



**4th
Platform**

Master Terms and Conditions for the Supply of Goods and Services

Principal Cloud Services include:

4th Platform Cloud	Software as a Service (SaaS) complete hosted Microsoft Office Suite and more
Cloud Storage	Secure Data Storage, retrievable from anywhere
Cloud Mail	Hosted Microsoft Exchange, access email from anywhere
Data Services	Complete suite of data services including DSL and Leased Lines
Helpdesk	Per seat unlimited remote Help Desk services
Cloud VoIP	Low cost, low capital outlay alternative to traditional PBX
Infrastructure	Supply, building and ongoing support of your IT infrastructure
Consulting	Impartial and expert advice on designing your IT landscape

Other Group Services include:

TMVP	Total Managed Volume Agreement for all your IT and print requirements
MPS	Manage Print Services, your entire print output fleet under one agreement
MDS	Managed Document Services, included your document handling into MPS
Print	Print output devices
EDM	Electronic Document Management – manage your documents on-line
Cameron Barclay	Your one-stop shop for all office and commercial design and fit-out works. Whatever your office environment needs Cameron Barclay can help.

T: 0333 240 8139
E: enquiries@4thplatform.co.uk
W: www.4thplatform.co.uk

MASTER TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, the following words have the following meanings:

"4th Platform" means 4th Platform Ltd. (Company Number 08217346) whose registered office is at Unit 1, Parsonage Business Park, Horsham, West Sussex RH12 4AL.

"4th Platform Premises" means any physical location or space owned, rented or hired by or lent to 4th Platform.

"Administrative Charge Scale" means the standard rates for administration set out in 4th Platform's scale of charges in force from time to time (available at www.principal.co.uk/adminchargescale.php).

"Business Day" means 9am to 5pm on any day which is not a Saturday, Sunday or bank or other public holiday in England and Wales.

"Change In Law" means any change in any law, enactment, order, regulation, directive, code of practice or other similar instrument occurring after the Date of the Contract affecting 4th Platform and suppliers of services which are the same or similar to the Services and which results in an increase in the cost to 4th Platform of providing the Services.

"Charge(s)" means the charge(s) payable by the Customer to 4th Platform in respect of the Services to be provided and/or for the supply of Goods as specified in the Contract. In the case of a TMV Agreement the Charges relating to any specified Goods and/or Services will be incorporated into the relevant TMV Agreement.

"Charge Frequency" means the frequency e.g. daily, weekly, monthly, quarterly, annually at which a Charge is due as set out in the Services Schedule.

"Commencement Date" means either a) the date on which the Services are first available for use by the Customer as notified to the Customer by 4th Platform in accordance with Clause 4.4 and where 4th Platform is to provide more than one Service it is the date on which the first service is available for use as notified to the Customer by 4th Platform in accordance with Clause 4.4 and where the Services are to be provided at more than one site of the Customer, the date shall be the date on which the Services is available for use at the first site to be commissioned and notified to the Customer by 4th Platform in accordance with Clause 4.4 or b) in the case of a TMV Agreement the date on which the relevant TMV Agreement comes into force for the relevant Services.

"Confidential Information" means all information of a confidential nature in the disclosing party's possession or control, whether created before or after the Date of the Contract, whatever its format, and whether or not marked "confidential" including relating to a party's business and products including but not limited to its operations, plans, market opportunities, customers, know-how (including designs, processes of production and technology), trade secrets and software disclosed to the other party whether in writing, orally or by any other medium but not including information which is or comes into the public domain through no fault of the other party, was already lawfully in the other party's possession or comes into the other party's possession without breach of any third-party's confidentiality obligation to the disclosing party, or is independently developed by or on behalf of the other party.

"Contract" means the Customer's signed Services Schedule incorporating these Terms and Conditions and the relevant Contract Documents, and 4th Platform's acceptance of it under Clause 2.

"Contract Documents" means (in order of precedence) these Terms and Conditions together with any or all of the following: TMV Agreement, Services Schedule, Scoping Document, Customer Technical Summary, Service Definition, Service Level Agreement and any other documents set out or expressly referred to in any of those Contract Documents.

"Customer" means the person or entity to whom 4th Platform is to provide Services and/or Goods as identified in the relevant Contract Documents and also referred to as the Hirer in a relevant TMV Agreement or other Contract Document.

"Customer's Environment" means the Customer's existing information technology and data and telecommunications network infrastructure which includes but is not limited to the hardware, software, telecommunications links which exist on the Date of Contract.

"Customer Equipment" means any hardware (including Customer Racks provided by the Customer) or other equipment which is part of any Services, 4th Platform permits the Customer to bring onto, install or operate at any 4th Platform Premises.

"Customer Racks" means the racks or cabinets, for the time being provided by 4th Platform or the Customer for installation in any 4th Platform Premises as part of hosting or co-location services, in which the Customer equipment is housed.

"Customer Technical Summary" means a detailed technical summary of the Customers Environment and/or IT infrastructure requirements prepared by the Customer or 4th Platform on the basis of information provided by the Customer.

"Data Service" means any service which provides the Customer with a means of backing up and restoring its data, including long term data storage.

"Date of the Contract" means the date on which 4th Platform, or in the case of any relevant TMV Agreement the Funder, signs the relevant Contract Document.

"Deliverables" means any products and materials developed by 4th Platform in relation to the Services in any media, including, without limitation, computer programs, data diagrams, reports and specifications (including drafts)

"Equipment" means any equipment used in the provision of the Services and installed at the Customer's premises or 4th Platform Premises and owned by 4th Platform or a third-party provider.

"Goods" means any item that is sold, hired or leased, to the Customer under this Contract.

"Group Company" means in respect of each party, all subsidiary companies of that party together with any parent or holding company and all other subsidiary companies of that parent or holding company (the relevant expressions being as defined by the Companies Act 2006).

"Intellectual Property Rights" means all vested and future rights of patents, trademarks, service marks, trade names, trademarks and get-up (and goodwill attaching to those trademarks and that get-

up), domain names, registered and unregistered designs, trade or business names, copyright (including rights in software), database rights, semi-conductor rights, design rights, rights in confidential information and any other intellectual property rights whatsoever, irrespective of whether such intellectual property rights have been registered or not, which may subsist in any part of the world.

"Losses" means claims, demands, actions, awards, judgments, settlements, costs, expenses, liabilities, damages and losses (including all interest, fines, penalties, management time and legal and other professional costs and expenses).

"Minimum Term" means the minimum period applicable for the provision of the Services as set out in Contract Documents or if no Minimum Term is stated a period of three years from the Commencement Date. Where a specific end date is stated, the Minimum Term will end on that date and where a period of months is stated such period will commence on the Commencement Date. Where 4th Platform is to provide more than one Service, it commences on the date the last Service is available for use by the Customer at the last site at which that Service is to be commissioned. Where a new Services Schedule is entered into during the Term the Minimum Term of all existing Services provided in accordance with any then current Service Schedules will be extended for the same period as specified in the new Services Schedule or if no Minimum Term is stated a period of three years from the Commencement Date of the Services being provided under the new Services Schedule.

"Month" means a calendar month.

"Permitted Amp Usage" means the number of Amps calculated by multiplying the number of Customer Racks installed at any 4th Platform Premises by eight.

"Scoping Document" means the document entitled as such which may be prepared by 4th Platform in relation to Services and which sets out the technical specification of the Services and any roll-out or installation timetable.

"Service(s)" means the service(s) to be provided by 4th Platform to the Customer under the Contract.

"Service Credit" means the amounts (if any) as set out in the applicable Service Level Agreement (if there is one) which are to be paid by 4th Platform to the Customer in accordance with Clause 16.4 in the event that 4th Platform fails to provide any Services in accordance with the applicable Service Level.

"Services Definition" (if there is one) means the version of the detailed technical specification of each element of the Services current at the Commencement Date.

"Service Level" means the service level for a Service specified in the Service Level Agreement for that Service (if there is one).

"Service Level Agreement" means the version of the service level agreement (if there is one) applicable to the provision of a Service comprised in the Services Definition for that Service current at the Commencement Date.

"Services Schedule" means the schedule of services which these Terms and Conditions are supplement to, which sets out amongst other things, details of the Customer, the Service(s) to be provided to the Customer by 4th Platform, the Minimum Term, the then current Charges and the Charge Frequency.

"Software" means any software which is made available by 4th Platform for use by the Customer in connection with or as part of any Services.

"Telephone Service" means any Service which includes the provision of facilities to make or receive telephone calls together with any related services.

"Term" means, in respect of each Service, the period during which 4th Platform is to provide that Service to the Customer commencing on the Commencement Date and ending when either a) terminated in accordance with Clause 17 or b) in the case of a TMV Agreement, when the relevant TMV Agreement ends or is terminated in accordance with its terms and conditions.

"TMV Agreement" means the Totally Managed Volume and Services Agreement Master Agreement and any relevant TMV Agreement Schedule(s) that relate to the relevant Goods, Services, Equipment and/or Software.

1.2 In these Terms and Conditions: words denoting the singular include the plural and vice versa; words denoting any gender include all genders; reference to any person includes a reference to companies and all other legal entities; any reference to a statute, statutory provision, subordinate legislation or code of practice is a reference to that statute, statutory provision, subordinate legislation or code of practice as amended, modified or re-enacted from time to time; any reference to a regulatory body includes a reference to any successor or replacement regulatory body; and any uses of the word "include" or "including" shall be deemed followed by the words "without limitation". Clause headings are used for convenience only and shall not affect the interpretation of the Clauses.

2. APPLICATION OF CONDITIONS

2.1 These Terms and Conditions shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, any Customer correspondence including a Customer purchase order, confirmation of order, or specification, or implied by law, trade custom, practice or course of dealing.

2.2 No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on 4th Platform unless in writing and signed by a director of 4th Platform or a person authorised in writing by a director of 4th Platform.

3. EFFECT OF SIGNED SERVICES SCHEDULE

3.1 The Customer's signature to the Services Schedule constitutes an offer by the Customer to purchase the Goods and/or Services specified in it and other applicable Contract Documents on these Terms and Conditions; accordingly, the execution and return by

	4th Platform of the Customer's signed Services Schedule, or 4th Platform's commencement or execution of work pursuant to the Contract, shall establish a contract for the supply and purchase of those Goods and/or Services on these Terms and Conditions. The Customer's standard terms and conditions (if any) attached to, enclosed with, or referred to in any correspondence of the Customer shall not govern the Contract.	(b) to send, knowingly receive, upload, download, store, display or use any material which is offensive, abusive, indecent, defamatory, obscene, menacing or which is in breach of copyright, confidence, privacy or any other third-party right;
4. 4TH PLATFORM'S OBLIGATIONS		(c) fraudulently or in conjunction with the commission of any criminal offence;
4.1	4th Platform shall supply the Goods and/or provide the Services to the Customer for the applicable Term with reasonable skill and care and in accordance with the Contract.	(d) to spam or send or provide unsolicited advertising or promotional material or to knowingly receive responses from spam or unsolicited advertising or promotional material sent or provided by the Customer or any third-party acting on its behalf; and/or
4.2	4th Platform shall ensure that it complies at all times with all legislation, laws, codes of practice, and licence conditions applicable to the supply of Goods and/or the provision of the Services, including any applicable obligations under the Data Protection Act 1998.	(e) in an unlawful manner or in contravention of any legislation, laws, codes of practice, licence conditions, third-party rights or any reasonable instructions of 4th Platform from time to time regarding the use of any Equipment, Software, Goods and/or Service.
4.3	4th Platform shall use reasonable endeavours to manage and complete the Services, and to deliver any Goods and/or Deliverables to the Customer, in accordance in all material respects with the Contract.	5.4 The provisions of Clause 5.3 shall not apply in respect of any material which is sent, stored or reproduced by the Customer for the legitimate and lawful purposes of the usual business of the Customer. The Customer shall indemnify 4th Platform from and against any Losses incurred by 4th Platform or its employees, officers, agents and contractors arising out of or in connection with any breach by the Customer of its obligations pursuant to Clause 5.3.
4.4	4th Platform shall use reasonable endeavours to meet any performance dates specified in the Contract and shall notify the Customer when each element of the Services is first available for use at each Customer site, but any such dates shall be estimates only and time shall not be of the essence of the Contract. At the request of the Customer, 4th Platform shall provide reasonable supporting evidence to the Customer to demonstrate that any Services have been made available for use by it.	5.5 4th Platform may suspend the provision of any Services (or any part of a Service) without liability to the Customer (including to pay Service Credits) where there is or 4th Platform reasonably suspects there is:
4.5	4th Platform reserves the right to suspend or vary any Services (or part of a Services and whether generally in respect of the Customer only) where it is required to do so by law, or at the direction of any court or governmental or other regulatory body, or as a result of the suspension, loss or revocation of any licence which 4th Platform requires to provide that Services. Unless the suspension arises as a consequence of an act or omission of the Customer, its employees or agents or person authorised by it to use the Services, during the period of any such suspension, 4th Platform will, acting reasonably, make a pro-rated adjustment to the Charges, such adjustment which shall be binding on the Customer.	(a) any unauthorised access to the Customer's network which may result in unauthorised access to 4th Platform's network, the suspension to last until such time as that unauthorised access ceases or is demonstrated by the Customer not to have occurred; and/or (b) any breach by the Customer of any of its obligations under Clause 5.3.
4.6	In the event that a third-party supplier of services to 4th Platform and/or the Customer under a Contract withdraws or reduces the services it provides then 4th Platform reserves the right to amend, vary or change any Equipment, Software or Services (including the technical specification for any Services, the Equipment or the Software used to provide any Services or the Services Definition for any Services) provided that such amendment, variation or change does not materially and adversely affect the provision of any Services. In the event that the third-party supplier withdrawal or reduction of services would result in an amendment, variation or change that would materially and/or adversely affect the provision of any Services, the Customer shall have the right either to terminate the element of the Services so affected (and no other elements of the Services) going forward (without liability for future payment for that element of the Services only) or instead elect to continue with that element of the Services subject to 4th Platform making an appropriate adjustment in the Charges acting reasonably. Where 4th Platform reasonably considers that it is necessary to suspend the provision of any Services or any part of a Service (including, without limitation, the provision of Services to a particular site of the Customer) for the purposes of carrying out amendment, variation, change, repair, maintenance or improvement of or to any Services, Software and/or Equipment, 4th Platform shall use its reasonable endeavours to ensure that the Customer receives reasonable notice of any such work.	5.6 The Customer shall remain liable to pay the Charges for any and all Services during any period of suspension pursuant to Clause 5.5.
5. CUSTOMER'S OBLIGATIONS		6. SUPPLY OF GOODS
5.1	The Customer shall:	6.1 The description of any Goods to be supplied is set out in the Services Schedule and/or any document to which it refers. 4th Platform warrant that at the time of delivery the Goods will correspond to any description given in the Contract. All other warranties, conditions or terms relating to fitness for purpose, merchantability or condition of the Goods and whether implied by statute or common law or otherwise are excluded to the fullest extent possible by law. Any claims under this warranty or in respect of any claimed shortages must be made by notice in writing to 4th Platform within three days of delivery. Where a valid claim is made under this warranty 4th Platform may at their sole discretion replace the Goods or refund the Charge, and in which case 4th Platform shall have no further liability to the Customer. 4th Platform reserve the right to make any changes in the specification of the Goods which do not materially affect their quality or performance. The Customer hereby warrants that they have obtained directly from the manufacturer of the Goods any warranties or guarantees they require in respect of the Goods.
(a)	ensure that it complies at all times with all legislation, codes of practice and licence conditions applicable to its use of the Equipment, Software, Goods and/or Services, including any applicable obligations under the Data Protection Act 1998, and any reasonable policies of 4th Platform regarding the use of any Equipment, Software, Goods and/or Services which are advised to it by 4th Platform from time to time;	6.2 The Customer must ensure that any premises into which the Goods are to be delivered or installed are ready to receive the Goods and the Customer shall make available to us free of charge any light, heat, air, electricity, power, communications ports and other facilities as 4th Platform may reasonably require for the delivery and any installation of the Goods. The Customer will be responsible for payment of any commissioning or other charges raised by any third-party in respect of the installation of the Goods. Any dates quoted for delivery of the Goods are approximate only. 4th Platform may deliver the Goods by separate instalments.
(b)	co-operate with 4th Platform in all matters relating to the Equipment, Software, Goods and/or Services;	6.3 Nothing in this Contract shall transfer to the Customer any Intellectual Property Rights in any Goods.
(c)	provide in a timely manner such access to the Customer's data as is requested by 4th Platform to enable it to perform its obligations under the Contract;	6.4 Risk of damage to or loss of the Goods shall pass to the Customer when the Goods are delivered to the delivery/installation address specified in the Services Schedule.
(d)	provide in a timely manner such information as 4th Platform may request to enable it to perform its obligations under the Contract, and ensure that such information is accurate in all material respects;	6.5 Notwithstanding delivery and the passing of risk in the Goods or any other provisions of the Contract, property in the Goods shall not pass to the Customer until 4th Platform have received payment in full for the price of all Goods the subject matter of this Contract. Until such time as the property in the Goods passes to the Customer, the Customer shall:
(e)	maintain in force at its own expense public liability insurance for the minimum amount of £5million.	(a) hold the Goods on a fiduciary basis as 4th Platform's bailee; (b) store the Goods (at no cost to 4th Platform) in satisfactory conditions and separately from all the Customer's other equipment or that of a third-party, so that it remains readily identifiable as 4th Platform's property;
5.2	If 4th Platform's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer or the Customer's agents, sub-contractors or employees, the Customer shall in all circumstances be liable to pay to 4th Platform on demand all reasonable Losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to 4th Platform confirming such Losses to the Customer in writing.	(c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and keep the Goods insured on 4th Platform's behalf for its full price against all risks with a reputable insurer to the reasonable satisfaction of 4th Platform, ensure that 4th Platform's interest in the Goods is noted on the policy, and hold the proceeds of such insurance on trust for 4th Platform and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
5.3	The Customer shall not use (nor allow any third-party to use) any Equipment, Software, Goods and/or Services:	6.6 4th Platform may at any time require the Customer to deliver them up to 4th Platform and if the Customer fails to do so 4th Platform may enter the Customer's premises or the premises of any third-party to repossess them.
(a)	in a way which is offensive, indecent, menacing, a nuisance or defamatory;	6.7 In accordance with current legislation, the Customer shall remain responsible for proper disposal of the Goods at the end of life unless the Goods are owned by a third-

	party or 4th Platform. In the event of any change in the current legislation requiring 4th Platform to dispose of the Goods then the Customer shall indemnify 4th Platform against all Losses arising from such change, to the fullest extent permissible by law.		pending resolution of that dispute. Following resolution of that dispute, the Customer shall pay to 4th Platform within seven days (or before the end of the original period of payment if earlier) any amount which it agrees or is ordered to pay together with interest (if applicable) calculated in accordance with Clause 7.8.
6.8	If the Goods to be supplied are to be subject to a hire or leasing agreement the Services Schedule will list the Goods to be supplied, the monthly or quarterly payment amount (to be paid to the hirer/lessee), the minimum or initial term of the hire or lease but the hire/lease agreement will be a separate and severable legally binding document.		
7.	CHARGES AND PAYMENT		
7.1	In consideration for the provision of the Services and/or the supply of Goods, the Customer shall pay the Charges to 4th Platform. The monthly, quarterly or annual (or other period as may be specified in the Services Schedule) recurring charges will commence on the Commencement Date and remain payable in advance at the same frequency thereafter. Any Charges due for Services used in excess of those provided for in the Services Schedule will be charged for in arrears at the same frequency as the Charges payable in advance. Any and all Charges for Goods and/or Services to be provided in accordance with a TMV Agreement will be charged for in accordance with the relevant TMV Agreement terms and conditions. Installation charges will become due from the Customer on the Customer signing the Services Schedule. Charges for Goods and/or Services not collected by Direct Debit must be paid for in full within 30 days of invoice (irrespective of when the Goods and/or Services are actually delivered). Other Charges will become due as specified in the Services Schedule or elsewhere in the Contract.	7.11	Should 4th Platform fail to issue a credit note to the Customer for any Service Credits which have become payable by 4th Platform within the time period for issuing such credit note as specified in the relevant Service Level Agreement then the Customer shall be entitled to deduct the value of those Service Credits from the next invoice issued by 4th Platform for the Charges for the Services to which those Service Credits relate.
7.2	The Customer shall pay all monies due to 4th Platform by Direct Debit unless otherwise agreed with 4th Platform in writing. If for any reason 4th Platform is unable to collect any payment by Direct Debit then 4th Platform will in addition to the amount due, be entitled to charge an amount in accordance with the then current Administrative Charge Scale from time to time applicable (available at www.principal.co.uk/adminchargescale.php). This additional charge will be applied each and every time 4th Platform are unable to collect any amount due by Direct Debit in accordance with this Contract.	7.12	Where 4th Platform is providing relevant Goods and/or relevant Services in accordance with a TMV Agreement the relevant TMV Agreement terms and conditions will replace Clauses 7.2 to 7.11 inclusive.
7.3	If the Customer:- (a) does not agree to set up a Direct Debit mandate; or (b) cancels the Direct Debit mandate for any reason at any time; or (c) 4th Platform cancels the Direct Debit mandate due to the Customer's repeated failure to pay or the Customer's other default, 4th Platform will be entitled to charge an additional percentage as set out in the then current Administrative Charge Scale from time to time applicable which will be charged in addition to the amount charged in accordance with this Contract.	8.	CHANGES, CHARGES ADJUSTMENT AND ADDITIONAL COST ITEMS
7.4	All Charges and other payments which may become due under the Contract are exclusive of: (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by 4th Platform's staff in connection with the Services, which shall be invoiced by 4th Platform at cost; and (b) VAT which (if applicable) shall be payable by the party making the payment in question at the rate from time to time in force.	8.1	In addition to its other rights under this Clause 8 to increase the Charges in certain specified circumstances, in the event that 4th Platform's operating costs in providing recurring (as opposed to one-off) supply of Goods and/or Services are increased as a result of increases in third-party charges to 4th Platform or other inflationary costs, 4th Platform shall also be entitled to increase any recurring Charges by an equivalent amount, save that in respect of any increases exceeding nine per-cent per annum 4th Platform shall, at the Customer's request, supply evidence of its own increased operating costs for providing the relevant Goods and/or Services.
7.5	All invoices issued by 4th Platform, unless paid by Direct Debit, shall be paid by the Customer in full, and in cleared funds, within thirty days of the date of the invoice.	8.2	Where any Charge is stated to be based on the volume of the Customer's use of a Service then 4th Platform shall be entitled to vary such Charge at any time to reflect the actual use of that Service by the Customer from time to time.
7.6	The Customer must provide any purchase order number or other reference which it wishes to appear on any invoice to be issued by 4th Platform at least twenty eight days prior to the date on which the invoice in question is to be raised. The Customer shall not be entitled to reject any invoice issued by 4th Platform on the grounds that it fails to include a purchase order number or other references where the Customer has failed to notify it to 4th Platform in accordance with this Clause 7.6.	8.3	If any Services are to include Digital Subscriber Line or similar technology at any Customer site and such technology is found to be unavailable at that site, the Customer shall pay all reasonable costs incurred by 4th Platform in installing an alternative suitable technology and undertaking any necessary network upgrades.
7.7	4th Platform shall be entitled to suspend the provision of any Services (or part of a Service) and/or delivery of any Equipment and/or Software and/or Goods without liability to the Customer (including to pay Service Credits) during any period during which any overdue sums are due to it from the Customer. During any such period of suspension, the Customer shall remain liable to pay the Charges for the suspended Services.	8.4	Where in connection with the provision of any Services it is necessary for a circuit to be installed at the Customer's site by a third-party, the Customer accepts that any installation charges may be higher than those specified in the Services Schedule because the third-party's site survey identifies circumstances or issues not originally contemplated by the parties at the Date of the Contract.
7.8	Time for payment shall be of the essence. 4th Platform shall be entitled to exercise its statutory rights to claim interest, its reasonable debt recovery costs and compensation under the Late Payment of Commercial Debt Regulations 2002, as modified or re-enacted from time to time, on all monies payable under the Contract which the Customer does not pay when due in addition to any other rights 4th Platform may have in respect of this Contract. Where, because of the Customer's status, the Late Payment of Commercial Debt Regulations 2002 does not apply, 4th Platform shall be entitled to recover from the Customer all costs incurred by it in the collection of all monies payable under this Contract, including but not limited to an administration fee of £100 per invoice which the Customer does not pay when due plus interest on overdue invoices at a rate equivalent to that payable under the Late Payment of Commercial Debt Regulations 2002 and legal costs on an indemnity basis, in addition to any other rights 4th Platform may have in respect of this Contract.	8.5	The capacity of any circuits located at each of the Customer's sites has been agreed between 4th Platform and the Customer as the bandwidth required as at the Date of the Contract for the then current traffic flow across the Customer's network. In the event that any subsequent modifications are required as a result of variances in actual traffic flow, such modifications shall be paid for by the Customer in addition to the relevant Charges.
7.9	Save as provided for by Clauses 7.10 and 7.11, the Customer shall not be entitled to make any deduction from any amount due from it to 4th Platform nor shall the Customer be entitled to exercise any right of set-off, counterclaim or withholding (other than any deduction or withholding of tax as required by law).	8.6	Where any third-party provider increases its charges to 4th Platform for the ongoing provision of any network or circuit used by the Customer as part of any Services, 4th Platform shall be entitled to increase the relevant Charges by an amount equal to the increase in charges payable by 4th Platform to the relevant third-party network provider.
7.10	Where the Customer has a bona fide dispute as to the amount of any invoice issued by 4th Platform which it has informed 4th Platform of in writing within 14 days of the date of the invoice, the Customer shall be entitled to withhold payment of the disputed amount only (provided it pays the undisputed amount in accordance with Clause 7.2)	8.7	If during any month the electricity consumed by the Customer Racks (based on a peak usage during the relevant month) exceeds the Permitted Amp Usage then the Customer shall pay the additional Amp charge of 4th Platform from time to time in force and available on request.
		8.8	The Charges for any 4th Platform Premises hosting or colocation service are based on the assumption that there will be no increase in the cost to 4th Platform of the electricity required to operate the Customer equipment and the 4th Platform Premises generally (including electricity used for heating/cooling) during the Term of the provision of those Services. In the event of any subsequent increase in the cost of electricity to 4th Platform, 4th Platform shall be entitled to increase the relevant Charges to reflect the increased cost of electricity committed for consumption by the Customer equipment and by an amount (calculated by reference to the space used by the Customer at the relevant 4th Platform Premises) to reflect the increased cost in operating the 4th Platform Premises environment.
		8.9	In respect of elements of the Charges that are variable depending on the volume uptake by the Customer (including but not limited to for data storage capacity, RAM usage, CPU usage and number of telephone calls made), in the event that in any month, quarter or year (as applicable, depending on the Customer's payment terms) the actual Charges payable by the Customer in respect of such Services would be less than 50% of the value of the highest amount of Charges paid by the Customer in any preceding month, quarter or year (as applicable) then the applicable Charges payable by the Customer for that month, quarter or year (as applicable) shall be 50% of such higher Charges instead of the lower actual Charges.
		8.10	In the event of any Change In Law occurring, 4th Platform shall be entitled to increase the Charges to reflect the increased cost to 4th Platform of providing the Services as a result of that Change In Law.
		8.11	At the request of the Customer, 4th Platform shall provide to the Customer such reasonable supporting evidence as may be necessary to support any increase to the Charges made by 4th Platform pursuant to Clauses 8.1 to 8.10. Any such evidence provided by 4th Platform shall constitute confidential information of 4th Platform.
		8.12	If a change to the Customer's Environment results in an increase in the cost of providing Services to the Customer, 4th Platform shall be entitled to increase the Charges for any and all affected Services accordingly. In addition 4th Platform shall be entitled to charge the Customer (at the then current rate) for making any changes to any Services that may have been affected. If 4th Platform is no longer able to provide a Service as a result of a change in the Customer's Environment 4th Platform may immediately cease and be relieved of any obligation to provide any affected Services and will be entitled to charge the Customer for early termination of the affected Services in accordance with Clause 17.8.

8.13	Where 4th Platform is providing relevant Services in accordance with a TMV Agreement the relevant TMV Agreement terms and conditions will replace Clauses 8.1, 8.2 and 8.9.		enable 4th Platform to complete the Customer Technical Summary is complete, accurate and not misleading in any way.
8.14	If either party requests a change to the scope or execution of the Services, 4th Platform shall, within a reasonable time, provide a written estimate to the Customer of:	12.	PREMISES
	(a) the likely time required to implement the change;	12.1	Access by the Customer and its representatives to any 4th Platform Premises shall at all times be subject to compliance with the access and security policies of 4th Platform and/or its third-party suppliers for the time being in force. The Customer shall indemnify 4th Platform against all Losses that 4th Platform or any of its other customers may incur by reason of any act or omission of the Customer or any of its representatives whilst on any 4th Platform Premises (including any failure by the Customer to comply with its obligations pursuant to the Contract).
	(b) any variations to the Charges arising from the change;	12.2	Each of 4th Platform and the Customer shall ensure that all of its employees, agents, sub-contractors and other persons authorised by it whom the other may permit access to any premises are suitably qualified, skilled and experienced to carry out the work for which they are entering the premises of the other. 4th Platform or the Customer shall be entitled to refuse any individual access to its premises without liability to the other party where it has reasonable grounds for suspecting that such individual does not have the appropriate skills, qualifications or experience or who may pose a threat to safety or security.
8.15	If 4th Platform requests a change to the scope of the Services, the Customer shall not unreasonably withhold or delay consent to it.	12.3	Whilst on any premises of the other party, 4th Platform and the Customer shall comply with all reasonable site procedures of the other party notified to it.
8.16	If the Customer wishes 4th Platform to proceed with the change, 4th Platform has no obligation to do so unless and until the parties have agreed in writing on the necessary variations to the Charges, any Contract Documents and any other relevant terms of the Contract to take account of the change.	12.4	In respect of any work to be undertaken by either party or a third-party at any premises of the Customer in connection with the supply of Goods and/or the provision of Services, the Customer shall be solely responsible for obtaining at its own cost and in sufficient time to enable the work in question to be undertaken any necessary consents required to undertake that work, including landlord's consent and wayleaves or easements required to enable network communications to be made to the Customer's premises.
9.	OUR STAFF	12.5	Where it is agreed that the Customer is to make alterations to its premises in order to allow the installation of equipment or a circuit or to receive the Goods and/or Services, this shall be recorded in the relevant Contract Documents together with the dates by which those alterations must be completed and the Customer shall complete any such alterations by those specified dates.
9.1	The Customer agrees not to solicit or entice away from 4th Platform or employ or attempt to employ, without the prior written consent of 4th Platform, any 4th Platform staff (whether an employee or sub-contractor of 4th Platform) introduced to the Customer as a consequence of this Contract until at least twelve months after all of 4th Platform's duties under this Contract have been performed. If the Customer breaches this Clause 9.1, 4th Platform will be entitled, without prejudice to its other remedies, to charge the Customer twenty five per-cent of the first year's gross remuneration of any replacement employee 4th Platform recruits as a consequence of the Customer's breach.	12.6	The Customer shall, at its own cost, prepare its premises for the installation of the Goods and/or for the provision of the Services and allow 4th Platform such access to and assistance at any of the Customer's premises at such times as 4th Platform may request to enable it to perform its obligations under the Contract, including access to enable 4th Platform to install, alter, vary, change, maintain, repair, replace or upgrade equipment and software or, on termination or expiry of the Contract or any applicable Services, to remove equipment and software from any premises of the Customer (and the Customer shall not be entitled to deny 4th Platform or any third-party access to any of its premises in such circumstances by reason of any dispute). Where requested by 4th Platform, such access may include remote (as opposed to physical) access to equipment and software installed at any Customer premises.
10.	TELEPHONE SERVICES AND INTERNET PROTOCOL ADDRESSES	12.7	4th Platform shall use its reasonable endeavours to undertake any work which requires access to the Customer's premises during the normal Business Day but reserves the right to require the provision of out of hours access. Where the Customer requests that 4th Platform undertakes any work at its premises outside of the normal Business Day, 4th Platform reserves the right to make an additional charge in respect of the provision of such out of hours work.
10.1	If Telephone Services are part of the Services, 4th Platform shall use its reasonable endeavours to provide uninterrupted Telephone Services, however no warranty or other representation is given by 4th Platform that any Telephone Services will be error or fault free or offer all of the services and facilities associated with traditional telephone lines (and for this reason, the Customer shall ensure that appropriate alternative arrangements are in place for the making of emergency calls). Subject to Clause 16.1, 4th Platform shall have no liability to the Customer in respect of any interruptions to any Telephone Services (other than to pay any applicable Service Credits, if any) and the Customer shall not be entitled to any refund of Charges (or to withhold payment of any Charges). In particular, the Customer acknowledges that the performance of any Telephone Services may be impaired by the uploading or downloading of data by the Customer across the same network used to provide those Telephone Services and that, subject to Clause 16.1, 4th Platform shall have no liability to the Customer (including to pay Service Credits) in such circumstances.	13.	4TH PLATFORM EQUIPMENT
10.2	Where the Customer uses equipment in connection with any Telephone Services of a type not approved for use with those Services by 4th Platform, 4th Platform shall, subject to Clause 16.1, have no liability to the Customer (including to pay Service Credits) as a result of any errors or faults with any Services which are attributable to the Customer's use of such un-approved equipment.	13.1	Where as part of any Services 4th Platform or a third-party acting on behalf of 4th Platform installs Equipment or Software at any premises of the Customer, such Equipment and Software shall at all times remain in the ownership of 4th Platform or the third-party owner. The Customer shall not acquire any rights of ownership in or title to any such Equipment or Software and shall not (whether by operation of law or otherwise), have any lien or similar rights over such Equipment or Software.
10.3	4th Platform shall use its reasonable endeavours to resolve any fault with any Telephone Services which is reported to it by the Customer as soon as reasonably practicable. In the event that 4th Platform agrees to work outside of its normal Business Day to remedy any such fault, then this shall be subject to the Customer agreeing to pay 4th Platform's additional charges for such out of hours work. 4th Platform reserves the right to charge the Customer for any such work undertaken by 4th Platform in investigating and/or remedying any fault with any Telephone Services which is reported to it by the Customer which subsequently turns out not to exist, to have been caused by the act or omission of the Customer or to have been caused by the Customer using equipment in connection with any Telephone Services of a type not approved for use with that Services by 4th Platform.	13.2	Risk of damage to or loss of any Equipment or Software of 4th Platform or the third-party owner installed at any premises of the Customer shall be borne by the Customer from the time such Equipment or Software is installed by 4th Platform or the third-party until 4th Platform or the third-party completes its removal. The Customer shall ensure that such Equipment and Software is insured at its own cost against fire, accident, theft and all usual risks (including loss or damage caused by an event of Force Majeure). In the event of any damage to or loss of any Equipment or Software whilst at the risk of the Customer whether accidental or not (other than damage or loss caused by 4th Platform or the third-party acting on behalf of 4th Platform), the Customer shall pay to 4th Platform the cost of repairing or replacing (as applicable) the Equipment or Software in question regardless of whether or not such costs are recoverable by the Customer under the policy of insurance maintained by it.
10.4	Where 4th Platform provides any Internet Protocol addresses, telephone numbers or codes to the Customer as part of any Services then the Customer shall not acquire any legal, equitable or other rights in respect of the same other than the right to use the Internet Protocol address, telephone number or code in question during the Term of the relevant Services in accordance with the terms of the Contract. All intellectual property rights subsisting in any Internet Protocol address, telephone number or code provide to the Customer by 4th Platform shall at all times remain vested in 4th Platform or its third-party licensor (as applicable).	13.3	Where 4th Platform agrees to sell any Equipment to the Customer and delivers such Equipment to the Customer prior to payment being received, risk of damage to or loss of that Equipment shall pass to the Customer upon delivery. Title to any such Equipment shall remain with 4th Platform until payment for that Equipment in full is received from the Customer, at which point title shall transfer to the Customer. Prior to title passing to the Customer, 4th Platform shall be entitled to enter any premises of the Customer at any time to recover that Equipment should payment for it be overdue from the Customer or should any of the events as listed in Clause 17.3(b) occur to the Customer.
10.5	The Customer shall not sell, transfer or lease any Internet Protocol address, telephone number or code which is provided to it by 4th Platform and, subject to Clause 10.6, upon termination of the Services in connection with which any Internet Protocol address, telephone number or code was provided, the right to use such Internet Protocol address, telephone number or code shall revert back to 4th Platform.	13.4	In respect of any Equipment or Software installed at any Customer premises, the Customer shall:
10.6	Subject to there being an appropriate porting agreement in place between 4th Platform and the relevant network carrier, the Customer may 'port' telephone numbers to and from 4th Platform.	(a)	take reasonable care of that Equipment and/or Software, such obligation to include prohibiting any person other than those authorised by 4th Platform to damage, alter, tamper with, move, remove, replace or repair that Equipment or Software;
10.7	4th Platform reserves the right to withdraw or change any Internet Protocol addresses, telephone numbers or codes which have been provided by it to the Customer at any time on notice.		
11.	CUSTOMER TECHNICAL SUMMARY		
11.1	Any Customer Technical Summary which is included as part of the Contract shall be relied on by 4th Platform to produce the technical specification for the supply of Goods and/or provision of Services to which it relates. The Customer warrants that any Customer Technical Summary provided by it or any information provided by it to		

- (b) immediately inform 4th Platform of any damage to, loss of or alterations to such Equipment and/or Software;
- (c) maintain at its own cost any operating environment for that Equipment and/or Software as may be reasonably specified by 4th Platform from time to time;
- (d) provide at its own cost an adequate electricity supply and suitable earth connections for that Equipment and/or Software;
- (e) not remove, alter or obscure any labels or markings which identifies that Equipment and/or Software as the property of 4th Platform or a third-party; and
- (f) not charge, mortgage or otherwise encumber that Equipment and/or Software.

14. CUSTOMER EQUIPMENT

14.1 Where, as part of any Services, 4th Platform permits the Customer to install any Customer Equipment at any 4th Platform Premises, the only right which is granted to the Customer is the right to locate that Customer Equipment at the 4th Platform Premises at the location within the Premises as 4th Platform shall dictate (which may be altered from time to time in accordance with Clause 14.3 below) during the Term of those Services. No relationship of landlord and tenant is created between 4th Platform, the Customer or any third-party.

14.2 4th Platform shall be entitled to access any Customer Equipment located at 4th Platform Premises (including any Customer Equipment located in a private suite or locked cabinet) at any time for the purposes of performing maintenance or other works in the case of an emergency or for health and safety reasons. The Customer shall provide 4th Platform with any security codes, access passes or keys necessary to enable access by 4th Platform in accordance with this Clause 14.2 and will keep 4th Platform updated with any changes to such security codes, access passes or keys.

14.3 4th Platform reserves the right to require the Customer to relocate any Customer Equipment located at any 4th Platform Premises to an alternative location within the same premises or another 4th Platform Premises. In the case of a private suite, 4th Platform shall ensure that the alternative location provides at least the same floor space. 4th Platform shall provide the Customer with at least ten Business Days written notice of any requirement for it to relocate any Customer Equipment pursuant to this Clause 14.3.

14.4 The Customer shall be solely responsible for the provision, installation, configuration and maintenance of all Customer Equipment. Risk of loss or damage to the Customer Equipment shall remain with the Customer at all times and the Customer shall be responsible for insuring all Customer Equipment against fire, accident, theft and all usual risks (including loss or damage caused by an event of Force Majeure).

14.5 The Customer shall ensure that all Customer Equipment:

- (a) is supplied, configured and used in accordance with all applicable manufacturer's instructions, safety standards, best industry practice and the reasonable instructions of 4th Platform;
- (b) is not added to, modified, removed or changed without the prior written consent of 4th Platform (such consent not to be unreasonably withheld or delayed);
- (c) does not exceed any power utilisation agreed in writing with 4th Platform or specified in the Contract.

14.6 At the request of 4th Platform from time to time, the Customer shall provide 4th Platform with an accurate list of all Customer Equipment installed at any 4th Platform Premises, such list to include as a minimum the equipment reference (which should also be clearly labelled on the front and rear facing panel of the equipment), make, model, serial number, specification, value, date purchased and date installed within 4th Platform Premises.

14.7 Within seven days of the date of termination of any Services in respect of which any Customer Equipment is located in any 4th Platform Premises, the Customer shall remove that Customer Equipment from the 4th Platform Premises during the usual Business Day (making good any damage and subject to access being granted by 4th Platform). In the event that the Customer fails to remove the Customer Equipment within:

- (a) such seven day period, then the Customer shall continue to pay the Charges for the terminated Services as though the Services were continuing (although 4th Platform shall not be obliged to provide the Services) until such time as the Customer Equipment is removed by the Customer or otherwise disposed of by 4th Platform in accordance with Clause 14.7(b); and
- (b) 28 days of the date of termination, 4th Platform shall be entitled, at 4th Platform's option, to: (i) place that Customer Equipment into storage (and the Customer shall pay to 4th Platform on demand all reasonable costs incurred by 4th Platform in connection with that storage); (ii) sell the Customer Equipment accounting to the Customer for the proceeds of any sale (after first deducting any amounts owing from the Customer to 4th Platform and the costs of effecting any sale); or (iii) dispose of that Customer Equipment (and the Customer shall pay to 4th Platform on demand all reasonable costs incurred by 4th Platform in disposing of that Customer Equipment). Any such action by 4th Platform in accordance with this Clause 14.7(b) shall be without any further notice to the Customer.

15. OTHER OBLIGATIONS OF THE PARTIES

15.1 In addition to the obligations of each party as set out in these Terms and Conditions, each party shall also comply with any other obligations and responsibilities as may be specified in the Contract Documents.

16. LIMITATION OF LIABILITY

16.1 Neither party seeks to limit or exclude its liability for death or personal injury caused by negligence nor in respect of fraud or fraudulent misrepresentation and no provision of the Contract shall be interpreted as attempting to exclude or limit such liability.

16.2 4th Platform shall have no liability to the Customer (including to pay Services Credits) in respect of any failure or delay by 4th Platform to deliver the Goods and/or provide the Services in accordance with the Contract where such failure or delay is attributable to any failure or delay by the Customer to comply with its obligations under the Contract.

16.3 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

16.4 Where the Service Levels for any Services provide for Service Credits to be payable by 4th Platform in the event that it fails to provide those Services in accordance with those Service Levels, such Service Credits shall be paid by 4th Platform in the form of a credit note. The Service Credits have been agreed between the parties as a fair and reasonable assessment of the likely loss and damage which the Customer would suffer as a result of 4th Platform failing to meet the applicable Service Levels and therefore represent the full extent of 4th Platform's liability for failure to achieve the relevant Service Levels. Payment of the relevant Service Credits by 4th Platform shall represent the Customer's sole and exclusive remedy in respect of any such failure by 4th Platform and the Customer hereby waives any right to claim for any additional loss and damage suffered by it in excess of the value of the Charges which would have been payable by the Customer during that Services period had 4th Platform provided the Services in question in accordance with the applicable Service Levels. 4th Platform shall not be liable to pay any Service Credits which would otherwise become due in consequence of a breach by the Customer of these Terms and Conditions. If there are no Service Levels applicable to a Service or Service Credits are not payable for failure to achieve Service Levels, then, subject to Clause 16.1, 4th Platform's sole liability to the Customer for non-availability of the relevant Services for whatever reason shall be to credit the Customer a fair proportion of the Charges paid in the relevant Charge period for the relevant Services taking into account all the circumstances.

16.5 Subject to the other provisions of this Clause 16 the total aggregate liability of 4th Platform to the Customer for any and all claims in connection with the supply of Goods and/or the provision of the Services or otherwise arising out of or in connection with the Contract for each 12 month period commencing on the Date of the Contract or any subsequent anniversary thereof shall be limited to the total amount of the Charges paid by the Customer for the supply of the relevant Goods and/or the provision of the relevant Service giving rise to the claim in question during the preceding 12 months (or during the first 12 months of the Term the Charges paid and payable during that period) subject to a maximum amount of £10,000 if lower than the actual amount of the relevant Charges over that 12 month period.

16.6 Subject to Clause 16.1, 4th Platform shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise to the Customer for the following types of loss:

- (a) loss of profit, loss of anticipated profit, loss of revenue, damage to goodwill, damage to reputation, loss of business, loss of savings or anticipated savings;
- (b) indirect or consequential loss;
- (c) any difference between the cost of making or receiving a telephone call via any VOIP telephone service compared to the cost of using a traditional telephone service;
- (d) any loss or damage arising as a result of any loss of or corruption to data (whether temporary or permanent); and/or
- (e) any loss or damage arising out of an inability to restore data due to the loss of or damage to any encryption key by the Customer.

17. TERM AND TERMINATION

17.1 Subject at all times to earlier termination in accordance with the provisions of these Terms and Conditions, the provision of each element of the Services by 4th Platform to the Customer shall continue until either a) the expiration of the Minimum Term and following the expiry of the Minimum Term the Contract for the provision of the Service(s) shall automatically renew for successive periods of 12 months unless either party serves on the other not less than three months written notice of termination, such notice to expire at the end of the Minimum Term or an anniversary of the date on which the Minimum Term expires or b) in the case of any Services relating to a TMV Agreement the provision of each relevant service by 4th Platform to the Customer shall continue until the relevant TMV Agreement ends or is terminated in accordance with the relevant TMV Agreement terms and conditions.

17.2 The provision of certain Services is dependent upon the Customer also being provided with certain other related Services. If, following the termination, for whatever reason, of the provision of any particular Services, 4th Platform would be unable to continue to provide the Customer with any such related Services, then the termination of that single Services shall be deemed to be in addition a termination of all such related Services.

17.3 Without prejudice to its other rights or remedies, either party shall be entitled to immediately terminate:

- (a) the provision of all or any of the Services by serving written notice of termination on the other party (such notice to be served within 45

	<p>20. SOFTWARE LICENSING AND INTELLECTUAL PROPERTY</p> <p>20.1 Ownership of all and any Intellectual Property Rights in any Software shall at all times remain vested in 4th Platform and/or its third-party licensors (as appropriate). The Customer shall not acquire ownership of or title to any such Intellectual Property Rights pursuant to the Contract or the provision of any Services to it.</p>
<p>(b) the provision of all Services in the event that the other party enters into any compromise or arrangement with its creditors or becomes unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986, if an order is made or an effective resolution is passed for the other party's winding up (except for the purposes of amalgamation or reconstruction as a solvent company), if a petition to wind up the other party is presented to court (which is not withdrawn within 14 days) or if a receiver, manager, administrative receiver or administrator is appointed in respect of the whole of any part of the other party's assets.</p>	<p>20.2 Subject to the payment by the Customer of the Charges for the relevant Services, the Customer's acceptance of any manufacturer or third-party licence conditions and the compliance by the Customer with its obligations pursuant to the Contract, 4th Platform grants to the Customer a non-exclusive, non-transferable, revocable licence to use the Software in order to utilise the Services to which it relates only during the Term of the provision by 4th Platform of the Services in question.</p>
<p>17.4 Without prejudice to its other right and remedies, 4th Platform shall be entitled to terminate at its discretion the provision of all or any of the Services by written notice in the event that the Customer fails on two or more occasions to pay any invoice (to the extent that the Customer has not disputed it in accordance with Clause 7.10) within 30 days of its due date or there has been two or more failed Direct Debit payment transactions for any Services and any such termination shall be deemed to be as a consequence of a material breach by the Customer.</p>	<p>20.3 The Customer will not and will not permit any third parties to:</p> <p>(a) distribute or allow others to distribute copies of the Software or any part thereof to any third-party;</p> <p>(b) tamper with, remove, reproduce, modify, amend or copy the Software or any part thereof;</p> <p>(c) provide, rent, sell, lease, licence or otherwise transfer the Software or any part thereof or use it for the benefit of a third-party;</p> <p>(d) reverse assemble, reverse compile, reverse engineer the Software or any part thereof; and/or</p> <p>(e) attempt to discover the source and/or object code of the Software or any other underlying proprietary information.</p>
<p>17.5 Termination of the provision of any individual Services shall not affect the continuing applicability of the Contract in respect of all remaining Services which are still to be provided nor shall it affect the continuing enforceability of any provision of the Contract concerning the terminated Services which, whether expressly or by implication, is to survive the termination of that particular Services.</p>	<p>This Clause 20.3 shall apply without prejudice to any rights which the Customer may have in respect of the Software which cannot lawfully be limited or excluded.</p>
<p>17.6 Termination of the provision of all Services shall not affect the continuing enforceability of any provision of the Contract which, whether expressly or by implication, is to survive termination.</p>	<p>20.4 Certain Software, use of which is licensed to 4th Platform by third parties, may require the Customer to enter into an end user agreement with the relevant third-party licensor and it shall be a condition of the provision of the Services in question that the Customer enters into and abides by the terms of any applicable end user license agreement.</p>
<p>17.7 On the day following the date on which the provision of a Data Services terminates (or the expiration of the period of 14 calendar days referred to in Clause 19.3) the Services will be completely decommissioned by 4th Platform and, subject to Clause 19.3 and 19.4, all data stored by 4th Platform in connection with the use of the Data Services will be deleted.</p>	<p>20.5 Subject to compliance by the Customer with Clause 20.4, 4th Platform warrants that (where applicable) it is authorised to sub-licence the use of Software in which the Intellectual Property Rights are owned by a third-party to the Customer in connection with the provision of the relevant Services.</p>
<p>17.8 In the event that the provision of any Service is terminated prior to the expiry of its Minimum Term or without compliance with its notice period (as applicable) or should the Customer purport to terminate the provision of any Service without complying with the applicable provisions of the Contract, 4th Platform shall be entitled, at its sole option (a) to claim contractual damages for early termination or (b) to liquidated damages equal to sixty per-cent of the monthly average of the actual Charges for the relevant Services invoiced under this Contract for the period that this Contract has been in force (regardless of when invoices are actually raised), multiplied by the number of months which the Contract would have remained in force but for the termination. The Customer accepts that such liquidated damages represent a genuine pre-estimate measure of losses 4th Platform will suffer as a result of the termination.</p>	<p>20.6 Where 4th Platform has been engaged by the Customer to install, implement, integrate, maintain or upgrade third-party software in the Customer's Environment, the Customer acknowledges that 4th Platform is not the author, developer, provider or seller of such third-party software. As such, 4th Platform gives no representations or warranties regarding performance of that third-party software and the parties agree that 4th Platform shall have no liability for any defects, flaws, programming errors, inefficiencies or malfunctions in any such third-party software, or for any lack of functionality in or non-performance of the third-party software. The Customer agrees that:</p>
<p>17.9 In the case of any Services relating to a TMV Agreement termination of the relevant Services will be in accordance with the terms and conditions of the relevant TMV Agreement and not in accordance with Clause 17.8.</p>	<p>(a) its exclusive remedies with respect to any third-party software will be against the third-party software supplier thereof;</p>
<p>18. FORCE MAJEURE</p>	<p>(b) it will not make any claim against 4th Platform in relation to its use of third-party software; and</p>
<p>18.1 4th Platform shall not in any circumstances have any liability to the Customer under the Contract if it is prevented from, or delayed in, performing its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of 4th Platform or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors.</p>	<p>(c) its use of any third-party software will be governed solely by the terms of the Customer's end user licence agreement with the third-party software supplier thereof.</p>
<p>19. OWNERSHIP, DISCLOSURE AND RETURN OF CUSTOMER DATA</p>	<p>20.7 Subject to compliance by the Customer with Clause 20.8, 4th Platform shall indemnify the Customer for all Losses which the Customer may incur to a third-party as a result of the use or possession by the Customer in accordance with the Contract of any Software in which the Intellectual Property Rights are owned by 4th Platform but found to infringe the intellectual property rights of any third-party (excluding any such claims which relate to data stored by the Customer using any service).</p>
<p>19.1 4th Platform acknowledges that it shall not acquire any rights of ownership in respect of any data stored by the Customer using any Services.</p>	<p>20.8 The indemnity set out in Clause 20.7 shall only have an effect if the Customer:</p>
<p>19.2 Where a Data Service is terminated either party under Clause 17.1 the Customer will remove its data by use of the Data Service during the relevant notice period.</p>	<p>(a) as soon as reasonably possible informs 4th Platform of any claim or potential claim which it receives or which it becomes aware that it may receive;</p>
<p>19.3 In the event that the provision of any Data Service is terminated by the Customer pursuant to Clause 17.3 and the Customer wishes to retrieve any data stored by using the Data Service following such termination then the Customer shall inform 4th Platform of this in writing at the same time as the Customer gives notice of termination. Subject to the Customer having paid 4th Platform all sums of money for the time being due and payable to 4th Platform, 4th Platform shall then allow the Customer to continue to use the Data Service free of charge for a period of up to 14 calendar days for the purpose only of carrying out such retrieval but not to use the service to backup up further data.</p>	<p>(b) makes no admission as to liability in respect of any claim or potential claim without the prior written consent of 4th Platform;</p> <p>(c) allows 4th Platform (at the cost of 4th Platform) to have sole conduct and control of the defence and/or settlement of any claim or potential claim; and</p> <p>(d) provides 4th Platform with such support, information and assistance as it may reasonably request in connection with the investigation, defence and/or settlement of any claim or potential claim. 4th Platform shall on request, refund the reasonable and demonstrable expenses of the Customer incurred in complying with its obligations pursuant to this Clause 20.8(d).</p>
<p>19.4 In the event that the provision of any Data Service is terminated other than by the Customer pursuant to Clause 17.3 and the Customer wishes to retrieve any data stored by it using a Data Service the Customer shall by written notice to 4th Platform on or before the date of termination elect for retrieval of the data to be carried out by 4th Platform using a portable disk in which case the Customer must pay immediately all charges which may be outstanding at the date of termination and the then current charge for the provision of such retrieval via portable disk. 4th Platform shall have no obligation to permit the use of the Data Service beyond the termination date so that the Customer may retrieve its data.</p>	<p>20.9 All Intellectual Property Rights and all other rights in the Deliverables shall be owned by 4th Platform. 4th Platform hereby licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services as is envisaged by the parties. This licence will automatically terminate upon termination of the Contract.</p>

21. ENCRYPTION KEYS

21.1 Where, in order to make use of the Services, the Customer is provided with any encryption keys by 4th Platform, those encryption keys shall be held at the risk of the Customer and it shall be the sole responsibility of the Customer to ensure that those encryption keys are kept safe and secure. The Customer acknowledges that 4th Platform shall not be able to undertake the restoration of any data where the Customer has lost any applicable encryption key provided to it and that 4th Platform shall have no liability to the Customer in such circumstances.

22. ENFORCEMENT OF THE CONTRACT BY THIRD PARTIES

22.1 No person who is not a party to the Contract shall have any right to enforce any of its terms.

23. CONFIDENTIALITY

23.1 Other than to its responsible employees, sub-contractors, professional advisers who need to have such Confidential Information disclosed to them or except insofar as a party may have a statutory duty to disclose any Confidential Information of the other party or is required by law or a regulatory body to do so, neither party shall divulge or communicate to any third-party any Confidential Information of the other party.

23.2 Each party shall safeguard the other party's Confidential Information as it would its own confidential information, and shall use the Confidential Information of the other party only in connection with the proper performance of the Contract and not otherwise or for its benefit or the benefit of any third-party.

23.3 Each party shall tell the other immediately if it discovers that this Clause 23 has been breached and shall, on request, return to the other all of the other party's Confidential Information which is in a physical form and destroy any other records containing Confidential Information.

23.4 The obligations in this Clause 23 shall continue without limit in time.

24. AMENDMENTS TO THE CONTRACT

24.1 4th Platform shall be entitled to make such reasonable amendments to any document comprising the Contract as may be necessary from time to time to ensure continuing compliance with any applicable legislation, law, code of practice and/or licence condition.

24.2 Subject to Clause 24.1 and save where otherwise provided in the Contract that a document may change, no amendment to any document comprising the Contract shall be valid unless and until made in writing and signed by a director of each of 4th Platform and the Customer or a person authorised in writing by such a director to sign on his/her behalf.

25. ASSIGNMENT OF THE CONTRACT AND SUB-CONTRACTING

25.1 The Customer shall not be entitled to assign or novate any of the rights or obligations under the Contract without the prior written consent of 4th Platform, such consent not to be unreasonably withheld or delayed. For the purposes of this Clause 25.1, 4th Platform shall not be deemed to have acted unreasonably should it refuse to consent to any assignment or novation by the Customer to any third-party who is not, in the reasonable opinion of 4th Platform, of the same financial standing or creditworthiness as the Customer.

25.2 4th Platform shall be entitled to assign or novate any of its rights or obligations under the Contract.

25.3 4th Platform shall be entitled to sub-contract the performance of any of its obligations under the Contract provided that any such sub-contracting shall not reduce 4th Platform's obligations to the Customer under the Contract.

26. GENERAL

26.1 Any notice or other communication to be given under the Contract shall be in writing, shall be deemed to have been duly served on a party if it is left at the authorised address of that party or posted by pre-paid first class post addressed to that party at such address and shall if:

- (a) personally delivered, be deemed to have been received at the time of delivery, provided that where delivery occurs after 5.00pm on a Business Day or on a day which is not a Business Day, receipt shall be deemed to occur at 9.00am on the next Business Day; or
- (b) posted to an inland address in the UK, be deemed to have been received on the second Business Day after the date of posting.

26.2 For the purpose of Clause 26.1, the authorised business address of 4th Platform shall be its registered office for the time being and, in the case of the Customer, the address as set out in the Services Schedule or other document forming part of this Contract. Either party may notify the other party in writing from time to time of a change in its authorised address to another address in the UK provided that notice of that change is given in accordance with the requirements of Clause 26.1.

26.3 Whilst the parties may make operational communications concerning the Contract via electronic mail, formal notice may not be validly served under the Contract by electronic mail.

26.4 The Contract and the documents referred to in it contain the entire agreement and understanding of the parties and supersede all prior arrangements and understandings (both oral and written) relating to the subject matter of the Contract (including any proposals submitted to the Customer by 4th Platform not expressly incorporated into the Contract). The Contract shall supersede and take precedence over any purchase order or other document submitted by the Customer setting out or referring to any contractual conditions, all of which are hereby excluded.

26.5 Neither party has relied upon any warranty or representation except as expressly provided for or referred to in the Contract. All warranties, conditions, terms and representations, express or implied (whether by law, statute or otherwise) if not expressly incorporated into the Contract are excluded to the fullest extent permitted by law.

26.6 Nothing in the Contract is intended to nor shall it create any partnership, joint venture, agency or other fiduciary relationship between the parties who are with respect to each other independent contractors.

26.7 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Clause shall not affect the validity and enforceability of the rest of the Contract.

26.8 No failure, delay or neglect by a 4th Platform to enforce any provision of the Contract shall be construed nor be deemed to operate as a waiver of 4th Platform's right in respect of such a provision nor shall it affect the validity of the Contract or any provision in the Contract nor prejudice 4th Platform's right to take any subsequent action.

26.9 The Contract shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the courts of England.

26.10 The Customer consents, unless such consent is withdrawn by written notice to 4th Platform, to 4th Platform disclosing for marketing purposes that the Customer is a Customer of 4th Platform in respect of the Services.

APPLICATION

This Contract sets out the basis upon which the Customer agrees to take certain Goods and/or Services from Principal from time to time. By signing it the Customer applies to take certain Goods and/or Services as set out in this Contract and any Services Schedules or Contract Documents that refer to this Contract.

For and on behalf of the Customer	For and on behalf of 4 th Platform
Signature	Signature
Name (please print)	Name (please print)
Position	Position
Date	Date