

BACKGROUND	
A	NCS Technology Limited is the supplier of various technology solutions and carries out associated installation and support services.
B	The Customer wishes to engage NCS to supply them with such technology and services and agrees that such provision shall be subject to these Customer Terms.

DEFINITIONS

Acceptance Tests	means such acceptance tests as are determined by NCS to measure compliance by the Solution with the Specification.
Authorised Representative	means the authorised representative of the Customer as set out in the Order Confirmation Form.
Cabling	means the cabling to be provided by NCS as part of the Solution.
Change Management Procedure	means the procedure to be followed if any changes to the Contract or the schedules are to be made as set out in Schedule 1 (Change Management Procedure).
Commencement Date	means the date the Contract is entered into as set out in the Order Acknowledgement.
Contract	means a contract between NCS and the Customer which is agreed as set out in the Quotation and in these Customer Terms.
Customer	means the customer of NCS as identified in the Quotation.
Customer Equipment	means the equipment and environment required to be provided by the Customer in compliance with the Customer Equipment Requirements to enable the operation of the Solution.
Customer Equipment Requirements	means the requirements for the Customer Equipment and the associated environment as set out in the Quotation and/or as otherwise communicated or made known to the Customer from time to time to ensure that such equipment is compatible with the Solution.
Data Protection Act	means the Data Protection Act 1998 as amended and supplemented from time to time.
Delivery Address	means the place where the Equipment (and where appropriate any other element of the Solution) shall be delivered and installed as set out in the Quotation.
Equipment	means the technology to be supplied by NCS as part of the Solution and as set out in the Quotation.
Equipment Documentation	means all documents and information made available to the Customer in relation to the Equipment.
Equipment Fees	means the fees payable by the Customer in relation to the Equipment as set out in the Quotation.
External Element	means external elements, factors or parties outside of NCS' reasonable control including but not limited to the Internet, the Customer Equipment or any third party equipment, the Value Added Services, power supply, the telecommunications infrastructure, telecommunication networks, the Customer's network or connectivity to the Solution, the Customer's breach of this Contract or the Customer's (or any third party acting on their behalf) or any other third parties' acts or omissions, any changes in any applicable law or regulation or any action or request of the police, the judiciary or any other body with applicable authority.
External Element Effect	means where an External Element affects NCS' ability to provide the Solution (or any part of it) in accordance with the terms of this Contract or otherwise causes NCS to breach any of the terms or conditions of this Contract.
Fees	means the fees payable by the Customer in relation to the Solution incorporating the Equipment Fees, the Support Fees and any other fees payable to NCS by the Customer under this Contract.
Intellectual Property Rights	means all intellectual property rights howsoever arising and in whatever media, whether or not registered or capable of registration, including (without limitation) copyright, database rights, patents, service marks, trade marks (whether registered or not), trade names, registered design rights, unregistered design rights, domain names, know-how, confidential information and any applications for the protection or registration of these rights and all renewals and extensions of them throughout the world.
Internet	means the global data network comprising interconnected networks using TCP/IP (Transmission Control Protocol/Internet Protocol).
Job Sheet	means the document completed by the NCS Engineer and signed by the Customer to acknowledge that the Solution has been installed and has passed the Acceptance Tests and has been accepted by the Customer.
Manufacturer's Warranty	means the warranty provided by the manufacturer of the Equipment as set out in the Quotation and the Equipment Documentation.
Minimum Contract Period	means the minimum period in relation to which the Customer contracts to purchase the Solution Support as set out in the Quotation.
NCS	means NCS Technology whose registered company number is 03644687 and whose registered office is at 3 West Court, Enterprise Road, Maidstone Kent ME15 6JD.
NCS Engineer	means the engineer acting on behalf of NCS to install and test the Solution at the Delivery Address.
NCS Helpdesk	means the helpdesk made available by NCS as set out in the Quotation.
Operating Instructions	means all instructions, guidance or information communicated or made generally available by NCS and/or as appropriate by any manufacturer, in relation to the Solution whether via their website or otherwise.
Order Confirmation Form	means the confirmation form entered into by the offering to purchase the Solution as set out in the Quotation.
Order Acknowledgement	Means the acceptance by NCS of the Customer's offer as set out in clause 1.5 which shall be communicated by email or such other method as determined by NCS.
Quotation	means the document submitted to the Customer incorporating details of the Solution to be supplied by NCS including the associated Order Confirmation Form.
Services	means the services to be supplied by NCS as part of the Solution including but not limited to the installation services.
Solution	means the Equipment, the Cabling, the Services and the Solution Support to be provided to the Customer as set out in the Quotation and the Contract.
Solution Support	means the Support provided by NCS in relation to the Solution as set out in the Quotation.
Specification	means the specification for the Equipment and the Services as set out in the Quotation.
Support Fees	means the fees payable by the Customer in relation to the Solution Support as set out in the Quotation.
Value Added Services	means those services identified by NCS as being supplied by the applicable third-party suppliers.
Warranty	means the warranty provided by NCS in relation to the Solution as set out on the Quotation.
Working Days	means in the UK all days other than weekends or national, public or bank holidays.

1	Quotation
1.1	Prior to entering into a Contract the Customer shall communicate their requirements to NCS.
1.2	When NCS have a full understanding of the requirements of the Customer, NCS will prepare a Quotation which shall in addition to information about the proposed Solution incorporate an Order Confirmation Form. If the parties are not in agreement about the contents of the Quotation they will work together to make appropriate changes and NCS will then resubmit an amended Quotation to the Customer.
1.3	Each Quotation shall be valid for a period of 14 days following its submission by NCS and shall for legal purposes amount to an "invitation to treat" (and not an offer) to provide the Solution on the terms set out in such Quotation. To the extent that there is a variation in the price of the Equipment, the Cabling or any other materials following the submission of a Quotation NCS shall be free to withdraw such Quotation and resubmit it taking into account such price variance.
1.4	The customer may signify their approval of such Quotation by signing and returning the Order Confirmation Form to NCS within 14 days of the submission of the Quotation. The return of the signed Order Confirmation Form shall be deemed to be an offer by the Customer to purchase the Solution on the terms and conditions of this Contract.
1.5	No offer placed by the Customer shall be deemed to be accepted by NCS until NCS submit an Order Acknowledgement, or if it happens before, until NCS delivers the Solution. Following such acceptance each party shall be bound by the terms and conditions of this Contract.

2	The Contract
2.1	Subject to any variation under clause 2.2 the Contract shall be subject only to terms and conditions set out in the Quotation and these Customer Terms to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).
2.2	No variation to the Contract shall have effect unless expressly agreed in writing and signed by somebody with authority to sign for each party, any change requested to the Contract may only be made by following the Change Management Procedure or as otherwise agreed by the parties.
2.3	All obligations in the Contract shall apply to all employees, subcontractors or agents of the Customer as they apply to the Customer. Any breach of such obligations or any acts or omissions of such employees, subcontractors or agents shall for the purpose of this Contract be deemed to be a breach, act or omission of the Customer.
2.4	A reference to a statute, statutory provision or subordinate legislation is a reference to it as it is in force taking account of any amendment or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts provided that, as between the parties, no such amendment or re-enactment shall apply for the purposes of this Contract to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party.

3	Delivery and Installation of the Equipment and Cabling
3.1	Delivery and installation of the Equipment and Cabling shall take place at the Delivery Address.
3.2	Any dates specified by NCS for delivery of the Equipment and Cabling are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
3.3	Any liability of NCS for non-delivery of the Equipment and Cabling shall be limited to providing the Equipment and Cabling within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Equipment and Cabling.
3.4	If NCS attempt to deliver the Equipment and Cabling to the Delivery Address but are unable to carry out such delivery, a delivery card shall be delivered at the Delivery Address and a further attempt shall be made to the Delivery Address on a date agreed by the parties. If such attempt shall again fail due to no fault of NCS the provisions of clause 3.5 shall apply.
3.5	If for any reason the Customer fails to accept delivery as set out in clause 3.4, or NCS is unable to deliver the Equipment and Cabling on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
3.5.1	NCS may store the Equipment and Cabling until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and
3.5.2	the Customer will be responsible for the cost of re-delivering thereafter.
3.6	The Customer shall provide at the Delivery Address and at its expense adequate and appropriate equipment and resources for taking collection of the Equipment and Cabling.
3.7	If required as part of the Services NCS shall install the Equipment and Cabling at the Delivery Address in accordance with the Contract.
3.8	When the NCS Engineer considers that the Equipment and Cabling has been installed in accordance with the Contract they shall inform the Customer. The Customer shall be obliged to make available the Authorised Representative throughout the day of delivery who is able to apply the Acceptance Tests to the Equipment and Cabling. Failure to make such person available shall mean that the Customer is unable to accept the Equipment and Cabling and all costs associated with any further time spent or activities required by NCS as a result of such failure shall be borne by the Customer on a time and materials basis.
3.9	Following being informed of the completion of installation the Customer shall apply the Acceptance Tests to the Equipment and Cabling and following successful completion of the Acceptance Tests, the Customer shall sign the Job Sheet as confirmation of their acceptance of the Equipment and Cabling.
3.10	To the extent that the Acceptance Tests (in NCS' reasonable opinion) fail NCS shall carry out such necessary remedial work in order to complete the installation and the process in clause 3.9 shall be repeated accordingly.
3.11	In the unlikely event that Acceptance Tests cannot (in NCS' reasonable opinion) successfully be completed in accordance with clause 3.9 or 3.10 NCS shall provide an alternative date to the Customer for further Acceptance Tests to be applied to the Solution to allow for the required remedial work to be carried out. When such failure is due to any act or omission of the Customer or anyone acting on their behalf all costs relating to such remedial work and re-testing shall be borne by the customer on a time and materials basis.

4	Cancellation
4.1	If the Customer wishes to cancel an order (or part of an order) prior to delivery then NCS shall permit such cancellation and shall, subject to the remainder of this clause 4, refund any amounts paid in relation to such order (or the element of the order which is being cancelled).
4.2	To the extent that NCS has carried out any work or incurred any expense (including but not limited to all amounts paid or committed to be paid in relation to the purchase of any Equipment or Cabling) in relation to the order being cancelled by the Customer, such amounts (to be charged on a time and materials basis and subject to NCS' standard rates from time to time) shall be set off against any amounts to be refunded under clause 4.1 above. Furthermore if there is any shortfall in relation to such amounts owed by the Customer, the Customer shall pay such amounts in full within 30 days of the date of any relevant invoice provided by NCS. When calculating the indebtedness of the Customer under this clause NCS may include a 20% restocking fee in relation to cancelled orders.
4.3	Following delivery in relation to an order a Customer shall have no right to cancel such order however this is without prejudice to the provisions set out in clause 3.9 and 3.10 relating to acceptance of the Solution.

5	Risk and Title in the Equipment and Cabling
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5.1	The Equipment and Cabling is at the risk of the Customer from the time of delivery to the Customer or where applicable the Customer's agent or carrier.
5.2	Ownership of the Equipment and Cabling shall not pass to the Customer until NCS has received in full (in cash or cleared funds), and subject to the Equipment and Cabling having been despatched, all sums due to it in respect of the Equipment and Cabling under the Contract.
5.3	Until ownership of the Equipment and Cabling has passed to the Customer, the Customer shall:
5.3.1	hold the Equipment and Cabling on a fiduciary basis as NCS' bailee;
5.3.2	not destroy, deface or obscure any identifying mark or packaging on or relating to the Equipment and Cabling;
5.3.3	maintain the Equipment and Cabling in a brand-new condition and keep it insured on NCS' behalf for its full price against all risks to the reasonable satisfaction of NCS; and
5.3.4	in relation to anyone with a claim against assets of the Customer, protect the Equipment and Cabling from being removed and make it known that such Equipment and Cabling is owned by NCS and is therefore not part of the asset base of the Customer.
5.4	Until title has passed to the Customer, the Customer shall account to NCS for any insurance proceeds in relation to the Equipment and Cabling and shall keep all such proceeds of insurance separate from any moneys or property of the Customer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
5.5	Until ownership has passed to the Customer the Customer's right to possession of the Equipment and Cabling shall terminate immediately if:
5.5.1	the Customer makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors, or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer in any jurisdiction; or
5.5.2	the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or is otherwise in breach of the Contract or any other contract between NCS and the Customer; or
5.5.3	the Customer encumbers or in any way charges any of the Equipment and Cabling.
5.6	If the Customer's right to possession terminates under clause 5.5 NCS shall be entitled to enter into the Customer's premises and repossess such Equipment and Cabling or require that the Equipment and Cabling is immediately returned to NCS.
5.7	If NCS are entitled to repossess the Equipment and Cabling under clause 5.5 and 5.6 the Customer shall grant NCS (and shall where necessary procure that any third party grants NCS), its agents and employees an irrevocable licence at any time to enter any premises where the Equipment and Cabling are or may be stored in order to recover them and the Customer shall give (and procure that any relevant third parties give) all access and assistance required to enable such recovery. All of NCS' costs in relation to the repossession of the Equipment and Cabling shall be borne by the Customer.
5.8	On termination of the Contract, howsoever caused, NCS' (but not the Customer's) rights contained in this clause 5 shall if applicable remain in effect.

6	NCS' Obligations
6.1	NCS shall supply the Services using reasonable skill and care.
6.2	NCS shall provide the Solution Support as set out in the Quotation.
6.3	Indications regarding performance dates, timelines or commencement of supply shall be estimates only and time in relation to such performance or commencement shall not be of the essence in relation to provision of the Solution.
6.4	The Customer acknowledges that NCS cannot control the continuity, performance, action, availability, impact or reliability of the External Elements. The Customer acknowledges that NCS shall not be responsible for External Element Effects and shall not be liable to the Customer in relation to any External Element Effects or any of the results or consequences that flow from such an External Element Effect.
6.5	Other than those set out in the Quotation all samples, drawings, descriptive, material, specifications and advertising issued by NCS and any descriptions or illustrations contained in NCS' marketing information, brochures, catalogues or websites (or via any other medium) are issued or published for the sole purpose of giving an approximate idea of the Solution (or relevant part of it) described in them. They shall not form any part of the Contract and imply no warranty in relation to such Solution (or relevant part of it).
6.6	If NCS are prevented, hindered or delayed from performing any of their obligations under this Contract by reason of any External Element Effect, by reason of any delay caused by or act or omission of the Customer (or anyone acting on their behalf) or due to any change required by the Customer which was not managed correctly via the Change Management Procedure then the timeframe for the attainment of NCS' obligations shall be adjusted by such period to account for the impact of such event or issue.

7	Customer's Obligations Regarding the Solution
7.1	The Customer shall comply with the following obligations in relation to the Solution (or relevant part of it):
7.1.1	co-operate with NCS in all matters relating to the Solution;
7.1.2	provide NCS, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's premises, office accommodation, data and other facilities as required by NCS to enable them to carry out the Services;
7.1.3	provide to NCS, in a timely manner, such information and assistance as NCS may require in relation to the Contract and ensure that it is accurate in all material respects;
7.1.4	obtain and maintain all necessary licences, authorisations and consents in relation to the Customer Equipment in all cases before the date on which the Solution is to be used by the Customer and throughout the lifetime of the Contract;
7.1.5	use the Solution strictly in accordance with all Operating Instructions and comply at all times with the Customer Equipment Requirements and ensure that the Customer Equipment complies with all relevant laws, standards, and requirements;
7.1.6	ensure that all those who use the Solution (or any part of it) are aware of the Customer's obligations under this clause 7 and that they agree to comply with such obligations;
7.1.7	not itself adjust, repair or maintain the Solution and shall not request, permit or authorise anyone other than NCS to carry out any adjustments, repairs or maintenance of the Solution;
7.1.8	be responsible for the health and safety of NCS and its employees or sub-contractors to the extent that they enter into or carry out any part of the Contract at any premises owned by, under the control of or otherwise used by the Customer. The Customer must ensure that such people are given all assistance and information required and that they are made aware of all rules, procedures and other relevant matters in relation to health and safety;
7.1.9	supply contact details for the Authorised Representatives who are from time to time permitted by the Customer to communicate with NCS in relation to this Contract and make decisions in relation to it; and
7.1.10	provide NCS with full, accurate and up-to-date asbestos registers in relation to all relevant premises prior to any work or access by NCS. If

	following a review of the register NCS consider that there is some level of risk or uncertainty involved it will not carry out any work and the Customer must do all that NCS require (including but not limited to testing and remedial work) in order to remove such risk or uncertainty.
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8	Warranties
8.1	Each party warrants and represents that, as at the Commencement Date of this Contract:
8.1.1	it has full capacity and authority to enter into and perform its obligations under this Contract;
8.1.2	this Contract is executed by a duly authorised representative of that party; and
8.1.3	there are no actions, suits or proceedings or regulatory investigations pending or, to that party's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Contract.
8.2	The Customer acknowledges that NCS are not the manufacturer of the Equipment and the Customer releases and discharges NCS from all obligations and liabilities that NCS may have in relation to the quality or condition of the Equipment or the use of them other than those set out in this clause 8.
8.3	NCS is not the manufacturer of the Equipment and gives no warranty of any kind as to the performance of the Equipment. However, to the extent that the Equipment is sold with a Manufacturer's Warranty NCS will use reasonable endeavours to assist the Customer in achieving a benefit through such Manufacturer's Warranty. Such Manufacturer's Warranty shall under no circumstances give any rights to the Customer to claim against NCS and any claims made against the manufacturer in relation to such Manufacturer's Warranty shall be strictly subject to the manufacturer's terms and conditions of business.
8.4	To the extent that it is set out in the Quotation NCS shall provide a Warranty in relation to the Cabling and its installation.
8.5	NCS shall not be liable for a breach of the Warranty set out in clause 8.4 unless:
8.5.1	the Customer gives written notice of the defect to NCS within 30 days of the time when the Customer discovers or ought to have discovered the defect or breach; and
8.5.2	NCS is given a reasonable opportunity to examine the relevant Cabling and the Customer gives NCS all information and assistance reasonably required in relation to such examination.
8.6	NCS shall not be liable for a breach of the Warranty in clause 8.4 if:
8.6.1	the defect or breach arises due to wilful damage caused by the Customer or any third party or due to the negligence of the Customer or any third party; or
8.6.2	the Customer or any other third party makes any further use of the Equipment or Cabling after giving notice of an issue with the Cabling; or
8.6.3	the defect or breach arises because the Customer or any other third party failed to follow good trade practice or did not comply with the Operating Instructions, the guidance or instructions contained within the Equipment Documentation or any other of NCS' (or the relevant manufacturer's) oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Equipment or the Cabling; or
8.6.4	the defect or breach arises out of any breach by the Customer of the Contract; or
8.6.5	the Customer or any other third party alters, repairs or modifies such Equipment or Cabling without the written consent of NCS; or
8.6.6	the Equipment or Cabling is used in combination with or otherwise together with any goods or services which are not supplied by NCS or which are not otherwise approved in writing by NCS as being compatible with the Equipment or Cabling.
8.7	If NCS are in breach of the Warranty referred to in clause 8.4 NCS shall at its sole discretion repair or replace such Cabling (or the defective part) or refund the price of such Cabling at the pro rata Contract rate.
8.8	If NCS complies with clause 8.7 it shall have no further liability for a breach of any of the Warranty.
8.9	The warranties given in this Contract are given in lieu of all other warranties, conditions, or other terms expressed or implied whether by statute, common law or otherwise which are, to the fullest extent permitted by law excluded from the Contract.

9	Value Added Service
9.1	Subject to NCS' agreement the Customer may purchase Value Added Services to be used alongside the Solution. The Customer acknowledges that subject to clause 9.2 NCS shall not be responsible for the provision of such Value-Added Services and shall not be liable in relation to any failure or issue in relation to such Value-Added Services. It shall be for the Customer to contract directly with the supplier of such Value-Added Services and all issues relating to the Value-Added Services are to be dealt with as between the Customer and the relevant supplier.
9.2	NCS agree that to the extent that they agree that a Value-Added Service can be used by the Customer alongside the Solution to the extent that the Customer and the Value-Added Service supplier comply with all requirements in relation to the integration, connectivity and performance of such Value Added Services alongside the Solution, the Solution will be compatible with the Value Added Services.

10	Fees and Payment
10.1	The Fees in relation to the Solution shall be as set out in the Quotation or as otherwise agreed between the parties in writing.
10.2	All payments shall (unless otherwise set out in the Quotation or agreed between the parties in writing) be made within 30 days of the date of each applicable invoice.
10.3	The Customer shall bear any risk in making payment and NCS shall not be responsible for any Fees (nor shall payment be made, or any indebtedness be extinguished) until they have been received, by NCS in cleared funds.
10.4	Unless specifically referred to all references to Fees are references to Fees exclusive of VAT which the Customer shall pay in addition at its current rate from time to time.
10.5	NCS may, without prejudice to any other rights it might have, set off any liability of the Customer against any liability of NCS to the Customer.
10.6	The Fees shall not include any additional costs for goods or services not expressly set out in the Quotation. Such additional costs shall be charged for on a time and materials basis at NCS' standard prices from time to time or as otherwise directed by NCS.
10.7	In the event that the Customer fails to make any payment in accordance with the terms and conditions of the Contract NCS may:
10.7.1	suspend or terminate the Contract with immediate effect and cease all work in relation to the Solution; and
10.7.2	charge interest on any late sum in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

11	Liability
11.1	Other than as stated in this Contract all warranties expressed or implied whether by statute common law or otherwise are excluded to the fullest extent permitted by law.
11.2	Both parties acknowledge and agree that the allocation of risk and liability contained in this Contract is reasonable in all the circumstances having regard to the Fees and the nature of this Contract and the ability of the Customer to rely on its own insurance arrangements and other resources to bear or recover any loss and/or damage incurred.
11.3	Nothing in this Contract shall exclude or limit either party's liability for:
11.3.1	death or personal injury caused by such party's negligence; or

11.3.2	for fraudulent misrepresentation; or
11.3.3	for any matter which it would be illegal for such party to exclude or limit their liability in relation to.
11.4	Save as provided in clause 11.3, NCS' total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise shall not:
11.4.1	in relation to any damage caused to physical property caused by the negligence of NCS exceed £500,000 in relation to any event or series of connected events;
11.4.2	where such liability relates solely to the Solution Support, in any 12-month period (commencing on the Commencement Date and its anniversary thereafter ("the Period")) exceed the Support Fees payable by the Customer under this Contract in relation to such Period;
11.4.3	where such liability relates solely to the Equipment or Cabling exceed the Equipment Fees;
11.4.4	in any event exceed the Fees paid by the Customer under this Contract.
11.5	Save as provided in clause 11.3 NCS shall not, in any event be liable for loss of profits; loss of contracts; loss of money; loss of anticipated savings; loss of business; loss of opportunity; loss of goodwill; loss of reputation; loss, damage to or corruption of data; or any indirect or consequential loss, and such liability is excluded whether it is foreseeable, known, foreseen or otherwise. For the avoidance of doubt, the exclusions set out in this clause apply, whether such losses are direct, indirect, consequential or otherwise.
11.6	Except in relation to a claim under clause 11.3 NCS shall have no liability to the Customer in respect of any claim made under this Contract unless the Customer has served notice of such claim within 3 months of the date the Customer became aware of the circumstances giving rise to such a claim or the date the Customer ought reasonably to have become aware of such circumstances.

12	Confidentiality
12.1	Neither party shall, without prior written consent of the other party, divulge or allow any disclosure of the whole or any part of the other party's Confidential Information to any person except its own employees or subcontractors, and only to the extent that it is strictly necessary for the proper performance of this Contract. Both parties undertake to the other party to ensure that such employees or subcontractors are made aware of the confidentiality of such information and that such employees or subcontractors owe a binding and effective duty of confidence to them in relation to such information. For the purpose of this clause Confidential Information is any information which is marked as confidential or which the receiving party ought reasonably to realise is of a confidential or business sensitive nature and shall include but not be limited to the terms and conditions of this Contract, any information relating to any dispute between the parties and any other information relating to the performance of any other element of the Solution or any part of it.
12.2	The obligations of confidentiality under this clause 12 will not apply to information which:
12.2.1	comes into the public domain other than by way of a breach of this Contract;
12.2.2	is lawfully in a party's possession before disclosure under this Contract and such party can provide reasonable evidence of such possession;
12.2.3	is received by a party from a third party who does not breach any duty of confidence in disclosing it;
12.2.4	is required to be disclosed by law, by any court of competent jurisdiction.
12.3	If either party breaches this clause 12 or is otherwise aware of any non-permitted use or disclosure of the other party's Confidential Information they shall promptly tell the other party and shall in relation to a breach provide such other party with such assistance as is required to remedy such use or disclosure.
12.4	For the avoidance of doubt the obligations set out in this clause 12 shall survive termination of this Contract and shall continue indefinitely thereafter.

13	Intellectual Property Rights
13.1	The Customer acknowledges that all Intellectual Property Rights in the Solution and all documents relating to the same belong to NCS or their licensors (and in the case of the Equipment to the manufacturer (or their licensors) of such Equipment). Nothing in this Contract assigns any Intellectual Property Rights in the Solution or in any documents and materials relating to the same to the Customer and the only right the Customer has in relation to such Intellectual Property Rights, is the right to use them in accordance with the terms of this Contract.
13.2	The Customer shall immediately inform NCS if it becomes aware of any circumstances where the Solution (or any part of it) infringes the Intellectual Property Rights of any third party or where any third party infringes (or may infringe) any of the Intellectual Property Rights that exist in the Solution.

14	Term and Termination
14.1	This Contract will continue for the Minimum Contract Period and thereafter until terminated by either party in accordance with this clause 14. Either party may terminate this Contract by giving the other 3 months written notice, such notice not to expire until the end of the Minimum Contract Period.
14.2	Either party may suspend or terminate this Contract immediately on notice, if the other party:
14.2.1	commits a material breach of this Contract and, if the breach is capable of remedy, fails to remedy the breach with 30 days of a written notice to do so, such notice to include notice of an intention to terminate following a failure to so remedy; or
14.2.2	is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent or bankrupt or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.
14.3	If the Contract expires or is terminated, then:
14.3.1	NCS shall immediately cease to have any obligations to the Customer in relation to the Solution;
14.3.2	the Customer shall return to NCS (or at NCS' discretion destroy) all documentation and Confidential Information in their possession relating to NCS and to this Contract and shall certify that such return or destruction has been carried out;
14.3.3	the Customer shall pay all amounts outstanding under the Contract in relation to which invoices have been raised and where any invoices have not been submitted NCS shall submit such invoices which shall be payable by the Customer immediately on receipt.
14.4	Termination of the Contract, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly or by implication intended to survive termination.

15	General
15.1	Neither party shall be liable to the other for any failure or delay in performance of this Contract to the extent that such failure or delay is due to any events outside of their reasonable control, including but not limited to acts of God, war, flood, fire, labour disputes, supplier and/or subcontractor delays or failures, municipal failure, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. If either party is affected by any such event, then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
15.2	The Customer agrees that for the duration of this Contract and for the period of one year thereafter they shall not solicit, entice or contract (or attempt to contract) with any person, firm or company who is or has been an employee, director or consultant of NCS at anytime during the

	term of this Contract other than by means of a national advertising campaign open to everyone and not specifically targeted.
15.3	Any written notice may be delivered or sent by first class post to the Customer or NCS at the address set out for such parties on the Quotation or as otherwise communicated in writing from time to time or by email to the email addresses of the Authorised Representative of the Customer.
15.4	Neither this Contract nor any rights, licences or obligations under it, may be assigned or novated by the Customer without the prior written approval of NCS. NCS shall be entitled to assign and novate its rights and/or obligations under this Contract to a member of its group or in relation to any business asset transfer.
15.5	Unless expressly provided for under this Contract, this Contract supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the subject matter of this Contract. The Customer confirms that they have not entered into this Contract on the basis of any representation that is not expressly incorporated into this Contract.
15.6	If any provision of this Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from this Contract and rendered ineffective as far as possible without modifying the remaining provisions of this Contract and shall not in any way affect any other provisions or the validity or enforcement of this Contract.
15.7	No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Contract. No right, power or remedy in this Contract conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party.
15.8	The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Contract except to the extent that any provision of this Contract expressly provides to the contrary.
15.9	This Contract shall be governed by the laws of England and Wales and the English courts shall have jurisdiction in relation to any dispute with respect to the subject matter or construction of this Contract.

**SCHEDULE 1
CHANGE MANAGEMENT PROCEDURE**

1	Change Control
1.1	The Customer may at any time request and NCS may at any time recommend changes to the Solution or to this Contract.
1.2	Neither party will be obliged to agree to any requested or recommended change.
1.3	NCS will advise the Customer of the likely impact of any requested or recommended change on the price and timescales for fulfilment of the change or of any other impact the changes may have on the terms of this Contract or otherwise.
1.4	Until such time as any change is formally agreed, each party will, unless otherwise agreed, continue to perform its obligations under this Contract as if such change had not been requested or recommended.
1.5	The parties will respond in writing to, or will meet to discuss, any requested or recommended change as soon as practicable. If the parties have not agreed any matter arising out of the request or recommendation for change within four (4) weeks of the request or recommendation, the parties shall be free to escalate it to the senior management of each party. No failure by the parties to comply with the provisions of this Schedule shall relieve either party from its obligations under this Contract.
1.6	Any agreement to a requested or recommended change will become valid as an amendment to the Contract only when recorded in writing and signed by the nominated representatives of both parties.