

## 1. Definitions and Interpretation

1.1 Unless the context otherwise requires, the following definitions shall apply:

**AUP** means the Acceptable Use Policy which is a document setting out the principles governing the use of the Service and which forms part of these Terms and Conditions.

**Cloud Hosted Services** means any services made available through access over the Internet to a remotely hosted virtual server network, including, without limitation, Hosted Exchange email, Infrastructure as a Service (IaaS) and Software as a Service (SaaS).

**Co-located Hosted Services** means any services made available through access over the Internet to the Customer's own server(s) located and hosted via soVision's Data Centre.

**Commencement Date** means the date that the Contract is effected (either by the Customer's acceptance of the terms of the Order or on the Operational Service Date, whichever is the earlier event);

**Confidential Information** means any information, written or oral, of a confidential nature obtained under contractual arrangements for or in connection with the Service including, but not limited to, any of the components, processes or methods of operating any infrastructure or software, unpublished information relating to either party's technology, know-how, intellectual property, commercial activities, finances or any such information relating to either party's suppliers, sub-contractors or customers, in addition to physical and data access passwords and codes received or acquired in the fulfilment of Services under the Contract. Failure to mark any Confidential Information as confidential or proprietary will not affect its status as Confidential Information under the Contract.

**Consumer** means an individual purchasing the Service outside the course of conducting business;

**Contract** means the agreement between soVision and the Customer incorporating these terms and conditions; the AUP, any other of soVision's terms referred to herein and any third party terms of supply and/ or licence conditions as applicable; and the Order, all as may be amended from time to time pursuant to condition 1.7;

**Customer** means the person, business or organisation with whom soVision contracts to supply the Service and its employees, representatives and authorised agents. soVision may accept instructions from any person who it reasonably believes is acting with the Customer's authority or knowledge;

**Customer Equipment** means the Equipment and software which the Customer uses or supplies to enable the Service to be provided.

**Downtime** means an outage causing interruption or failure to the provision of the Service.

**Equipment** means the switches, routers, servers, computers and other items of hardware necessary to form a connection and interface to the Service;

**Hosted Service Access Time** means access to Cloud Hosted Services and Colocated Hosted Services which, save in the event of suspension or otherwise in accordance with the terms of the Contract, is provided on demand 24 hours a day, 365 days a year.

**Internet** means the global data network comprising interconnected networks using the TCP/IP ("Transmission Control Protocol / Internet Protocol");

**Internet Address** means an Internet Protocol Address (IP Address);

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**Initial Contract Term** means a minimum period of 12 months from the Operational Service Date unless otherwise specified in the Order;

**Law** means any law, statute or regulation, guideline or code of conduct (whether or not having the force of law) in any jurisdiction to which soVision or the Customer is from time to time subject;

**Name** means any name specifically requested by or allocated to the Customer for provision of the Service and shall include, without limitation, any domain name or mailbox name;

**Order** means any information supplied by soVision in writing that constitutes an offer capable of acceptance by the Customer and which has been accepted by the Customer either expressly or implied by confirmatory action. The Order will define the elements of Service to be provided, the charges applicable to that Service and the terms that will apply;

**Operational Service Date** means the date when the Service is first made available to the Customer or the date when the Customer first starts to use the Service, whichever is the earlier;

**Service(s)** means the service(s) provided by soVision whereby the Customer may gain access to the Internet and/or, where applicable, any Cloud or Co-located Hosted Services and other means and facilities including connectivity provided by soVision for the Customer in connection with the Service and which are set out in the Order;

**Shared Equipment** means the servers, storage or networking hardware provided through soVision which the Customer uses to enable the Service to be provided.

**Site** means the premises at which the Service is or is to be provided under the terms of the Contract;

**soVision** means soVision IT Ltd, a private limited company registered in England No. 10714018 and whose registered office is at Avon House, Avon Mill Lane, Keynsham, Bristol BS31 2UG;

**User Documentation** means any documentation relating to the Service supplied by soVision, either on paper, electronically or on-line.

- 1.2 The expressions "Customer" and "soVision" shall include their respective successors, assignees, employees and agents, as permitted herein.
- 1.3 Additional terms and conditions may apply to the Contract, including soVision's Terms and Conditions for Sale of Goods available online at [www.sovisionit.com](http://www.sovisionit.com). Where third party terms apply, these will be advised in the Order.
- 1.4 Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.
- 1.5 'In writing' and 'written' means any form of recorded message capable of comprehension by ordinary visual means including hand or type written documents together with any electronic or digitised communication containing text.
- 1.6 The headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of these terms and conditions.
- 1.7 soVision reserves the right to amend the terms and conditions contained or referred to herein, and any other special terms connected with provision of the Services, from time to time. soVision will notify the Customer in writing of changes it makes to any special terms contained or defined in the Order. Changes to soVision's standard terms and conditions will be posted on the soVision website at [www.sovisionit.com](http://www.sovisionit.com). Continued use of the Service or failure to terminate the Contract will be deemed to constitute acceptance of any updated terms and conditions.

## **2. Quotations and Formation of Contract**

- 2.1 Subject and without prejudice to Clause 2.4 any quotation made by soVision for the provision of Services to the Customer's order, unless otherwise stated, is open for acceptance by the Customer for a period of 30 days from the date of quotation. Thereafter, soVision reserves the right to vary or withdraw any quotation without notice.
- 2.2 soVision shall endeavour to scope correctly all Services required at quotation stage. However in some cases the interoperability of Services with the Customer's existing infrastructure, facilities and systems may not be capable of validation until provision of Services has commenced and all quotations are provided on an errors and omissions excepted (E&OE) basis.
- 2.3 A general quotation or estimate is not an offer and may be withdrawn without notice and an order given in respect of a general quotation or estimate is not binding on soVision until or unless accepted by soVision.
- 2.4 Quotations, Orders and Contracts for Services are made, accepted and entered into subject to soVision's standard terms and conditions as herein described or referred to together with any special or third party terms and usage policies advised as applying to the Services, any of which may be amended from time to time in accordance with clause 1.7. These terms and conditions shall not be deemed to have been altered, modified or varied by the Customer save as expressly agreed by soVision in writing.
- 2.5 If these terms and conditions together with any special or third party terms applying to the Services differ in any respect from those of any offer made or Order placed by the Customer, the Customer's terms will not be binding on soVision until or unless expressly accepted by soVision and no acceptance by soVision of the terms of such counter offer shall be implied.
- 2.6 The giving by the Customer of any instruction to proceed with provision of the Services or any part thereof, or any other conduct of the Customer in confirmation of the existence of the Contract shall constitute an unqualified acceptance by the Customer of these terms and conditions.

## **3. Right to cancel [Consumers only]**

- 3.1 If the Customer is a Consumer and an Order is placed on-line or via telephone or mail order the right to cancel an order up to 14 days after receipt of goods or contracting for the supply of services is given under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 unless, by agreement (see Clause 3.2), those services begin before the end of this 'cooling off' period.
- 3.2 Arrangements for the provision of Service will be automatically triggered on the Commencement Date and under these terms and conditions services will be deemed to have commenced during the 'cooling off' period. The Customer therefore agrees that this right to cancel will not apply.
- 3.3 If the Customer does not agree to this soVision must be advised prior to the Customer placing the Order. In this event soVision will not process the Order until 14 days from Commencement Date have expired. Any delay in providing the Service under these circumstances will not affect the Initial Contract Term.
- 3.4 No right to cancel will apply if goods or services supplied are made to the Customer's specification or customised in any way.
- 3.5 Nothing in these terms and conditions affects the Customer's statutory rights as a Consumer.

## 4. Term and Termination

- 4.1 The Service, unless otherwise agreed in the Order, shall commence on the Operational Service Date and continue thereafter until terminated by soVision or the Customer in accordance with this Clause 4, subject to the minimum period of the Initial Contract Term.
- 4.2 The Contract may be terminated by either soVision or the Customer on giving at least 30 days' written notice to the other expiring on the last day of the Initial Contract Term or at any time thereafter (see Notices at 18.2).
- 4.3 Either Party may terminate the Contract by notice with immediate effect if:
- i) provision of Services is prohibited at any time by a competent judicial or regulatory authority;
  - ii) the other applies for dissolution or is dissolved, or begins, is party to, consents to or is otherwise subject to proceedings under the law relating to bankruptcy, distress, receivership, insolvency or the relief of creditors or enters into arrangements benefiting its creditors;
  - iii) the other materially breaches the Contract (including, without limitation, non-payment of any Charges hereunder) and, if the breach is remediable, fails to remedy it within 28 days of receiving written notice of the breach.
- 4.4 soVision shall be entitled to terminate the Contract by notice with immediate effect if:
- i) The Customer fails to take delivery of the Services except in accordance with its contractual rights.
  - ii) the Customer commits a breach of Clause 8 which in soVision's reasonable opinion is serious enough to merit immediate termination;
  - iii) soVision suspects on reasonable grounds that the Customer may have committed or be committing any fraud against soVision; or
  - iv) the Customer provides soVision with any false, inaccurate or misleading information for the purpose of obtaining the Service; or.
  - v) there is a change of Control of the Customer within the meaning of section 840 of the Income and Corporation Taxes Act 1988; or
  - vi) the Customer purports to assign any of its rights or obligations under this contract.
- 4.5 If soVision becomes entitled to terminate the Contract by application of Clause 4.3 or 4.4 above, soVision may, at its sole discretion, elect to suspend the Service (in whole or in part) without prejudice to its right to terminate the Contract and the Customer shall remain liable for payment of any charges for the Service during any such period of suspension.
- 4.6 If, as a result of the Customer's default, the Company is entitled to and elects to terminate the Contract, the Customer shall be liable for and will pay immediately upon invoice all charges due but not yet invoiced for the unexpired period, if any, of the Initial Contract Term.
- 4.7 The Customer shall be entitled to terminate the Contract by notice in writing of 30 days if the Customer does not consent to any change to the terms effected as set out in Clause 1.7. which are to the material detriment of the Customer with the exception of reasonable increase to the Charges applicable to Service within the Initial Contract Term.
- 4.8 Termination in accordance with this Clause 4 shall not prejudice any other rights or remedies of the injured party and will be without liability for any loss or damage suffered by the party in default.
- 4.9 If notice is given to terminate the Contract, the Customer shall be liable for payment of all charges under the Contract up to the expiry of the notice (or expiry of the Initial Contract Term if this is later) together with any applicable transfer and/or cancellation charges. No refund will be made for prepaid domain registration or licence fees. The Customer's notice does not avoid any liability for Services already provided.
- 4.10 On termination of the Contract the Customer shall immediately cease using the Service. The Customer shall have no further right to use the Service, to access information stored as part of the Service, or to utilise any usage time or service credits whether prepaid or otherwise.

- 4.11 Except as provided for in the Contract there are no commercial restrictions or technological implications restricting or preventing the Customer's migration of Services to alternative service providers upon termination. In such event soVision will liaise with the Customer to facilitate data provision and transfer as appropriate, subject to the payment by the Customer of any exceptional oncosts incurred by soVision, eg for data retrieval.
- 4.12 Except as provided for in Clause 3.3, cancellation of Orders, in whole or in part, cannot be accepted without soVision's consent in writing and will only be accepted on the basis that the Customer indemnifies soVision in respect of all losses, costs and expenses incurred by soVision up to the date upon which soVision accepts the Customer's notice of cancellation.
- 4.13 The right to terminate the Contract shall not prejudice any other right or remedy of soVision in respect of any breach or any rights, obligations, or liabilities accrued prior to termination.

## **5. Provision of Service**

- 5.1 soVision will use its reasonable endeavours to provide the Customer with the Service in accordance with the terms and conditions of the Contract.
- 5.2 soVision will endeavour to meet any date proposed for the provision of Service, but any such date is to be treated as an estimate only and soVision accepts no liability for failure to meet it.
- 5.3 The Customer accepts that limitations of the available telecommunications infrastructure may restrict the level of Service physically capable of being provided, and that such limitations may not become evident until after installation. In the event that such limitations result in the Service falling below the standard that could reasonably be expected (contract frustration) the Customer may terminate the Contract forthwith in writing and will remain liable only for the direct costs associated with the installation and pro-rata costs for the proportion of the first charging period which has elapsed before the Contract is terminated.
- 5.4 soVision reserves the right at all times and without notice to modify the way that the Service is delivered in order to secure, improve or update the Service, provided any change does not detrimentally impact the Service or SLA. soVision also maintains the right to make changes as required by regulation or legislation.
- 5.5 soVision reserves the right at its sole discretion to withdraw or substitute all or part of the Service at any time during this contract if such Services are no longer capable of economic support, are to be withdrawn from third party supply or for any other technical, economic or commercial reason. In such event the Customer will be given 30 days' notice of withdrawal or substitution and the Company shall have no liability of any kind to the Customer for any costs, business disruption or loss of profits howsoever incurred or occasioned by such withdrawal or substitution.
- 5.6 soVision may temporarily suspend the Service for the purpose of repair, maintenance or improvement of any of soVision's facilities which are necessary to provide the Service; or vary the technical specification of the Service for operational reasons subject to soVision giving the Customer as much on-line, written or oral advice as is reasonably practicable in the circumstances, and restoring the Service as soon as reasonably practicable after such temporary suspension.
- 5.7 soVision shall not be held responsible for the Customer's inability to use the Service due to any incompatibility between the Customer's Equipment and soVision's Equipment or the Service, or for any breakdown or failure in the Equipment used by the Customer, or for any incapability of the Equipment used by the Customer to access or utilise the Service.
- 5.8 Where soVision manages Cloud Hosted Services provided under the Contract soVision is responsible for any software and intellectual property licensing required for the Customer's legitimate use of those Cloud Hosted Services subject to the Customer's payment of any relevant 'per user' and other service charges set out in the Order, There are no other licensing implications for the Customer's use of Cloud Hosted Services and GNU General Public License (GNU GPL or GPL) software licensing does not apply.



- 5.9 Whilst soVision will make every reasonable effort to ensure that a Customer's data held on any server or website it hosts is protected from unwanted external intrusion or destruction, soVision has no liability for any loss of or damage to any data so stored and notwithstanding that the Service may include provision of data and system backup services, soVision will not be liable for recovery or reinstatement of lost or corrupted data howsoever such loss or corruption is sustained. It is the Customer's responsibility to effect and maintain adequate insurance cover in respect of any loss of or damage to data so stored, the cost of reinstatement of programs and data required and any increased cost of working the Customer is likely to sustain as a result of such loss or damage.
- 5.10 Customer Equipment co-located at soVision's Data Centre is left at the Customer's risk and the Customer shall maintain at its own cost insurance cover against all typical commercial risk (including without limitation, damage or loss in relation to the equipment, any loss or damage caused to soVision property or soVision employees or agents by the negligence or default of the Customer, its employees or agents, or caused by any malfunctioning of the Customer Equipment, and any consequential loss or business interruption). The Customer shall upon reasonable request provide soVision with evidence that such insurance is being maintained.
- 5.11 soVision will make reasonable endeavours to ensure that viruses, worms or other destructive devices are not transmitted to the Customer. However, it is the sole responsibility of the Customer to ensure that it has the necessary software and hardware loaded and commissioned to minimise this risk.
- 5.12 No defect or default in any part delivery of the Service shall entitle the Customer to treat the Contract as repudiated for the balance of the Services remaining to be delivered under it.

## **6. Service Levels**

- 6.1 soVision's Service Level Agreement for fault response and target resolution is available online at <http://www.sovisionit.com>.
- 6.2 Service levels applicable to soVision's on-sale of third party's bandwidth and/or telecommunications line and pathway products supplied as part of the Service shall be those of the originating supplier.
- 6.3 In the event of any default in the Service, the Customer should report it by telephone or email via the contact points advised from time to time or published on the soVision website at [www.sovisionit.com](http://www.sovisionit.com). All reported and otherwise identified faults will be logged and tracked via soVision's service ticketing system.
- 6.4 It is technically impracticable to provide the Service free of faults and soVision make no warranties or representations that the Customer's use of the Service will be uninterrupted or error-free. The Customer accepts that all Service provided hereunder is delivered "as is" without warranty of any kind.
- 6.5 Bandwidth to be supplied will be agreed between soVision and the Customer as expressed in the Order. LAN interface services will be regulated so that the maximum bandwidth is that stated in the Order. Given the nature of the Internet, it is impossible for soVision to guarantee the bandwidth available between a Customer and another site elsewhere on the global Internet. This depends on the bandwidth available at the other site and the bandwidth available on the various circuits over which traffic between the Customer and the other site passes and soVision does not warrant that any messages or information transmitted via the Service will be transmitted accurately, reliably, in a timely manner or at all.
- 6.6 soVision undertakes no liability whatsoever for any failure in provision of access to the Internet and the Customer's sole remedy for dissatisfaction with any element of the Service is to terminate the Contract as provided for under Clauses 4.2 and 5.3.

## **6.7 Cloud Hosted Services**

- 6.7.1 soVision shall use all reasonable efforts to ensure that server connectivity during Hosted Service Access Time will be available (excluding for the duration of any event of Force Majeure) for a minimum Uptime Percentage of 99.99% for Virtual Private Server (VPS) and 99.90% for Dedicated Server (DS) access. Uptime is calculated on a monthly basis over each calendar month based on the following formula:

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$$U\% = (S-D)/S \times 100$$

Where: S = Available usage hours of Hosted Services Access Time per calendar month

D = Downtime Aggregate Hours (excluding any period of force majeure) and

U% = Uptime Percentage

subject without limitation to Clauses 6.7.2 to 6.7.4 inclusive below.

- 6.7.2 This service level relates to server connectivity and therefore non-availability of Services attributable to any of the following is excluded: i) Customer Equipment failure; ii) the actions of Customer Personnel; iii) errors in the software running on the server;
- iv) previously scheduled maintenance, planned outages and interruptions to Services due to Force Majeure events;
- v) the inability of one or more users to have access to the Services if other users are simultaneously able to gain access;
- vi) Customer network faults (faults beyond the supplied Company Ethernet interface);
- vii) outages caused by security violations to the Customer's network such as hacking or denial of service;
- viii) faults caused by remote tampering with any supplied equipment (intentional, unintentional or caused by third parties not operating under permission from the Company).
- 6.7.3 Where service may be considered degraded for whatever reason this does not constitute as an outage.
- 6.7.4 soVision shall not be responsible for failure or delay in providing the Service if such failure or delay arises directly from the Customer being in breach of its obligations under the Contract.
- 6.7.5 In the event that soVision fails to provide minimum Uptime in accordance with Clause 6.7.1 and such failure is not wholly or partly attributable to any excluded events or actions at 6.7.2 the Customer will be entitled to an account credit for one day's service for every hour the service availability fails to meet the minimum Uptime (subject to the amount credited not exceeding the charge for one month's Services).
- 6.7.6 One day's service credit is one three hundred and sixty fifth of the annual charge for the Services. Any credit to the Customer's account will only be made where the Customer makes a claim in writing within 14 days of the end of the relevant monthly period for which the credit is claimed.
- 6.7.7 Scheduled Downtime of Cloud Hosted Services, where provided, may occasionally be necessary for soVision to carry out essential maintenance or network upgrades. This will be kept to a minimum and scheduled to minimise disruption. soVision will aim to provide 7 days' notice of Scheduled Downtime and in the event that such notice is impossible will provide the maximum period of notice practicable. soVision will use all reasonable endeavours to minimise the Downtime that may be caused by such change or upgrade.
- 6.7.8 Scheduled Downtime shall be performed during a window between the hours of 19:30 and 07:30 UK time, Monday to Sunday.
- 6.7.9 Whilst soVision will make every attempt to perform maintenance in accordance with clause 6.7.7 there are events which dictate that urgent maintenance activities are necessary to maintain the security, integrity or functionality of the Services, any service provided to other sovision Customers or soVision's Network. In the event that such emergency maintenance is required soVision will use its reasonable endeavours to give prior warning of service degradation or risk thereof and will endeavour to keep such maintenance to an absolute minimum.
- 6.7.10 The Services may be suspended for so long as is reasonably necessary subject to prior notice to the Customer:
- i) to enable either party to comply with an order or request from a governmental, or other competent regulatory body or administrative authority, or

- ii) to enable soVision to carry out work which is necessary in its reasonable opinion to maintain or improve the Services, or
- iii) to carry out standard maintenance and support;  
provided that soVision shall use all reasonable endeavours to schedule such Downtime during hours of low usage of the Services so as to minimise impact on the Services, and to ensure that there is no permanent material degradation of the Services.

6.7.11 For the avoidance of doubt, interruption to Services which are preceded by calls to the Customer advising of Downtime in accordance with this Clause 6.7 shall not be included in the calculation of Uptime Percentage.

## **7. Customer's Obligations**

- 7.1 The Customer shall be responsible and liable for all use of the Service through the Customer's password(s) (including without limitation all charges incurred and any breaches of the terms of the Contract) even where the Service is not actually used by the Customer but by some other person or organisation using the Customer's password.
- 7.2 The Customer will keep any password(s), authentication codes and security procedures used for accessing the Service confidential and will immediately notify soVision if it becomes aware of any unauthorised third party access to such confidential information.
- 7.3 The Customer is responsible for all costs it incurs for providing, installing and testing all computers and other Customer Equipment or services (including communication lines, links or interfaces) necessary to access and properly use the Service. Unless provided as part of the Service soVision does not assume control of and is not responsible for the telecommunications services used by the Customer to access or use the Service.
- 7.4 Except as provided for in Clause 5.8, or otherwise stated in the Order it is the Customer's sole responsibility to ensure that it holds and maintains all valid licensing for any third party software required for its access and use of the Service. The Customer agrees that its usage of such software shall at all times comply with the relevant licensor's end user terms. Title and any other property rights in any software belongs to and shall remain with soVision and/or its licensors.
- 7.5 The Customer shall allow any person accredited by soVision, on production of authorisation, access to the Site at all reasonable times for the purposes of providing Service or to remove Equipment belonging to soVision upon termination of the Service.
- 7.6 If requested by soVision, the Customer shall obtain any consent from third parties for the installation and use of any of soVision's Equipment which is to be installed under the Contract.
- 7.7 The Customer shall at its own expense provide reasonable facilities and assistance to soVision in the installation of soVision's Equipment. The Customer shall be responsible for ensuring the supply of any electricity required for the proper functioning of soVision's Equipment and shall provide or procure suitable accommodation, facilities and environmental conditions for housing of the soVision's Equipment and all necessary electrical and other installations and fittings.
- 7.8 The Customer shall be responsible for soVision's Equipment while it is at a Site and shall not add to, modify or in any way interfere with it. The Customer shall be liable to soVision for any loss or damage to soVision's Equipment, except in so far as any such loss or damage is attributable to the negligent or wilful act or omission of soVision, its agents or subcontractors.
- 7.9 The Customer shall remain liable for any charges for the Service, notwithstanding that the Customer is unable to use the Service for any period of time, unless the reason that the Customer is unable to use the Service is wholly attributable to the negligence or wilful default or omission of soVision or the originating supplier of that part of the Service.



## **8. Use of the Service**

- 8.1 Use of the Service enables the Customer to access the Internet and other material. Apart from any World Wide Web site controlled by soVision and other material provided by it, soVision does not control and is not responsible for the content of material originated, obtained or used by the Customer or its End Users in connection with the Service. The Customer is responsible in all circumstances for determining the suitability, legality or lawfulness of accessing, viewing, transmitting or downloading any material from the Internet.
- 8.2 The Customer shall not access, maintain, or otherwise use any SaaS provided as Cloud Hosted Services except for the sole purpose of accessing the functionality of such software in accordance with the terms of the Contract. The Customer will be responsible and held liable for any unauthorised installation, use, copying, access or distribution of any SaaS so provided.
- 8.3 Usage policies applicable to soVision's on-sale of third party's bandwidth and/or telecommunications line and pathway products supplied as part of the Service shall be those of the originating supplier including, without limitation, policies on fair usage.
- 8.4 The Customer warrants that its use of the Service shall not at any time breach the terms of any applicable end user licence and/or usage policy, including soVision's AUP published on the website <http://www.sovisionit.com> and updated from time to time.

## **9. Charges and Payment**

- 9.1 The Customer will pay all charges for the Service (including but not limited to any usage time, subscription, installation and maintenance charges). Charges will be calculated according to the rates on the Order.
- 9.2 Subject to any provision of the Contract and unless soVision notifies the Customer otherwise, liability for charges shall commence on the Operational Service Date.
- 9.3 soVision will submit invoice and credit notes electronically in Portable Document Format (pdf) and the Customer will be requested to provide an electronic address for such purpose.
- 9.4 Charges for the first billing period from the Operational Service Date will be payable immediately. Thereafter charges invoiced for each consecutive billing period will be payable in advance. Installation and any other set up charges are payable against invoice upon entering into the Contract. 9.5 soVision reserves the right to require the Customer to establish Standing Order or Direct Debit instructions for settlement of monthly or quarterly charges. In all other cases, unless otherwise agreed in writing, payment of charges is due within 14 days of the date of invoice.
- 9.6 Charges quoted by soVision are exclusive of VAT which will be charged at the rate prescribed by law at the time of invoice. All payments must be in UK Pounds Sterling.
- 9.7 Without prejudice to any other of its rights soVision may at its sole discretion exercise its statutory right to claim interest and compensation for debt recovery costs under applicable late payment legislation on any amounts that remain due more than 30 days from the date of invoice and may suspend without notice all Services it provides to the Customer until such overdue amounts are settled in full.
- 9.8 If any payment is returned by the Customer's bank as unpaid for any reason, the Customer will be liable for an additional charge for administration of £25 plus VAT.
- 9.9 soVision shall be entitled to set off any amounts it owes to the Customer against any amounts owed to it by the Customer for provision of any Services.
- 9.10 The Customer shall not be entitled by reason of any claim against soVision to withhold payment of the price of the Services or to claim any right of set-off against any payment due to soVision under any Contract.
- 9.11 If at any time the Customer fails to meet the standard of creditworthiness deemed acceptable by soVision from time to time, soVision shall be entitled to withdraw credit facilities to the Customer or terminate the Contract forthwith.

9.12 The accessing of information and services provided by third parties via the Service may be subject to those third parties' terms and conditions (including but not limited to terms relating to payment). The Customer is responsible for compliance with all such terms and conditions.

## **10. Names and Internet Addresses**

10.1 The Customer represents and warrants that it is the owner of or that it has been and is duly authorised by the owner to use any trade mark or name requested or allocated as its Name, and that the use of any such trade mark or name does not conflict with or infringe the rights of any third party.

10.2 The Customer acknowledges that soVision cannot guarantee that any Name requested by the Customer will be available or approved for use. soVision will undertake to attempt the registration within 5 working days of the Customer's written instruction but will not be held responsible should that domain name be registered to another party within that period.

10.3 soVision will submit an invoice to the Customer approximately 60 days before a domain name is due for renewal. If the Customer decides that the domain should not be renewed, the Customer must notify soVision at [accounts@sovisionit.com](mailto:accounts@sovisionit.com) as quickly as possible and in any event no later than 14 days before the domain renewal date. Failure to give timely notice will result in the Customer becoming liable for the full renewal fee.

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- 10.4 soVision may require the Customer to select a replacement Name and may suspend the Service if, in soVision's opinion, there are reasonable grounds for soVision to believe that the Customer's current choice of name is, or is likely to be, in breach of the provisions of Clause 10.1.
- 10.5 Any Internet address allocated by soVision to the Customer will at all times remain the sole property of soVision and the Customer will have a non-transferable licence to use such address for the duration of the Contract. Upon termination of the Contract, for whatever reason, the Customer's licence to use the Internet address shall automatically terminate and thereafter the Customer will not use the address.
- 10.6 Domain Names will normally be managed for the Customer by soVision. Transfer of the Name to an alternative host or manager will only be undertaken after receipt of written instructions (by letter or email to an address advised by soVision for the purpose) from the Customer and after all outstanding charges related to Services associated with the Name have been paid in full. soVision will make an Administration Charge of £15 plus VAT for each domain name transferred.
- 10.7 The Customer shall provide soVision with all personal details reasonably required by soVision for provision of Service, including but not limited to the Customer's full name, address, telephone number, age and payment details (such as credit card information). The Customer will notify soVision within thirty days of any change to any of the personal details provided to soVision.
- 10.8 The registration and use of the Customer's domain name is subject to the terms and conditions of use applied by the relevant naming authority. The Customer shall ensure that it is aware of those terms and conditions and that it complies with them. For UK domain registrations the relevant terms and conditions are those of Nominet UK, the UK naming authority, and these terms can be found at <http://www.nominet.uk/registrants/legal/terms/> The Customer shall have no right to bring any claim against soVision in respect of refusal to register a domain name or cancellation of the domain name by the relevant naming authority.
- 10.9 The Customer shall remain responsible for any charges levied by the naming authority for the registration, transfer or renewal of registration of the domain name and any administration charge paid by the Customer to soVision shall be non-refundable notwithstanding refusal by the naming authority to register a Name.
- 10.10 In the event that the Customer requests soVision to register and install a Secure Certificate, soVision shall have no liability should this process fail due to any incompatibility between information held against the Domain Name, the Certificate of Incorporation, etc. The Customer shall remain liable for any costs incurred by soVision notwithstanding that an installation is unsuccessful.

## 11. Limitation of Liability

- 11.1 The Customer acknowledges that soVision's obligations and liabilities in respect of the Service are exhaustively defined within the terms of the Contract. The Customer agrees that the express obligations and warranties made by soVision in the Contract are in lieu of and to the exclusion of any warranty, condition, term undertaking or representation of any kind whether express or implied by statute, common law, custom or otherwise including (without limitation) those relating to the exercise of reasonable care and skill, satisfactory quality, performance or fitness for purpose of the Service or any part of the Service so far as permitted by law and particularly in respect of nonconsumers.
- 11.2 For the avoidance of doubt, any use of the Service in the course of conducting business shall give rise to the Customer being a non-consumer and the provisions herein affecting the statutory consumer protection otherwise afforded as a consumer shall not apply.
- 11.3 Nothing in the Contract shall exclude or limit soVision's liability for:
- i) death or personal injury arising from the negligence of soVision's employees, agents or contractors while acting in the course of their employment by soVision; or
  - ii) fraud or fraudulent misrepresentation.

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11.4 Subject to Clause 11.3 soVision's maximum liability whether in contract, tort (including negligence and breach of statutory duty) or otherwise arising under or in connection with the Contract will not exceed the sum of the charges paid by the Customer for the supply to the Customer of such of the Service as are the subject of the Customer's claim in the 12-month period preceding the month in which the actual loss or damage occurs (to be calculated pro rata if the period is less than 12 months from the Operational Service Date) in aggregate.

11.5 The Customer agrees that the level of the charges relating to provision of Service under the Contract has been calculated on the basis of the limitations and exclusions set out in the Contract and that such exclusions and limitations are reasonable in light of the nature of the Service provided and level of charges made. The Customer is advised to obtain insurance in respect of any liability excluded by soVision hereunder including but not limited to the loss or corruption of data.

11.6 Subject to Clause 11.3 but notwithstanding anything else in the Contract, soVision shall not be liable in contract, tort (including negligence or breach of statutory duty) for:

- i) the accuracy, completeness, fitness for purpose or legality of any information accessed using the Service;
- ii) the transmission or the reception of or the failure to transmit or to receive any material (of whatever nature);
- iii) the receipt of infringing information of whatever nature transmitted via the Service; iv) the loss of, damage to or corruption of data, or files, stored, transmitted or used in the Service or on soVision's or a third party's Network;
- v) the loss or damage suffered by Customer as a result of any virus or other hostile computer program, denial of service, spamming, or hacking being introduced via the Service;
- vi) any loss of actual or anticipated profits, loss of contracts, downtime costs, loss of opportunity, loss of reputation, loss of the use of money, loss of business, loss of goodwill, loss of anticipated savings or wasted expenditure; and/or
- vii) any indirect, incidental, special or consequential loss or damage
- viii) any loss, cost or damage incurred by the Customer arising out of or in relation to the entering into by the Customer of any transaction or attempted transaction with any third party in relation to the sale, rental or provision of goods and services via the Service.
- ix) the acts or omissions of providers of telecommunication services or for faults in or failures of their apparatus.

11.7 soVision provides no warranty of any kind with respect to the security and integrity of the Customer's equipment or network systems and any liability whatsoever arising from or out of: i) connection to the Internet or; ii) any person's act of interference (whether malicious, wilful or accidental)

is hereby expressly excluded.

11.8 Customer Equipment sited at soVision's premises is left at the Customer's risk and soVision shall not be liable for any loss or damage, except in so far as any such loss or damage is attributable to the negligent or wilful act or omission of soVision, its agents or subcontractors. In any such case liability will be limited to repair or replacement with equivalent or superior equipment at soVision's discretion.

## 12. Confidentiality

12.1 Each party will keep and maintain any Confidential Information disclosed to it by the other or learned or acquired by it in the operation of the Contract in the strictest confidence, using the same care as it uses to safeguard its own confidential information.

12.2 A party's Confidential Information shall not include information which the other party can demonstrate:

- i) is previously rightfully known to it without restriction at the time of disclosure; ii) is or becomes, from no act or omission on its own part, generally known in the relevant industry or public domain;
- iii) is disclosed to it by a third party as a matter of right and without restriction at the time of disclosure; or
- iv) is independently developed by it without access to the Confidential Information; or
- v) is required to be disclosed by it in under any applicable Law including disclosure required for compliance with the Freedom of Information Act 2000 or The Regulation of Investigatory Powers (RIP) Act 2000;

12.3 Neither party may use or disclose any Confidential Information other than for the purposes and activities specifically permitted by the Contract and each party shall take all reasonable steps to ensure that the other party's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of these terms.

12.4 If the Customer is legally compelled to disclose any Confidential Information, then, prior to such disclosure, the Customer must:

- i) immediately notify soVision to allow soVision the opportunity to contest the requirement for disclosure;
- ii) affirm the privileged and confidential nature of the Confidential Information; and iii) cooperate fully with soVision in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of such disclosure and/or use of the Confidential Information. In the event that such protection is not obtained the Customer may disclose the Confidential Information only to the extent necessary to comply with applicable legal requirements.

12.5 The obligations of confidentiality in this Clause 12 shall survive termination of the Contract for whatever cause.

### **13. Indemnity**

13.1 The Customer shall indemnify soVision against each loss, liability or cost incurred by soVision arising out of :

- i) any claims or legal proceedings arising from the Customer's supply of material or information, or use of the Service, or use of the Service through the Customer's computer servers, or passwords which are brought or threatened against soVision by any other person; or
- ii) any breach of the Contract by the Customer.

13.2 The Customer shall defend and pay all costs, damages, awards, fees (including any reasonable legal fees) and judgements awarded against soVision arising from the above claims and shall provide soVision with notice of such claims, full authority to defend, compromise or settle such claims and reasonable assistance necessary to defend such claims, at the Customer's sole expense.

### **14. Complaints**

14.1 soVision operates a Customer Complaints Code of Practice which can be accessed via the company's website at <http://www.sovisionit.com/Complaints-Code> . If you require a hard copy of this Code, please contact us on 0117 986 4026. We reserve the right to update this Code from time to time and any revision will be published on our website.

### **15. Assignment**

15.1 The Customer shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of soVision whose



consent shall not be unreasonably withheld. soVision shall have the right to assign or otherwise delegate all or any of its rights or obligations under the Contract to any person or entity.

## **16. Force Majeure**

16.1 soVision shall not be liable for any breach of its obligations under the Contract where it is hindered or prevented from carrying out its obligations by any cause outside its reasonable control, including without limitation, by lightning, fire, flood, extremely severe weather, strike, lock-out, labour dispute, act of God, war, terrorism, riot, civil commotion, malicious damage, failure of any telecommunications or computer system or other service provider, compliance with any law, accident (or by any damage caused by any of such events).

## **17. Entire Agreement and no Waiver**

17.1 These terms and conditions together with any documents expressly referred to in them, contain the entire agreement between soVision and the Customer relating to the subject matter covered and supersede any previous agreements, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters.

17.2 No oral explanation or oral information given by any party shall alter the interpretation of these terms and conditions. In agreeing to these terms and conditions, the Customer has not relied on any representation other than those expressly stated in these terms and conditions and agrees that it shall have no remedy in respect of any misrepresentation which has not been made expressly herein.

17.3 No waiver by soVision of any default of the Customer under the Contract shall operate or be construed as a waiver by soVision of any future defaults, whether of a like or different character. No granting of time or other forbearance or indulgence by soVision to the Customer shall in any way release, discharge or otherwise affect the liability of the Customer under the Contract.

17.4 If any one or more of the terms and conditions herein is found to be unenforceable or invalid, the validity of the remaining terms will not be affected.

## **18. Notices and Instructions**

18.1 Any notice or instruction to be given by either party to the other in writing may be sent by email, fax or postal service to the address of the other party as it appears in the Order or such other address as such party may from time to time have communicated to the other in writing or, if either party is a limited company, to its registered address. A notice if sent by email shall, unless the contrary is proved, be deemed to be received on the day it was sent or if sent by fax shall be deemed to be served on receipt of an error free transmission report, or if sent by post shall be deemed to be served two days following the date of posting.

18.2 Cancellation notices should be sent to the soVision cancellation team at [accounts@sovisionit.com](mailto:accounts@sovisionit.com) or to soVision's registered address as shown. soVision will provide written acceptance of the cancellation by email to the Customer's provided email address, subject to the Customer's compliance with the specific provisions of Clause 4.9 above and the fulfilment of all other of its obligations under the Contract up to expiry of the notice.

## **19. Data Protection**

19.1 The provisions shall apply to the processing of Personal Data, carried out for the Data Controller by the Data Processor, and to all Personal Data held by the Data Processor in relation to all such processing.

19.2 The Data Processor is only to carry out the Services, and only to process the Personal Data received from the Data Controller:

- a) for the purposes of those Services and not for any other purpose; and
- b) to the extent and in such a manner as is necessary for those purposes;

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- 19.3 All instructions given by the Data Controller to the Data Processor shall always be in compliance with the GDPR and other applicable laws. The Data Processor shall act only on instructions from the Data Controller unless the Data Processor is required by law to do otherwise (as per Article 29 of the GDPR).
- 19.4 The Data Processor shall promptly comply with any request from the Data Controller requiring the Data Processor to amend, transfer, delete, or otherwise dispose of the Personal Data.
- 19.5 The Data Processor shall transfer all Personal Data to the Data Controller on the Data Controller's request in the formats, at the times, and in compliance with the Data Controller's written instructions where reasonable.
- 19.6 Both Parties shall comply always with the GDPR and other applicable laws and shall not perform their obligations under this contract between themselves in such way as to cause either Party to breach any of its applicable obligations under the GDPR.
- 19.7 The Data Controller hereby warrants, represents, and undertakes that the Personal Data shall comply with the GDPR in all respects including, but not limited to, its collection, holding, and processing.
- 19.8 The Data Processor agrees to comply with any reasonable measures required by the Data Controller to ensure that its obligations under this Statement are satisfactorily performed in accordance with all applicable legislation from time to time in force (including, but not limited to, the GDPR) and any best practice guidance issued by the ICO.
- 19.9 The Data Processor shall provide all reasonable assistance (at the Data Controller's cost where applicable) to the Data Controller in complying with its obligations under the GDPR with respect to exercising data subject's rights, the security of processing, the notification of personal data breaches, the conduct of data protection impact assessments (where applicable), and in dealings with the ICO.
- 19.10 The Data Processor shall not sub-contract any of its obligations or rights under this Agreement without the prior written consent of the Data Controller (such consent not to be unreasonably withheld).
- 19.11 In the event that the Data Processor appoints a Sub-Processor (with the written consent of the Data Controller), the Data Processor shall enter into a Sub-Processing Agreement with the Sub-Processor which shall impose upon the Sub-Processor the same obligations as are imposed upon the Data Processor by this Agreement and which shall permit both the Data Processor and the Data Controller to enforce those obligations; and ensure that the Sub-Processor complies fully with its obligations under the Sub-Processing Agreement and the GDPR.
- 19.12 When processing the Personal Data on behalf of the Data Controller, the Data Processor shall:
- a) process the Personal Data only to the extent, and in such manner, as is necessary to comply with its obligations to the Data Controller or as may be required by law (in which case, the Data Processor shall inform the Data Controller of the legal requirement in question before processing the Personal Data for that purpose unless prohibited from doing so by law);
  - b) implement appropriate technical and organisational measures, and take all steps necessary to protect the Personal Data against unauthorised or unlawful processing, accidental loss, destruction, damage, alteration, or disclosure;
  - c) if so requested by the Data Controller (and within the timescales required by the Data Controller where reasonable) supply further details of the technical and organisational systems in place to safeguard the security of the Personal Data held and to prevent unauthorised access;
  - d) make available to the Data Controller all such information as is reasonably required and necessary to demonstrate the Data Processor's compliance with the GDPR; and
  - e) inform the Data Controller immediately if it is asked to do anything that infringes the GDPR or any other applicable data protection legislation.
- 19.13 The Data Controller shall be liable for all action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees and payments on a solicitor and client basis), or demand suffered or incurred

by, awarded against, or agreed to be paid by, the Data Processor and any Sub-Processor arising directly or in connection with:

- a) any non-compliance by the Data Controller with the GDPR or other applicable legislation;
- b) any Personal Data processing carried out by the Data Processor or Sub-Processor in accordance with instructions given by the Data Controller that infringe the GDPR or other applicable legislation; or
- c) any breach by the Data Controller of its obligations under this contract.

19.14 The Data Controller shall not be entitled to claim back from the Data Processor or Sub-Processor any sums paid in compensation by the Data Controller in respect of any damage to the extent that the Data Controller is liable to indemnify the Data Processor or Sub-Processor.

19.15 Nothing in this contract (and this Clause 13) shall relieve either Party of, or otherwise affect, the liability of either Party to any data subject, or for any other breach of that Party's direct obligations under the GDPR. Furthermore, the Data Processor hereby acknowledges that it shall remain subject to the authority of the ICO and shall co-operate fully therewith, as required, and that failure to comply with its obligations as a data processor under the GDPR may render it subject to the fines, penalties, and compensation requirements set out in the GDPR.

19.16 The Data Processor shall, at the written request of the Data Controller, delete (or otherwise dispose of) the Personal Data or return it to the Data Controller using hardware that the data controller has provided, in the format(s) reasonably requested by the Data Controller within a reasonable time after the earlier of the following:

- a) the end of the provision of the Services; or
- b) the processing of that Personal Data by the Data Processor is no longer required for the performance of the Data Processor's obligations under the Service Agreement.

19.17 Following the deletion, disposal, or return of the Personal Data, the Data Processor shall delete (or otherwise dispose of) all further copies of the Personal Data that it holds, unless retention of such copies is required by law, in which case the Data Processor shall inform the Data Controller of such requirement(s) in writing.

19.18 All Personal Data to be deleted or disposed of by the Data Processor under this Agreement shall be deleted or disposed of using the following method(s): Secure deletion or shredding.

## **20. Governing Law**

20.1 The Contract shall be governed by and construed in accordance with English law and soVision and the Customer agree to submit to the exclusive jurisdiction of the English Courts.