

1 INTERPRETATION

- 1.1 In this Agreement (as defined in the Order Form):
- 1.1.1 headings have been included for convenience only and shall not be used in construing any provision in this Agreement;
 - 1.1.2 words: using the singular include the plural; importing any gender include every gender; and importing persons include bodies corporate and unincorporated;
 - 1.1.3 references to any legislation include references to any amendments or re-enactments thereof;
 - 1.1.4 references to Clauses and Schedules are references to clauses of and schedules to this Agreement; and
 - 1.1.5 words beginning with capital letters are intended to have the meaning given to them either in these Terms and Conditions or in the Order Form.
 - 1.1.6 Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
 - 1.1.7 A reference to writing or written includes email.
- 1.2 In the event of any conflict or inconsistency between the various documents forming part of this Agreement the following order of precedence shall apply:
- 1.2.1 the Order Form;
 - 1.2.2 these Terms and Conditions;
 - 1.2.3 Schedule 1;
 - 1.2.4 Schedule 3;
 - 1.2.5 Schedule 2.
- 1.3 For the purposes of these Terms and Conditions: a reference to a party or parties means Scomis and/or the Customer (as appropriate); and the Charges, Customer, Customer's Representative, Effective Date, Location, Services and Term shall have the meaning ascribed to them in the Order Form.

2 SERVICES

- 2.1 Scomis agrees to provide to the Customer the Services expressly set out in this Agreement for the Term in accordance with these Terms and Conditions.
- 2.2 If at any time during the Term the Customer wishes to alter all or any part of the Services, the Customer and Scomis shall discuss the proposed change. Any agreed changes shall be recorded in writing and signed by a duly authorised representative from each party.

3 CUSTOMER RESPONSIBILITIES

- 3.1 The Customer shall comply with its responsibilities set out in Schedule 1 (the "Customer Responsibilities").
- 3.2 The Customer acknowledges and agrees that if it does not comply with the Customer Responsibilities, Scomis may: not be able to supply the Services in accordance with this Agreement; and/or increase the Charges to reflect Scomis' increased costs therefrom. To the extent that Scomis is unable to provide the Services due to such non-compliance, Scomis shall not be liable for any costs, charges or losses sustained or incurred by the Customer that arise directly or indirectly therefrom. This Clause aims to: be fair and reasonable to all Scomis customers; and ensure all Scomis customers are able to access and receive services from the Scomis Service Desk when required.

4 SCOMIS RESPONSIBILITIES

- 4.1 Scomis shall use all reasonable endeavours to perform its obligations under this Agreement.
- 4.2 Scomis shall provide the Services with all reasonable skill and care, using suitably qualified personnel or agents and in accordance with good industry practice.
- 4.3 Scomis shall use all reasonable endeavours to observe all relevant health and safety rules and regulations and any other reasonable security requirements that apply at the Locations and that have been communicated to it under Schedule 1 paragraph 1.4 provided that Scomis shall not be liable under this Agreement if such observation by Scomis places Scomis in breach of any of its obligations under this Agreement.

5 CHARGES AND PAYMENT

- 5.1 In consideration for the provision of the Services during the Term, the Customer shall pay Scomis the Charges. Unless otherwise agreed by the parties in writing in advance, the Customer shall pay Scomis:
- 5.1.1 all subscription charges set out in the Order Form (including all Charges for the support and maintenance of the Customer's equipment) annually in advance (such charges to be determined pro-rata until the following Annual Renewal Date in the first year of this Agreement). Such charges are due on the Effective Date and on Annual Renewal Date of each subsequent calendar year that this Agreement is effect;
 - 5.1.2 notwithstanding Clause 5.1.1, all licence fees set out in the Order Form annually in advance. Such charges are due on the Effective Date and on the Annual Renewal Date of each subsequent calendar year that this Agreement is effect; and
 - 5.1.3 in accordance with Clause 5.2 such charges invoiced from time to time for the provision of the Services other than those set out in Clause 5.1.1 and 5.1.2.
- 5.2 The Customer shall pay any invoice submitted to it by Scomis, in full and in cleared funds, within thirty (30) days from the date of Scomis' invoice without deduction or set-off. Time for payment shall be of the essence of this Agreement.
- 5.3 If any sums invoiced to the Customer by Scomis are not paid within the specified time limits set out in this Clause 5, Scomis may suspend all Services until payment has been made in full and/or charge the Customer interest on the overdue amount, payable by the Customer immediately on demand, from the due date up to the date of actual payment, after as well as before judgment, at an annual rate equal to 3% over the then current base lending rate of Barclays Bank Plc.
- 5.4 All sums payable by the Customer under this Agreement are stated to be exclusive of VAT and any other taxes and duties.

- 5.5 If the Customer (acting in good faith) disputes part or all of any invoice on reasonable grounds, it shall notify Scomis in writing as soon as is reasonably possible identifying clearly the disputed part of such invoice and the reasons why it is challenged. If a bona fide dispute exists in relation to part only of an invoice, the Customer shall pay the undisputed amount in accordance with Clause 5.2; and disputed element shall be dealt with in accordance with Clause 11.1.
- 5.6 In addition to the charges referred to in Clause 5.1, the Customer shall be liable to pay Scomis, on demand, for all costs, expenses and out of pocket disbursements reasonably incurred by Scomis in the provision of the Services. So as to avoid doubt, this includes all reasonable travelling and subsistence expenses properly incurred by any person visiting the Locations to carry out Scomis' obligations under this Agreement.
- 5.7 Scomis may increase the Charges on each Annual Renewal Date provided that:
- 5.7.1 such increase shall not exceed the greater of (i) 5% year-on-year; or (ii) a percentage equal to the percentage increase in the Consumer Price Index CPI, in each case during the period since the last such increase or, if there has been no such increase, during the period since the Effective Date; and
- 5.7.2 Scomis gives the Customer written notice of such increase at least 2 months before the proposed date of the increase. If such increase is not acceptable to the Customer, the Customer shall notify Scomis in writing within 14 days of the date of Scomis' notice. Scomis shall have the right (at its sole discretion) within 14 days of the Customer's notice to provide written notice to the Customer that this Agreement shall be terminated on the next Annual Renewal Date.

6 NON-DISCLOSURE, FOIA AND DPA

- 6.1 Each party agrees and undertakes that during the Term and for five (5) years following termination of this Agreement it shall keep confidential all documentation or information, including but not limited to the contents of this Agreement; and shall not use for its own purposes nor without the prior written consent of the other party disclose to any third party any information which is proprietary or confidential (including trade secrets and information of commercial value) and which is either labelled or stated as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure ("Confidential Information"), unless such Confidential Information is or becomes public knowledge other than through any act or omission of the receiving party, is in the receiving party's lawful possession before the disclosure, is lawfully disclosed to the receiving party by a third party without restriction on disclosure or is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 6.2 If either party receives a request for information under the Freedom of Information Act 2000 (the "Act") concerning any information relating to the other, it shall as soon as reasonably possible notify the other party ("Receiving Party") of the request and consult with the Receiving Party as to whether it considers any of such information to be exempt from disclosure under the Act. The Receiving Party shall use all reasonable endeavours to respond within 5 working days to such notice. If the Receiving Party is of the opinion that such information which is the subject of the request should not be disclosed because an exemption under the Act applies, it shall provide the other party with reasons to support its opinion, including (where relevant) the harm or prejudice that the Receiving Party believes its operations would suffer if the said information were to be disclosed. The party who received the FOIA request undertakes not to disclose the information referred to in this Clause 6.2 until expiry of eight full working days starting from the day after receipt of such notice and shall have due regard to the Receiving Party's response pursuant to this Clause 6.2 before, if it deems appropriate, disclosing the information identified by Receiving Party in its response.
- 6.3 Both parties warrant, represent and undertake that they shall observe all their obligations under the Data Protection Act 1998 (the "DPA"), General Data Protection Regulation EU 2016/679 (the "GDPR"), and any national implementing laws, regulations and secondary legislation in the UK, and any successor legislation to the DPA or GDPR which arise in connection with this Agreement. The Customer acknowledges and agrees that in relation to any personal data processed by Scomis regarding its provision of the Services, the Customer is the data controller and Scomis is the data processor. The Customer warrants and undertakes that such personal data is accurate, relevant and kept up to date and the Customer has the relevant data subject's consent to be processed in relation to the Services. Notwithstanding anything else in these Terms and Conditions, the Customer shall fully indemnify, defend and hold harmless Scomis against all losses, claims, damages, liabilities, costs and expenses incurred by Scomis in respect of any breach by Scomis of the DPA pursuant to Scomis carrying out the Customer's instructions under this Agreement. The terms "data controller", "data processor", "data subject", "personal data" and "processed" bear the respective meanings given them in the DPA or GDPR (as applicable).

7 LIMITATION OF LIABILITY

- 7.1 Subject to Clauses 7.2 and 7.3, the entire financial liability of Scomis to the Customer in respect of the Services in any calendar year shall not exceed 100% (one hundred percent) of the total amount paid by the Customer to Scomis pursuant to the relevant Charges under which a claim arises in the calendar year the claim or series of claims arose.
- 7.2 In no circumstances shall Scomis be liable to the Customer for any loss of or damage to or corruption of data, loss of revenue, loss of goodwill or for any special, indirect or consequential loss or damage howsoever arising from the provision of the Services.
- 7.3 Nothing in this Clause 7 shall in any way limit either party's liability arising from personal injury or death caused by its negligence, fraud or fraudulent misrepresentation or any other liability which cannot lawfully be excluded or limited.
- 7.4 Except as expressly and specifically provided in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 7.5 Without limitation, Scomis specifically denies any implied or express representation that the software Scomis provide as part of the Scomis Material (as defined below in clause 9.3) will operate uninterrupted or error-free or be fit to operate in conjunction with any hardware items or software products other than with those that are identified in Schedule 3 (Service Specific Documentation).
- 7.6 Any unauthorised plug-ins to, modifications to and / or use of the Scomis Material and / or Scomis back-up data by, or on behalf of, the Customer shall render all the Scomis warranties and obligations under this Agreement null and void. The Customer shall be liable for all losses arising from such unauthorised acts.

8 FORCE MAJEURE

- 8.1 A party, provided that it has complied with the provisions of Clause 8.2, shall not be in breach of this Agreement or liable to the other for any delay or non performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control including, without limitation, any of the following: acts of God, including but not limited to fire, flood, earthquake, windstorm or other natural disaster; fire, explosion or accidental damage; adverse weather conditions; interruption or failure in communications networks, technical infrastructure and facilities (including the internet or the remote link) or a utility service (including electricity); material changes to the Scomis' supply chain contracts; and/or mandatory compliance with any law (including a failure to grant any licence or consent needed or any change in the law or interpretation of the law) ("Force Majeure Event").
- 8.2 Any party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- 8.2.1 it notifies the other party in writing in a timely manner of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
- 8.2.2 it has used all reasonable endeavours to mitigate the effect of the Force Majeure Event and to carry out its obligations under this Agreement in any way that is reasonably practicable; and
- 8.2.3 as soon as reasonably possible after the end of the Force Majeure Event, the affected party shall notify the other party in writing that the Force Majeure Event has ended and shall resume performance of its obligations under this Agreement.
- 8.3 If any Force Majeure Event continues for more than 60 (sixty) days the party not subject to the Force Majeure Event may immediately terminate this Agreement on giving written notice to the other.
- 9 INTELLECTUAL PROPERTY RIGHTS**
- 9.1 All copyright, database right, patents, registered and unregistered design rights, registered and unregistered trade marks, and all other industrial, commercial or intellectual property rights existing in any jurisdiction in the world and all the rights to apply for the same (the "Intellectual Property Rights") in the Customer's documentation, information, data, remote link, hardware or software (the "Customer Material") shall remain vested in the Customer or its licensors.
- 9.2 Notwithstanding any of the Customer's other supply contracts, the Customer shall grant, or shall procure the grant of, a perpetual, royalty free, non-exclusive and non-transferable licence to Scomis to inspect, copy, use and/or modify any Customer Material as agreed by the parties in order to allow Scomis to provide the Services under this Agreement.
- 9.3 All Intellectual Property Rights in any report, documentation, information, data, software, equipment or invention prepared, created or provided by Scomis in relation to this Agreement (the "Scomis Material") shall remain vested in Scomis (or its relevant licensors) and to the extent that such rights in any such Scomis Material vest in the Customer by operation of law, the Customer hereby assigns such rights to Scomis.
- 9.4 For the duration of the Term:
- 9.4.1 Scomis warrants that, subject to clause 7.6, the use of the Scomis Material by the Customer as permitted by this Agreement shall not infringe any third party Intellectual Property Rights; and
- 9.4.2 the Customer warrants that the use of the Customer Material by Scomis as permitted by this Agreement and the Customer's receipt of the Services via the remote link and any Services rendered by Scomis at the Location shall not infringe any third party Intellectual Property Rights.
- 9.5 The Customer shall fully indemnify Scomis against all losses, claims, damages, liabilities, costs and expenses that may be suffered by Scomis, or made by third parties or awarded against or settled by the Customer in favour of any third party in connection with any claims or proceedings relating to Clause 9.4. Scomis shall: notify the Customer in a timely manner of becoming aware of such claim; allow the Customer to conduct such claim; provide reasonable assistance (at the Customer's expense) to the Customer in defending such claim; and not make any admissions which may be prejudicial to the defence or settlement of any claim.
- 10 DURATION AND TERMINATION**
- 10.1 This Agreement shall commence on the Effective Date and shall continue for the duration of the Initial Term. Thereafter the Agreement shall continue from year to year with each party having the right, without prejudice to its other rights or remedies, to terminate this Agreement on each anniversary of the Effective Date by giving not less than 30 days prior written notice to the other party (the "**Extended Term**").
- 10.2 Notwithstanding Clause 10.1, each party shall have the right, without prejudice to its other rights and remedies, to terminate this Agreement immediately by written notice to the other if the other is in material breach of any term of this Agreement and such breach is either incapable of remedy or is capable of remedy but the party in breach has failed to remedy it within thirty (30) days of receipt of a notice from the party not in breach requiring it to do so.
- 10.3 Termination of this Agreement by whatever means shall not affect any rights, obligations or liabilities of either party which have accrued before termination of this Agreement and/or are intended to continue to have effect beyond termination.
- 10.4 Upon termination of this Agreement:
- 10.4.1 each party shall in a timely manner (and in any event within 15 working days) return to the other the Confidential Information and Scomis Material or Customer Material (as appropriate) held by the other and destroy any electronic copies of the same, except where it is necessary for Scomis to retain such Confidential Information or Customer Materials to exercise any rights granted under this Agreement or by law which is intended to survive termination of this Agreement; and
- 10.4.2 save in the case of the Customer's breach pursuant to Clause 10.2, Scomis shall, at the Customer's written request, provide reasonable assistance to the Customer to ensure an orderly transfer of the Services to the Customer or a new service provider. Such assistance shall be provided on a time and materials basis at Scomis' then standard hourly fee rates.
- 11 MISCELLANEOUS**
- 11.1 If there is a dispute that arises out of or relates to this Agreement, Scomis and the Customer will use their reasonable endeavours to negotiate in good faith and settle the dispute. If this is not possible, the Customer's Representative or Scomis' Head of Service Management (as appropriate) who identifies such dispute shall notify the other in writing specifying the nature of the dispute ("Matter in Dispute"). Failing personnel agreeing a solution in writing within 10 working days of such notice, either person may refer the Matter in Dispute to the Headmaster or Head of Scomis (as appropriate), who shall then attempt to resolve the Matter in Dispute in good faith within 10 working days from the date of the reference.

- 11.2 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.
- 11.3 All notices which are required to be given under this Agreement shall be in writing and shall be sent to the Customer's Representative or Head of Scomis (as appropriate) at the address or email address of the recipient set out in the Order Form (or such other person, address or email address as either party may indicate by at least fourteen (14) days prior written notice to the other party). Any such notice may be delivered personally, by first class pre-paid letter or by email and shall be deemed to have been received: by hand-delivery – at the time of delivery; by first class post – 2 working days after the date of posting; and by email - 1 working day after transmission.
- 11.4 This Agreement and all documents referred to herein contains the whole agreement between the parties relating to the subject matter of this Agreement and, save as expressly set out herein, supersedes all previous agreements, representations (other than fraudulent) oral or written, and all other prior communications between the parties relating to the same.
- 11.5 The Customer shall not assign, transfer or sub-contract or deal in any other manner with this Agreement without the prior written consent of Scomis (such consent not to be unreasonably withheld or delayed). Scomis is entitled to assign, transfer or sub-contract this Agreement (in whole or in part) to any third party on notice to the Customer.
- 11.6 The Customer shall not, without Scomis' prior written consent, at any time from the date of this Agreement to the expiry of 6 (six) months after the termination of this Agreement, solicit or entice away from Scomis or employ or attempt to employ any person who is, or has been, engaged as an agent, employee, consultant, engineer or subcontractor of Scomis in the provision of the Services.
- 11.7 Nothing in this Agreement is intended to, or shall, operate to:
- 11.7.1 create a partnership or joint venture of any kind between Scomis and the Customer;
 - 11.7.2 authorise either party to act as agent for the other party; and/or
 - 11.7.3 authorise either party to act in the name or on behalf of, or otherwise bind, the other party in any way.
- 11.8 No failure to exercise and no delay in exercising on the part of either party any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege preclude the enforcement of any other right, power or privilege nor shall the waiver for any breach of any provision herein be taken or held to be a waiver of the provision itself. Any waiver to be effective must be in writing.
- 11.9 If any part of this Agreement is found by a court of competent jurisdiction to be invalid, unlawful or unenforceable then such part shall be severed from the remainder of the Agreement which shall continue to be valid and enforceable to the fullest extent permitted by law.
- 11.10 Amendments to this Agreement by Scomis
- 11.10.1 Subject to clauses 11.10.2 and 11.10.3 below, Scomis may amend this Agreement by giving prior written notice to the Customer
 - 11.10.2 If Scomis' arrangements with one or more suppliers relating to the Services is altered such that it will have a material adverse effect on the Services, Scomis shall be entitled to vary this Agreement on written notice with immediate effect without the Customer's consent solely to reflect such change(s) in Scomis' supply chain. However, the Customer shall be entitled, within 1 month of such variation, to terminate this Agreement on the next anniversary of the Effective Date. Scomis shall, wherever practicable, give the Customer reasonable written notice of such proposed changes.
 - 11.10.3 If Scomis make changes to this Agreement that will have a material adverse effect on the Services, (excluding those made due to supply chain changes), the Customer shall be entitled to terminate this Agreement on not less than 30 days notice within 1 month of such change being notified to the Customer in writing.
- 11.11 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement, but all the counterparts shall together constitute the same Agreement.
- 11.12 This Agreement shall be governed by and shall be construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English Courts.

Version 5.0 - February 2018