditions as warranties. The Customer waives all claims for breach of any warranty and all claims for any breach of representation and for any misrepresentation, (whether negligent or otherwise) unless made fraudulently.

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

**16.1.** Except as specifically stated to the contrary in the Quotation or Condition 16.3, and except in relation to the Content, and other information, software and data the Customer supplies to Enigma I.T , the Intellectual Property Rights in the Website (including without limitation the Website Software) and in all software, documentation and other materials used or prepared in the course of rendering the Services are, as between Enigma I.T and the Customer, reserved to Enigma I.T. Enigma I.T may grant licences to use them to third parties. If any of those Intellectual Property Rights vests in the Customer or in any of its employees or contractors the Customer will, on Enigma I.T 's request, assign those rights to Enigma I.T .

- 16.2.** The Customer will give Enigma I.T any assistance Enigma I.T may require to enable Enigma I.T to obtain, enjoy, defend and enforce the Intellectual Property Rights reserved to Enigma I.T in Condition 16.1.
- 16.3.** The Intellectual Property Rights in the look and feel of the Website and in the Customer's branding used in connection with the Website and in the Content are, as between Enigma I.T and the Customer, reserved to the Customer.
- 16.4.** If the Customer makes or has anyone else (except Enigma I.T ) make any modification to the Website, any Software Product or any Website Software, Enigma I.T will have no further liability or responsibility in respect of the same, will be released from any obligation to provide any service in respect of the same, and will be entitled to raise additional charges in return for any Service that Enigma I.T does provide.
- 16.5.** Despite anything else in these Terms and Conditions or any Quotation, Enigma I.T will not be obliged to do anything which, in its reasonable opinion, may infringe the Intellectual Property Rights or other rights of any third party.
- 16.6.** The Customer will notify Enigma I.T immediately if it becomes aware of any unauthorised use of the Website, any Software Product or any Website Software. The Customer will permit Enigma I.T at any time to check that the use of any Software Product and any Website Software is in accordance with these Terms and Conditions and any Quotation and, for that purpose, Enigma I.T may enter any of the Customer's premises (and the Customer irrevocably licenses Enigma I.T , its employees and agents to enter any of those premises for that purpose).

## **17. Confidentiality**

- 17.1.** Enigma I.T and the Customer each agrees:
  - 17.1.1.** to keep the other's Confidential Information confidential and, except as permitted elsewhere in these Terms and Conditions, not to disclose that information to any other person, or use it for any purpose except the exercise of its rights, or the performance of its obligations, under these Terms and Conditions;
  - 17.1.2.** to disclose the other's Confidential Information only on a need-to-know basis to its employees, officers, professional advisers, contractors and suppliers who have given an undertaking similar to that in Condition 17.1.1; and
  - 17.1.3.** immediately on receipt of a written request from the other party, or on the termination or expiry of any Contract (however it happens), destroy or, at the other's request, deliver to the other, all copies of the other's Confidential Information, and certify to the other that this has been done.
- 17.2.** Nothing in Condition
  - 17.2.1.** will prevent either party from disclosing or retaining any of the other's Confidential Information in order to comply with the law or any regulation, or the order of any court or authority of competent jurisdiction, provided that where the Customer is a public authority and receives a Request for Information it complies with Condition 17.3; or
  - 17.2.2.** applies to any of the other's information that is or comes into the public domain through no breach of Condition 17.1, or that is trivial or obvious, or that by its nature cannot be confidential.
  - 17.2.3.** Each party will immediately notify the other if it becomes aware of any breach of confidence in relation to that other's Confidential Information, and it will give the other any assistance reasonably required in connection with any action or proceedings that the other may institute against any third party for breach of confidence.

## **18. Termination**

- 18.1.** Despite anything else contained in these Terms and Conditions or any Quotation, Enigma I.T may, at its option, suspend the performance of its obligations or terminate any or all Contracts immediately on giving notice in writing to the Customer if:
  - 18.1.1.** the Customer fails to pay any amount due under these Terms and Conditions and that sum remains unpaid for 14 days after Enigma I.T has given the Customer notice that that amount has not been paid; or
  - 18.1.2.** the Customer commits any breach of these Terms and Conditions (except a failure to pay when Condition 18.1.1 will apply) and in the case of a breach which is not persistent and which is capable of being remedied, has failed, within 30 days after

**18.1.3.** Enigma I.T has requested the Customer in writing, to remedy the breach; or the Customer has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets, or it passes a resolution for winding-up (except for the purpose of a bona fide scheme of solvent amalgamation or reconstruction), or if a court of competent jurisdiction makes an order to that effect, or if it becomes subject to an administration order, or if it enters into any voluntary arrangement with its creditors, or if any similar process to any of the above is begun, or if the Customer ceases or threatens to cease to carry on business.

**18.2.** Any suspension of any Service on Enigma I.T 's part will not prejudice its right to terminate that any Contract later, for the same or for a different reason.

**18.3.** On the termination or expiry of any Contract (however it happens) the Customer will return to Enigma I.T any Equipment for which the Customer has not paid in full, all copies of Enigma I.T 's Confidential Information and all copies of any Software Product and any Website Software and, and will erase all copies of the Software Products and the Website Software from any computer system in the Customer's possession or control, and the Customer will certify to Enigma I.T that this has been done.

**18.4.** Any termination or expiry of any Contract (however it happens) will not affect any accrued rights or liabilities of either Enigma I.T or the Customer, nor will it affect the coming into force or the continuance in force of any of these Terms and Conditions that is expressly, or by implication, intended to come into or to continue in force on or after termination.

**18.5.** On the termination or expiry of any Contract the Customer will immediately pay Enigma I.T for all work done before termination and for all expenses Enigma I.T has incurred or has agreed to incur in connection with any work done or to be done for the Customer.

**18.6.** No refund of any charges, fees or expenses paid in advance will be made on the termination or expiry of any Contract.

## **19. Delays**

**19.1.** Despite anything else contained in these Terms and Conditions or any Quotation, Enigma I.T will not be liable for any delay in performing or failure to perform its obligations caused by circumstances beyond its control (including, without limitation, any act or omission on the part of the Customer or on the part of any third party, and any defect, error, fault or deficiency in any software not provided by Enigma I.T or in any equipment), and Enigma I.T will be granted a reasonable extension of time for the performance of its obligations, the reasonableness of that extension to be assessed not only in the context of the project in hand but also in the context of its other commitments.

**19.2.** Enigma I.T will endeavour to comply with any timetable or dates which Enigma I.T have given to the Customer's for the performance of the Services, but these are estimates only, and Enigma I.T will not be liable for any delay or failure to supply or perform in accordance with that timetable or those dates.

**19.3.** Both Enigma I.T and the Customer will use reasonable endeavours to carry out their respective obligations so as to allow the other a reasonable period within which to perform its obligations. If either Enigma I.T or the Customer becomes aware of the possibility of any delay or slippage, it will notify the other as soon as practicable. If either Enigma I.T or the Customer causes any delay, the other will be allowed a reasonable extension of time for the performance of its tasks, the reasonableness of that extension to be assessed not only in the context of the project in hand but also in the context of other commitments.

## **20. Representatives**

**20.1.** Enigma I.T and the Customer will each appoint a person who will act as its representative for the purposes of liaising with the other, who will be authorised to take decisions on behalf of the appointor, and who will be responsible for providing any information which may be required by the other party to perform its obligations. Enigma I.T and the Customer will each immediately notify the other of the name, telephone number, fax number and e-mail address of its appointee and of any change in the identity or the contact details of that appointee.

## **21. The Customer's Information and Facilities**

**21.1.** The Customer will provide Enigma I.T , free of charge, with all information, software, materials, documentation, resources and facilities reasonably requested by Enigma I.T to enable Enigma I.T to perform its obligations. The Customer will ensure that its staff, contractors and other suppliers co-operate fully with Enigma I.T and cause no delay. Where

Enigma I.T needs the Customer to provide information, software, documentation, resources, facilities, equipment, or materials or take a decision, the Customer will do so promptly and so as not to delay the work Enigma I.T is doing.

- 21.2.** Unless Enigma I.T has undertaken to provide it, the Customer will ensure that the any equipment, telecommunications and network systems necessary for the performance of Enigma I.T 's obligations or necessary to allow the Customer to use any Service is installed and is fully operational before Enigma I.T delivers any goods or provides any Service that depends on the same. The Customer will ensure that the same are maintained and supported so as to keep them in good working order.
- 21.3.** Whilst any of Enigma I.T 's employees or consultants is working on the Customer's premises, the Customer will ensure the health and safety of those people. The Customer will indemnify Enigma I.T and keep Enigma I.T indemnified against all losses, damages and expenses incurred or suffered by Enigma I.T in connection with any and all claims made in respect of any injury, death or loss suffered by those employees or consultants. This provision will survive the termination or expiry of any Contract and will continue in force indefinitely.
- 21.4.** The Customer warrants to Enigma I.T that none of the Content or any other information, software or materials supplied by the Customer to Enigma I.T will infringe the Intellectual Property Rights of any third party, nor will it include anything which is pornographic, obscene, offensive, indecent, abusive, menacing, unlawful, blasphemous, an invasion of privacy, an infringement of Intellectual Property Rights or of any Data Protection legislation or principle, defamatory, a malicious falsehood or seditious libel, a contempt of court, or anything which is likely to incite or capable of inciting violence, racial hatred, sadism, cruelty, or which encourages any unlawful or illegal act or omission, or which is misleading, or causes annoyance, inconvenience or needless anxiety, or which is potentially damaging or harmful.
- 21.5.** The Customer warrants to Enigma I.T that the Customer has the right to disclose to Enigma I.T and to publish the Content and any other information, software and materials that the Customer provides to Enigma I.T and that Enigma I.T is entitled to retain, disclose and amend the Content and that information, software and materials for the purpose of fulfilling its obligations to the Customer. Without prejudice to the above, the Customer also warrants that the Customer has obtained the consent of any individual whose personal data are disclosed to Enigma I.T or published on the Website.
- 21.6.** The Customer will indemnify Enigma I.T and keep Enigma I.T fully and effectively indemnified against any and all costs, claims, demands, expenses and liabilities of any nature arising out of or in connection with any breach of any provision in Conditions 21.4 or 21.5. This provision will survive the termination or expiry of any Contract and will continue in force indefinitely.

## **22. Liability**

- 22.1.** Nothing in these Terms and Conditions or any Quotation limits or excludes Enigma I.T 's liability for the death or injury of any person caused by its negligence or for any fraud or fraudulent misrepresentation.
- 22.2.** Subject to Condition 22.1, but otherwise despite anything else contained in these Terms and Conditions or any Quotation, Enigma I.T will not be liable to the Customer for loss of profits, loss of savings, loss of use, loss of business, loss of opportunity, loss or spoiling of data, loss of contracts (in each case whether direct or indirect), or for any indirect or consequential loss, whether arising from negligence, or breach of contract, or in any other way, even if Enigma I.T was advised of or knew of the likelihood of that loss or type of loss arising.
- 22.3.** Subject to Condition 22.1, but otherwise despite anything else contained in these Terms and Conditions or any Quotation, Enigma I.T 's total liability in connection with each Contract, whether in contract, or tort (including negligence) or arising in any other way, will not exceed the Price and Charges paid by the Customer under that Contract or, if greater, £100,000.
- 22.4.** Subject to Conditions 22.2 and 22.3, Enigma I.T will indemnify the Customer against any costs or damages finally awarded against the Customer by a court of competent jurisdiction in the United Kingdom as a result of any third party claim that the Software Product or any Website Software infringes the copyright of any third party, provided that:

- 22.4.1.** the Customer notifies Enigma I.T immediately in writing of any allegations of infringement or other claim;
- 22.4.2.** the Customer does not make any admission or in any other way prejudice the defence of any such claim;
- 22.4.3.** the Customer allows Enigma I.T to conduct and settle all negotiations or litigation and gives Enigma I.T reasonable assistance in doing so;
- 22.4.4.** the claim does not arise as a result of any modification to the Software Product or the Website Software, or as a result of the Content or any other information, software or other materials supplied by the Customer to Enigma I.T , or as the result of the use of the Software Product or the Website Software in conjunction with anything which Enigma I.T has not supplied, or the design of the anything in accordance with the Customer's specifications or instructions;
- 22.4.5.** the Customer has not breached these terms and Conditions;
- 22.4.6.** Enigma I.T may modify or replace the Software Product or the Website Software; and
- 22.4.7.** Enigma I.T may refund the Price of the Software Product to the Customer and, on the making of that refund, the Customer will cease using the Software Product and the Contract for the same will terminate immediately. This Condition 22.4 sets out Enigma I.T 's entire liability in respect of any actual or alleged infringement of Intellectual Property Rights in respect of the Software Products and the Website Software.

**22.5.** Because of the uncertainty of future events and circumstances Enigma I.T does not guarantee that its forecasts, projections, advice, recommendations or the contents of any report, presentation or other document will be achievable; Enigma I.T gives the same to address specific circumstances at the time. All information which Enigma I.T supplies is supplied in good faith, but Enigma I.T does not warrant or guarantee the accuracy or completeness of any information obtained from, or based on information obtained from, the Customer's or any third party. It is not within the scope of Enigma I.T 's obligations to enquire as to, or to verify, the accuracy or completeness of that information.

**22.6.** The provisions of this Condition 22 will survive the termination or expiry of any Contract and will continue in force indefinitely.

## **23. Waiver of Remedies**

**23.1.** No forbearance or delay by either Enigma I.T or the Customer in enforcing its respective rights will prejudice or restrict those rights. No waiver of any right will operate as a waiver of any subsequent breach. Except as expressly provided otherwise in these Terms and Conditions or any Quotation, no right, power or remedy conferred by these Terms and Conditions or any Contract or by the law on, or reserved to, Enigma I.T or the Customer is exclusive of any other right, power or remedy available to Enigma I.T or the Customer, and each of those rights, powers, and remedies is cumulative.

## **24. Entire Agreement**

**24.1.** The relevant Sections of these Terms and Conditions and any Quotation supersede all earlier agreements, arrangements and understandings between the Customer and Enigma I.T in relation to the subject matter of the Contract and constitute the entire agreement between Enigma I.T and the Customer relating to that subject matter. No addition to or modification of any provision of these Terms and Conditions or any Quotation will be binding on Enigma I.T or the Customer unless recorded in writing and signed by a duly authorised representative of each of Enigma I.T and the Customer.

## **25. Assignment**

**25.1.** The Customer may not assign, or transfer, or sub-contract or sub-license any of its rights or obligations under any Contract, whether in whole or in part, without first obtaining Enigma I.T 's written consent.

## **26. Notices**

**26.1.** All notices to be given under these Terms and Conditions must be in writing and be sent to the intended recipient at its principal place of business or any other address in England which the intended recipient has designated for that purpose by notice given in accordance with the provisions of this Condition 26. Any notice may be delivered personally, or by first class pre-paid letter, or by fax, and will be deemed to have been served: if by hand, when delivered; if by first class post, 48 hours after posting; and if by fax, when dispatched,



provided the sender's fax machine automatically produces written confirmation of error free transmission to the intended recipient's fax number.

**27. Law**

**27.1.** These Terms and Conditions and each Contract between Enigma I.T and the Customer are governed by, and are to be construed in accordance with the laws of England and Wales and the parties will submit to the non-exclusive jurisdiction of the English courts.

**28. Partnership and Staff**

**28.1.** Nothing in these Terms and Conditions or any Quotation creates, evidences or implies any partnership or joint venture between Enigma I.T and the Customer or the relationship between them of principal and agent.

**28.2.** Enigma I.T has the discretion to allocate such staff as Enigma I.T from time to time sees fit to the provision of the Services.

**28.3.** The Customer will not, either during the period when Enigma I.T is providing any Services to the Customer, or for 6 months afterwards, without first obtaining Enigma I.T 's written consent:

**28.3.1.** solicit or endeavour to entice away from, or discourage from being employed or engaged by, Enigma I.T anyone who is or has been involved in the provision of those Services; or

**28.3.2.** employ, engage or endeavour to employ or engage anyone who is employed or engaged by Enigma I.T and is or has been involved in providing those Services.

**29. Third Party Rights**

**29.1.** No third party is entitled to the benefit of these Terms and Conditions or any Contract under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

**30. Change Control**

**30.1.** Either Enigma I.T or the Customer at any time can request or recommend a change to any of the Services.

**30.2.** Neither party will be obliged to agree to any requested or recommended change but neither party will unreasonably withhold its agreement to that request or recommendation.

**30.3.** Enigma I.T will advise the Customer of the likely impact of any requested or recommended change on the Price, the Charges and timescales for the Service.

**30.4.** Until such time as any change is agreed in writing, Enigma I.T will, unless otherwise agreed in writing by Enigma I.T and the Customer, continue to perform and to be paid for the Service as if that change had not been requested or recommended.

**30.5.** The parties will respond in writing to, or will meet to discuss, any requested or recommended change as soon as practicable, and in any event within four weeks following receipt of the request or recommendation.

**30.6.** Any agreement to a requested or recommended change will become valid only when recorded in writing and signed on behalf of each of the parties.