

# Terms and Conditions

Software and Hardware | Consultancy Service | Support | Hosting  
Services

# Software and Hardware Agreement

## 1. DEFINITIONS

1.1 In this Agreement, unless the context requires otherwise, the following expressions shall have the following meanings:

"**Agreement**" means these terms and conditions of sale, which form the agreement between ACUTEC and the Client in respect of each Order;

"**Confidential Information**" means all information marked as "Confidential" and disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party"), or to any employee or sub-contractor of the Receiving Party (the "Recipient"), whether before or after the date of the Agreement, including, without limitation, any information relating to the Disclosing Party's Clients, products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunity and business affairs;

"**Client**" means the person whose details are set out in each Order;

"**Delivery Date**" means the estimated date of delivery of the Products and/or commencement of the Services, if any, which may be communicated by ACUTEC to the Client;

"**Hardware**" means the computer equipment to be sold to the Client;

"**ACUTEC**" means ACUTEC Registration No. 3094253 of St Peter's House, Church Hill, Coleshill, Birmingham, B46 3AL

"**Order**" means a request by the Client to purchase those Products and/or Services specified therein;

"**Premises**" means the premises where the Products are to be delivered or installed;

"**Price**" means the price for the provision of the Products and Services contained in an Order;

"**Products**" means collectively the Hardware and the Software, or any part thereof;

"**Services**" means configuration, installation, consultancy, disaster recovery or other services offered by ACUTEC;

"**Supplier**" means a manufacturer and/or licensor of a Product; "**Software**" means the Software to be licensed to the Client.

1.2 In this Agreement references to:

1.2.1 Persons include bodies corporate, unincorporated associations and partnerships;

1.2.2 Clauses are to clauses of this Agreement;

1.2.3 A "subsidiary" or "holding company" shall be construed in accordance with Sections 1159 of the Companies Act 2006; and

1.2.4 Any statutory provision shall include reference to a statutory provision as modified or re-enacted or both from time to time whether before or after the date of this Agreement. 1.3 The headings in this Agreement shall not affect the interpretation of this Agreement.

## 2. SCOPE AND TERM

2.1 A separate agreement on the terms of this Agreement shall come into force on the date on which each Order is accepted by ACUTEC.

2.2 This Agreement shall apply to all Products and Services ordered by the Client and each Order shall constitute a separate contract on the terms and conditions hereof for those Products and Services forming part of such Order.

2.3 In respect of each Order this Agreement shall apply and prevail over any terms or conditions (whether or not in conflict with or additional to the terms and conditions of this Agreement) contained or referred to in any purchase order or other documentation submitted by the Client or in correspondence or implied by trade, custom or course of dealing.

## 3. SUPPLY AND LICENCE OF PRODUCTS

3.1 While ACUTEC shall use its reasonable endeavours to deliver Products and to ensure that the Services commence on the relevant Delivery Date, a failure to do so shall not constitute a breach of this Agreement.

3.2 If the Client refuses or fails to take delivery of any Products, ACUTEC shall be entitled to immediate payment in full for such Products.

3.3 If the Client refuses or fails to take delivery of any Products the Client shall pay all costs of storage and any additional costs incurred as a result of such refusal or failure.

3.4 ACUTEC may carry out partial deliveries of the Products. In such an event, each delivery of the Products shall be separately invoiceable and payable. Each delivery shall be considered to be the subject of a separate contract and failure by ACUTEC to make any one or more deliveries in accordance with this Agreement or any claim by the Client in respect of any one or more deliveries shall not entitle the Client to treat this Agreement as a whole as repudiated.

3.5 In respect of software belonging to ACUTEC to be supplied by ACUTEC to the client pursuant to this Agreement, ACUTEC grants to the client with effect from the actual date of delivery a non-executive, non-transferable licence to use the Software for its own internal purposes only and in conjunction with this Agreement and for operation in an environment deemed suitable under this Agreement.

3.6 ACUTEC at its option hereby either (a) grants to the Client with effect from the actual date of delivery a non-exclusive, non-transferable licence to use the Software for its own internal purposes only and in accordance with the Supplier's standard licensing terms, and for operation in an environment deemed suitable under the Supplier's standard licensing terms (which are available to the Client on request), or (b) shall procure the grant of a licence directly from the Supplier to the Client to enable the Client to use the Software (on terms which shall be specified by the Supplier).

3.7 The Client hereby indemnifies ACUTEC in respect of any loss (of any kind) which ACUTEC may suffer as a result of the breach by the Client of a licence granted under Clause 3.5 or 3.6.

## 4. TITLE AND RISK

4.1 Risk of loss or damage to the Products shall pass to the Client when delivered (whether delivered to the Client or to a third party at the Client's direction) and the Client shall be responsible for insuring the Products thereafter. Title to the Hardware shall pass to the Client on the date that the Price and any additional costs payable, including any applicable value added tax, have been paid in full to ACUTEC. For the avoidance of doubt, title to the Software (and all documentation relating to the Software) shall remain with the Supplier at all times. Notwithstanding title in any Products passing to the Client, ACUTEC shall retain the right to maintain an action on for the price of the Products.

4.2 Until the Client has settled in full any accounts owed to ACUTEC under any Order placed under this Agreement, the Client shall hold all of the Products on trust for ACUTEC.

4.3 ACUTEC shall be entitled (without prejudice to any other legal remedies which it may have) to enter the Premises without notice to the Client and remove the Products at any time if the Client fails to make payment in full of all sums due under this Agreement by the due date.

## 5. WARRANTIES

5.1 ACUTEC warrants that:

5.1.1 it is entitled to enter into this Agreement;

5.1.2 it shall use its reasonable care and skill in carrying out the Services;

5.1.3 all employees and replacements thereof to be provided by ACUTEC for the purposes of carrying out ACUTEC's obligations hereunder will have the necessary expertise and skills to perform ACUTEC's obligations hereunder.

5.2 ACUTEC shall either (a) procure for the Client the benefit of any standard end-user warranties in respect of the Products and Services from the Supplier(s) (whether by assignment from ACUTEC or granted directly by the Supplier(s)) or (b) grant the Client the same warranties that ACUTEC receives from

the Supplier(s) in respect of the Products and Services, Any sums recoverable under (b) shall be limited to the sums recovered by ACUTEC from the relevant Supplier(s) in respect of the relevant claim.

- 5.3 The Client shall notify ACUTEC in writing of any failure by ACUTEC to comply with any of the warranties set out in Clause 5.1, or any failure of the Products or Services to comply with the relevant Supplier's standard warranties, as soon as practicable after discovery of the failure, failing which the Client shall not be entitled to claim for breach of warranty. The notice from the Client to ACUTEC shall identify and, where possible, substantiate the breach.
- 5.4 Except for the express warranties and conditions expressly contained or referred to in this Agreement, ACUTEC makes no other warranties or conditions, express or implied, including the implied warranties and conditions of satisfactory quality or fitness for a particular purpose in respect of the Products or Services.

## **6. PROPRIETARY RIGHTS AND INDEMNITY AND INDEMNITY**

- 6.1 The copyright and all other intellectual property rights of whatever nature in the Products shall be and remain vested in the Supplier(s).
- 6.2 The Client shall not remove any notices of copyright or other intellectual property rights contained on or in the Products.
- 6.3 ACUTEC shall either (a) procure for the Client the benefit of any standard end-user warranties and/or indemnities from the Supplier(s) (whether by assignment from ACUTEC or granted directly by the Supplier(s) in respect of any alleged infringement of intellectual property rights by the Products or Services or (b) grant the Client the same warranties and/or indemnities that ACUTEC receives from the Supplier(s) in respect of the Products and Services. Any sums recoverable under (b) shall be limited to the sums recovered by ACUTEC from the relevant Supplier(s) in respect of the relevant claim. Details of these warranties and indemnities are available upon request.
- 6.4 The Client shall promptly notify ACUTEC in writing of any allegations of infringement of which it becomes aware and shall not make any admission without ACUTEC's prior written consent.
- 6.5 The provisions of this Clause 6 shall survive the termination of this Agreement in so far as it relates to events occurring before the date of termination of this Agreement.

## **7. SERVICES**

Any Services to be provided or procured by ACUTEC shall be subject to any additional terms contained or referred to in the ACUTEC Standard Terms and Conditions for the Provision of Consultancy Services ("Services Terms"). In the event of any conflict or discrepancy between the terms of the Services Terms and the terms herein, the Services Terms shall prevail.

## **8. PRICE AND PAYMENT**

- 8.1 The Client shall pay to ACUTEC the Price as invoiced. Delivery of the Products will be charged for in addition, unless otherwise agreed.
- 8.2 All valid invoices issued to the Client pursuant to this Agreement shall be payable as per the terms stated on the invoice. The Client shall not be permitted to make any deduction from the Price whether in respect of set-off, counterclaim or otherwise.
- 8.3 The Price, and any additional charges payable hereunder, are exclusive of VAT, customs charges and duties, which shall be paid by the Client in the amount and manner prescribed by law.
- 8.4 ACUTEC may charge interest at the rate of 4% above the base lending rate of NatWest Bank Plc calculated daily from the due date until payment received in full.
- 8.5 Without prejudice to any of its other rights, ACUTEC shall be entitled to suspend its obligations under this Agreement for so long as any payment due hereunder remains outstanding.

## **9. TERMINATION**

- 9.1 This Agreement shall, save as may be provided for herein, continue for a minimum period of 12 months and, thereafter the agreement will be a 12 month rolling agreement, either party may terminate this Agreement by giving no less than 3 months' notice prior to the annual renewal in writing to the other.
- 9.2 Either party ("Initiating Party") may terminate this Agreement at any time forthwith by notice in writing if:
- 9.2.1 the other party (the "Breaching Party") is in material breach of any of its material obligations under this Agreement and (if the breach is capable of remedy) fails to remedy the breach within 30 days after receipt of notice in writing from the Initiating Party giving particulars of the breach and requiring the Breaching Party to do so;
- 9.2.2 a resolution is passed or an order is made for the winding-up (or equivalent order in the relevant jurisdiction) of the other party otherwise than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction and in such manner that the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the obligations imposed on the other party under this Agreement; or
- 9.2.3 the other party becomes subject to an administration order; a liquidator, receiver or administrative receiver or similar is appointed over, or an encumbrancer takes possession of, any of the other party's property or assets; the other party enters into an arrangement or composition with its creditors; the other party ceases or threatens to cease to carry on business; the other party becomes insolvent; or the other party ceases to be able to pay its debts as they fall due.

## **10. EFFECTS OF TERMINATION**

- 10.1 Any termination of this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either party which have arisen on or before the date this Agreement terminates, nor shall it affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 10.2 Unless terminated pursuant to Clause 9.2, the licence to use the Software contained in Clause 3.5 shall survive any termination of the Agreement.
- 10.3 The following Clauses shall survive termination of this Agreement: 1, 4, 6, 8, 10, 12, 13, 15, 16, 19

## **11. ASSIGNMENT**

- 11.1 The Client shall not, nor shall it purport to, assign, transfer grant any trust of or sub-contract any of its rights or obligations under this Agreement without the prior written consent of ACUTEC, such consent not to be unreasonably withheld or delayed.
- 11.2 ACUTEC shall be entitled to assign this Agreement to any ACUTEC Company. The Client will be informed of any such assignment.

## **12. CONFIDENTIALITY**

- 12.1 During the term of this Agreement and after the termination or expiry of this Agreement for any reason whatsoever the Receiving Party shall:
- 12.1.1 keep the Confidential Information confidential;
- 12.1.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 12.2, 12.3 and 12.4; and
- 12.1.3 not use the Confidential Information for any purpose other than the performance of its obligations under this Agreement.
- 12.2 During the term of this Agreement the Receiving Party may disclose the Confidential Information to its Recipients to the extent that it is necessary for the purposes of this Agreement.
- 12.3 The Receiving Party shall use all reasonable endeavours to ensure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient were a party hereto.

- 12.4 The obligations contained in Clauses 12.1 to 12.3 shall not apply to any Confidential Information which:
- 12.4.1 is at the date of this Agreement in, or at any time after the date of this Agreement comes into, the public domain other than through a breach of this Agreement by the Receiving Party or any Recipient;
- 12.4.2 can be shown by the Receiving Party to the satisfaction of the Disclosing Party to have been known to the Receiving Party prior to it being disclosed by the Disclosing Party to the Receiving Party; or
- 12.4.3 subsequently comes lawfully into the possession of the Receiving Party from a third party.
- 12.5 No public announcements concerning the existence or contents of this Agreement shall be made by either party without the prior written consent of the other party.

### **13. LIABILITIES AND INDEMNITIES**

- 13.1 Neither party shall, nor shall they purport to, exclude or restrict liability for death or personal injury resulting from the negligence of that party or its employees, servants or agents acting in the course of their employment.
- 13.2 Save as expressly set out herein, all conditions, warranties and obligations which may be implied or incorporated into this Agreement by statute, common law, or otherwise, including those in respect of satisfactory quality and fitness for purpose, and any liabilities arising there from, are hereby excluded.
- 13.3 Neither party shall in any circumstances be liable to the other for loss of profits, business or contracts or any other indirect or consequential loss caused in any way by some act, omission, or misrepresentation (excluding any fraudulent or negligent misrepresentation) committed in connection with this Agreement (whether arising from negligence, breach of contract or howsoever), even if such loss was reasonably foreseeable or if one party had advised the other of the possibility of such loss.
- 13.4 Other than in respect of Clause 13.1, the total aggregate liability of one party to the other from any cause relating to or arising out of this Agreement, regardless of the form of action whether in contract, tort or otherwise, will not, in respect of:
- 13.4.1 the Products, exceed the Price; and
- 13.4.2 the Services, exceed the sums paid therefore.
- 13.5 Other than in respect of Clause 13.1, neither party shall have any liability to the other in any respect unless it shall have served notice of the same on the other party within 12 months of the date on which it became aware of the circumstances giving rise to any such claim or the date when it ought reasonably to have become so aware. 13.6 Each provision of this Clause 13, limiting or excluding liability, operates separately and shall survive independently of the other provisions.

### **14. FORCE MAJEURE**

- 14.1 Save for the payment obligations in Clause 8, neither party shall be liable for failure to perform its obligations under this Agreement if such failure results from circumstances beyond that party's reasonable control including but not limited to strikes, lock-outs, labour disputes, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood or storm ("Event of Force Majeure").
- 14.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

### **15. EXPORT CONTROL REGULATIONS**

The Client acknowledges that the Products may be subject to the export control regulations of the UK and/or another country. Accordingly, the Client agrees that any Products to which such regulations apply will not be exported from the UK to any country prohibited by such regulations, unless prior approval in writing has been obtained from the relevant regulatory authorities, which shall be the Client's responsibility and at the Client's expense.

### **16. NON-SOLICITATION**

- 16.1 Neither party shall from the date of this Agreement until six months after termination of this Agreement employ or engage on any basis or offer employment or engagement to any of the other party's staff who have been or had been associated with the provision or receipt of the Services in the year proceeding any such offer being made without the other party's prior agreement in writing.
- 16.2 Each party agrees that if it employs or engages any person contrary to clause 16.1 the party in default shall be liable to pay the other party liquidated damages equal to 30 % of that person's gross annual salary at the time of the breach. The parties hereby acknowledge and agree that the formula specified in this clause 16.2 is a reasonable estimation of the loss which would be incurred by the loss of the person so employed or engaged.

### **17. GENERAL**

- 17.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties by a duly authorised officer of each of the parties.
- 17.2 The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy. The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 17.3 The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect or impact the continuation in force of the remainder of this Agreement.
- 17.4 Nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the parties or as constituting either party as the agent of the other party for any purpose whatsoever and neither party shall have the authority or power to bind the other party, or to contract in the name of, or to create a liability against, the other party in any way or for any purpose.

### **18. ENTIRE AGREEMENT**

- 18.1 This Agreement (as amended from time to time), together with any document expressly referred to in any of its terms, contains the entire agreement between the parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of this Agreement.
- 18.2 The Client confirms that, in agreeing to enter into this Agreement, it has not relied on any representation save insofar as the same has expressly in this Agreement been made a representation and agrees that it shall have no remedy in respect of any misrepresentation which has not become a term of this Agreement, save that the agreement of the Client contained in this Clause 18.2 shall not apply in respect of any fraudulent or negligent misrepresentation, whether or not such has become a term of this Agreement. 18.3 The parties agree that the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

### **19. NOTICES**

- 19.1 Any notice under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by recorded delivery or email to the address of the party set out in this Agreement or to any other person or address subsequently notified by one party to the other.
- 19.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly given:
- 19.2.1 if delivered personally when left at the address referred to in Clause 19.1; or
- 19.2.2 if sent by recorded delivery three (3) days after posting it; 19.2.3 if sent by email, when received.

## 20. GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of England and Wales and the Client agrees to submit to the exclusive jurisdiction of the English courts.

# Consultancy Service Agreement

These terms and conditions shall govern the provision of Consultancy Services (as defined below) by ACUTEC to the Client to the exclusion of all other terms and/or conditions whether included in any acknowledgement, communication or otherwise from either party unless otherwise agreed between the parties in writing.

## 1. DEFINITIONS

In this Agreement, unless the context requires otherwise, the following expressions shall have the following meanings:

**"Agreement"** means these Standard Terms and Conditions for the Provision of Consultancy Services;

**"Bespoke Software Development"** means the supply by ACUTEC of Information Technology services for the conception, creation and/or development of Software or the like that is specific to the Client's requirement (for example, without limitation, web-site development, new Software etc.), as opposed to the supply of third party produced Software which is specifically excluded from this Agreement, and "Bespoke Software" shall be construed accordingly;

**"Confidential Information"** means all information, whether provided in writing or orally, and disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party"), or to any employee or sub-contractor of the Receiving Party (the "Recipient"), whether before or after the date of the Agreement, including, without limitation, any information relating to the Disclosing Party's Clients, products, operations, processes, plans or intentions, product information, know how, design rights, trade secrets, market opportunity and business affairs;

**"Consultancy Services"** shall mean any information technology related services that are detailed in the Service Schedule but excludes the sale and supply of hardware, sale and licensing of Software, supply of maintenance and/or support and the provision of Bespoke Software Development;

**"Client"** means the person, firm or company whose details are set out in the Service Schedule;

**"Delivery Date"** means the estimated date of commencement of the Consultancy Services which will be recorded in the Service Schedule; **"Intellectual Property"** means patents, trademarks (registered and unregistered), utility models, all components of copyright (including rights of transcription, distribution, publishing and moral rights) and other exclusive rights of utilisation, rights in service marks, get-up, logos, designs (whether registered or unregistered) and inventions, trade and business names, rights in goodwill or reputation, database rights (including extraction and re-utilisation rights), rights in compilations, any rights similar to any of the above that come into existence (whether by introduction of a new right through legislation or by some other means), applications for any such rights and interests in any of the above and all rights or forms of protection of a similar nature to any of the above or having equivalent effect anywhere in the world;

**"ACUTEC"** means ACUTEC, Registered No: 3094253 of St Peters House, Church Hill, Coleshill, Birmingham, B46 3AL

**"Price"** means the price for the provision of Consultancy Services or the provision of Bespoke Software Development contained in the Service Schedule

**"Service Schedule"** shall mean the schedule in the form attached to this Agreement which upon completion and signature by both parties shall, together with this Agreement, form the Contract between the Client and ACUTEC. Should any terms and/or condition included in the Service Schedule conflict with any term and/or condition in this Agreement the term and/or condition in the Service Schedule shall take precedence to the extent a conflict exists. Each Service Schedule shall be identifiable by a unique Service Schedule Number ("SSN");

1.2 In this Agreement references to:

1.2.1 persons include bodies corporate, unincorporated associations and partnerships;

1.2.2 Clauses are to clauses of this Agreement;

1.2.3 a "subsidiary" or "holding company" shall be construed in accordance with Sections 1159 of the Companies Act 2006; and

1.2.4 any statutory provision shall include reference to a statutory provision as modified or re-enacted or both from time to time whether before or after the date of this Agreement. 1.3 The headings in this Agreement shall not affect the interpretation of this Agreement.

## 2. SPECIFICATIONS

All performance data and other technical information relating to the Consultancy Services are given by ACUTEC in the belief that they are reasonably accurate. ACUTEC accepts no responsibility whatsoever for any such information which has been prepared by a third party.

## 3. SERVICE ESTIMATES

3.1 At the Client's request, ACUTEC may provide in the Service Schedule an estimate of charges for any Consultancy Services. Unless explicitly stated, such estimate shall not be binding on ACUTEC or convert the Contract to a fixed price contract in respect of such Consultancy Services.

3.2 If ACUTEC determines (at its sole discretion), that any estimate will be materially exceeded, it shall, within a reasonable period of time, notify the Client. In such event, the Client may elect to terminate the Consultancy Services upon 14 days notice.

3.3 Where the Service Schedule provides that the Consultancy Services shall be performed for a fixed price, this Agreement and/or the Services Schedule may not be terminated by the Client before completion of the Consultancy Services except pursuant to Clause 6.2 of this Agreement.

3.4 Should the Client terminate this Agreement in breach of Clause 3.3, then the Client shall be liable to pay ACUTEC by way of liquidated damages a sum equal to 50% of the anticipated cumulative billings which but for such termination would have been payable by the Client up until the earliest time when the Client was contractually entitled to terminate the Agreement. The Client acknowledges that this sum is a genuine pre-estimate of the loss that ACUTEC would suffer;

3.5 The Client shall pay or reimburse to ACUTEC (on production of vouchers and/or other evidence) all reasonable and proper expenses incurred in connection with the provision of the Consultancy Services including but not limited to travel and accommodation expenses. Car mileage allowances will be payable by the Client to ACUTEC in accordance with AA guidelines;

- 3.6 Each Service Schedule shall designate a Project Manager for the Client and a Project Manager for ACUTEK who shall each be responsible for directing the specific activities of their respective employees and shall have sufficient authority to represent the Client and ACUTEK respectively on all technical, administrative and supervisory matters arising in connection with the performance of the respective Consultancy Services. Either party may replace its Project Manager upon reasonable notice to the other party, provided such replacement has the appropriate skills, knowledge and expertise to perform the role.

#### **4 INTELLECTUAL PROPERTY RIGHTS AND INDEMNITY**

- 4.1 All Intellectual Property created or developed during the supply of the Consultancy Services will remain the property of ACUTEK.
- 4.2 On payment in full for the Consultancy Services to be paid under the relevant Service Schedule, the Client will be granted a non-exclusive and non-transferable, royalty-free licence to use the product of such Consultancy Services and any associated documentation in accordance with these terms and conditions. ACUTEK will be entitled to terminate the licence forthwith, should the Client breach the terms of this Agreement, the Service Schedule and/or any licence granted hereunder. No sub-licences may be granted without ACUTEK's prior written consent.
- 4.3 Unless stated otherwise in the Service Schedule, all Intellectual Property created or developed during the Bespoke Software Development will remain the property of ACUTEK.
- 4.4 On payment in full for the Bespoke Software Development to be paid under the relevant Service Schedule, the Client will be granted a non-exclusive and non-transferable, royalty-free licence to use the Bespoke Software and any associated documentation in accordance with these terms and conditions. ACUTEK will be entitled to terminate the licence forthwith, should the Client breach the terms of this Agreement or the particular Service Schedule. No sub-licences may be granted without ACUTEK's prior written consent.
- 4.5 ACUTEK will defend, at its own expense, any legal action brought against the Client to the extent that it is based on a claim that the Consultancy Services or any Bespoke Software (or any part thereof), when used in accordance with any documentation that accompanies the Consultancy Services or Bespoke Software, infringes a copyright of a third party, and ACUTEK will pay any final judgement awarded to the third party against the Client PROVIDED THAT: Client shall (i) notify ACUTEK promptly in writing of any such claim; (ii) permit ACUTEK to have sole control of the defence, compromise or settlement of such claim, including any appeals; (iii) not make any prejudicial statements or settlement offers without the prior written consent of ACUTEK; and (iv) fully co-operate with ACUTEK in the defence or settlement of such claim. ACUTEK will pay such reasonable costs, damages or fees incurred by Client in connection with such action or claim.
- 4.6 Should the Bespoke Software and/or the Consultancy Services become, or in ACUTEK's opinion be likely to become, the subject of any such infringement claim, Client shall permit ACUTEK, at ACUTEK's option and expense, to (i) procure for Client the right to continue using the Bespoke Software or the Consultancy Services, or (ii) replace or modify the Bespoke Software or the Consultancy Services so that they become noninfringing, or (iii) terminate the right to use the Bespoke Software or the Consultancy Services, upon which termination Client shall, and shall procure that End Users, promptly destroy all copies of the Bespoke Software or the Consultancy Services and certify the same to ACUTEK.
- 4.7 ACUTEK shall have no liability for any Intellectual Property infringement claim to the extent that it is based on (i) the use or combination of the Bespoke Software with Software, hardware or other materials not recommended by ACUTEK, provided such infringement would not have arisen but for such use or combination; or (ii) the use of the Bespoke Software in a manner other than that for which it was designed or contemplated as evidenced by ACUTEK's documentation; or (iii) any unauthorized modification of the Bespoke Software or Consultancy Services by any party; or (iv) any compliance with designs, plans or specifications furnished by Client. This section states the entire liability of ACUTEK, and Client's sole and exclusive remedy, with respect to infringement of any Intellectual Property rights, and ACUTEK shall have no additional liability with respect to any alleged or proved infringement.

#### **5 PRICE AND PAYMENT**

- 5.1 The Client shall pay to ACUTEK the Price as invoiced.
- 5.2 Unless otherwise stated in a Service Schedule, all valid invoices issued to the Client shall be payable as the stated terms on the invoice. The Client shall not be permitted to make any deduction from the Price whether in respect of set-off, counterclaim or otherwise.
- 5.3 The Price, and any additional charges payable hereunder, are exclusive of VAT, customs charges and duties, which shall be paid by the Client in the amount and manner prescribed by law.
- 5.4 ACUTEK may charge interest at the rate of 4% above the base lending rate of NatWest Bank Plc calculated daily from the due date until payment received in full.
- 5.5 Without prejudice to any of its other rights, ACUTEK shall be entitled to suspend its obligations under this Agreement or a Service Schedule for so long as any payment due there under remains outstanding.
- 5.7 Unless otherwise stated in a Service Schedule, invoices shall be issued in accordance with Clause 5.2 together with a schedule stating what Services the invoice(s) relates to (i.e. a "Summary Sheet"). If ACUTEK does not receive an email/fax 01675 462853 from you detailing any material issues you may have with the professional services within five days from receipt of this schedule, all such professional services shall be deemed to have been fully accepted by you and an invoice(s) will be raised accordingly."

#### **6 TERMINATION**

- 6.1 This Agreement shall, save as may be provided for herein, continue for a minimum period of 12 months and, thereafter, either party may terminate this Agreement or a Service Schedule by giving no less than 3 month's notice in writing to the other.
- 6.2 Either party ("Initiating Party") may terminate this Agreement at any time forthwith by notice in writing if:
- 6.2.1 the other party (the "Breaching Party") is in material breach of any of its material obligations under this Agreement and (if the breach is capable of remedy) fails to remedy the breach within 30 days after receipt of notice in writing from the Initiating Party giving particulars of the breach and requiring the Breaching Party to do so;
- 6.2.2 a resolution is passed or an order is made for the winding up (or equivalent order in the relevant jurisdiction) of the other party otherwise than for the purposes of a bona fide scheme of solvent amalgamation or reconstruction and in such manner that the entity resulting from the amalgamation or reconstruction effectively agrees to be bound by or assume the obligations imposed on the other party under this Agreement; or
- 6.2.3 the other party becomes subject to an administration order; a liquidator, receiver or administrative receiver or similar is appointed over, or an encumbrancer takes possession of, any of the other party's property or assets; the other party enters into an arrangement or composition with its creditors; the other party ceases or threatens to cease to carry on business; the other party becomes insolvent; or the other party ceases to be able to pay its debts as they fall due.
- 6.3 ACUTEK shall be entitled to immediately terminate any licence granted under Clause 4.2 on the occurrence of any of the circumstances detailed in Clauses 6.2.2 and 6.2.3.

#### **7 EFFECTS OF TERMINATION**

- 7.1 Any termination of this Agreement (howsoever occasioned) or a Service Schedule shall not affect any accrued rights or liabilities of either party which have arisen on or before the date this Agreement or a Service Schedule terminates, nor shall it affect the coming into force or continuance in force of any provision which is expressly or by implication intended to come into or continue in force on or after such termination.
- 7.2 Unless terminated pursuant to Clause 6.2, the licence to use the Bespoke Software contained in Clause 4.4 shall survive any termination of this Agreement.
- 7.3 The following Clauses shall survive termination of this Agreement: 1, 2, 4, 5, 7, 9, 10, 15 and 19.

## **8. ASSIGNMENT AND SUBCONTRACTING**

- 8.1 The Client shall not, nor shall it purport to, assign, transfer grant any trust of or sub-contract any of its rights or obligations under this Agreement without the prior written consent of ACUTEC, such consent not to be unreasonably withheld or delayed.
- 8.2 ACUTEC shall be entitled to sub-contract the supply of the Consultancy Services or the provision of Bespoke Software Development to any third party that it deems is appropriately skilled to provide the same, although ACUTEC shall remain primarily liable to the Client notwithstanding the use of such subcontractors.

## **9. CONFIDENTIALITY**

- 9.1 During the term of this Agreement and after the termination or expiry of this Agreement for any reason whatsoever the Receiving Party shall:
- 9.1.1 keep the Confidential Information confidential;
- 9.1.2 not disclose the Confidential Information to any other person other than with the prior written consent of the Disclosing Party or in accordance with Clauses 9.2, 9.3 and 9.4; and
- 9.1.3 not use the Confidential Information for any purpose other than the performance of its obligations under this Agreement.
- 9.2 During the term of this Agreement the Receiving Party may disclose the Confidential Information to its Recipients to the extent that it is necessary for the purposes of this Agreement.
- 9.3 The Receiving Party shall use all reasonable endeavours to ensure that each Recipient is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient were a party hereto.
- 9.4 The obligations contained in Clauses 9.1 to 9.3 shall not apply to any Confidential Information which:
- 9.4.1 is at the date of this Agreement in, or at any time after the date of this Agreement comes into, the public domain other than through a breach of this Agreement by the Receiving Party or any Recipient;
- 9.4.2 can be shown by the Receiving Party to the satisfaction of the Disclosing Party to have been known to the Receiving Party prior to it being disclosed by the Disclosing Party to the Receiving Party;
- 9.4.3 subsequently comes lawfully into the possession of the Receiving Party from a third party; or 9.4.4 is otherwise disclosed through process of law.
- 9.5 No public announcements concerning the existence or contents of this Agreement shall be made by either party without the prior written consent of the other party.

## **10. LIABILITIES AND INDEMNITIES**

- 10.1 Neither party shall, nor shall they purport to, exclude or restrict liability for death or personal injury resulting from the negligence of that party or its employees, servants or agents acting in the course of their employment.
- 10.2 Save as expressly set out herein and in particular, clause 11, all conditions, warranties and obligations which may be implied or incorporated into this Agreement by statute, common law, or otherwise, including those in respect of satisfactory quality and fitness for purpose, and any liabilities arising there from, are hereby excluded.
- 10.3 Other than in respect of Clause 10.1, neither party shall in any circumstances be liable to the other for loss of profits, business or contracts or any other indirect or consequential loss caused in any way by some act, omission, or misrepresentation (excluding any fraudulent or negligent misrepresentation) committed in connection with this Agreement (whether arising from negligence, breach of contract or howsoever), even if such loss was reasonably foreseeable or if one party had advised the other of the possibility of such loss.
- 10.4 Other than in respect of Clause 10.1, the total aggregate liability of one party to the other from any cause relating to or arising out of this Agreement, regardless of the form of action whether in contract, tort or otherwise, will not, in respect of the Consultancy Services and/or Bespoke Software Development or the resulting Bespoke Software exceed the Price paid by the Client.
- 10.5 Other than in respect of Clause 10.1, neither party shall have any liability to the other in any respect unless it shall have served notice of the same on the other party within 12 months of the date on which it became aware of the circumstances giving rise to any such claim or the date when it ought reasonably to have become so aware.
- 10.6 Each provision of this Clause 10, limiting or excluding liability, operates separately and shall survive independently of the other provisions and the invalidity, illegality or unenforceability of any provision of this Clause 10 shall not affect or impact the continuation in force of the remainder of this Agreement.

## **11. WARRANTIES**

- 11.1 ACUTEC warrants that:
- 11.1.1 it will carry out all aspects of the Consultancy Services and any Bespoke Software Development with reasonable skill and care and to generally accepted industry standards;
- 11.1.2 the Consultancy Services or Bespoke Software will, for a period of 30 days from the date of acceptance, conform to, and operate in accordance with any specification provided by ACUTEC;
- 11.1.3 it has the right and authority to enter into this Agreement.
- 11.2 Client's sole remedy in relation to any breach of any of the above warranties during the warranty period (i.e. 30 days from the date of Acceptance) shall be that ACUTEC shall perform, at its sole expense, all rectification services necessary to render the Consultancy Services or Bespoke Software compliant with the above warranties.

## **12. VARIATIONS**

- 12.1 Client shall be entitled at any time prior to completion of the Consultancy Services or Bespoke Software to request that ACUTEC modify any aspect of the scope of such Consultancy Services or Bespoke Software.
- 12.2 Client shall provide ACUTEC with full particulars of any requested modification and such further information as ACUTEC may reasonably require. Within 14 days of receipt of such request ACUTEC shall inform Client in writing of the alterations to any timeframe that may have been agreed for completion of the Consultancy Services or Bespoke Software Development (if any) and any additional prices payable to implement such modification. For the avoidance of doubt, the Price originally payable for the Consultancy Services or Bespoke Software Development Client shall not be reduced because of a request for modification.
- 12.3 If Client elects to proceed with such modification then the timeframe and prices payable shall be amended as indicated by ACUTEC pursuant to Clause 12.2 above and accepted by the Client in writing.

## **13. PERSONNEL**

- 13.1 ACUTEC shall use all its reasonable endeavours to avoid replacing the personnel assigned to perform the Consultancy Services or Bespoke Software Development during the currency of the Service Schedule. However, in the event of replacement being necessary or desirable, ACUTEC shall replace

such personnel with personnel of commensurate skill and expertise. Nothing in this clause shall relieve ACUTEC of any of its obligations or its responsibilities for any acts or omissions of its personnel under this Agreement.

#### **14. FORCE MAJEURE**

- 14.1 Save for the obligations in Clauses 3 and 5, neither party shall be liable for failure to perform its obligations under this Agreement if such failure results from circumstances beyond that party's reasonable control including but not limited to strikes, lock-outs, labour disputes, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood or storm ("Event of Force Majeure").
- 14.2 Each of the parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure, such notice to contain details of the circumstances giving rise to the Event of Force Majeure.

#### **15. NON-SOLICITATION**

- 15.1 Neither party shall from the date of this Agreement until six months after termination of this Agreement employ or engage on any basis or offer employment or engagement to any of the other party's staff who have been or had been associated with the provision or receipt of the Services in the year proceeding any such offer being made without the other party's prior agreement in writing.
- 15.2 Each party agrees that if it employs or engages any person contrary to clause 15.1 the party in default shall be liable to pay the other party liquidated damages equal to 30 % of that persons gross annual salary at the time of the breach. The parties hereby acknowledge and agree that the formula specified in this clause 15.2 is a reasonable estimation of the loss which would be incurred by the loss of the person so employed or engaged.

#### **16. GENERAL**

- 16.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the parties by a duly authorised officer of each of the parties.
- 16.2 The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy. The rights and remedies contained in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.
- 16.3 The invalidity, illegality or unenforceability of any provision of this Agreement shall not affect or impact the continuation in force of the remainder of this Agreement.
- 16.4 Nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the parties or as constituting either party as the agent of the other party for any purpose whatsoever and neither party shall have the authority or power to bind the other party, or to contract in the name of, or to create a liability against, the other party in any way or for any purpose.

#### **17. ENTIRE AGREEMENT**

- 17.1 This Agreement (as amended from time to time), together with any document expressly referred to in any of its terms, contains the entire agreement between the parties relating to the subject matter covered and supersedes any previous agreements, arrangements, undertakings or proposals, written or oral, between the parties in relation to such matters. No oral explanation or oral information given by any party shall alter the interpretation of this Agreement.
- 17.2 The Client confirms that, in agreeing to enter into this Agreement, it has not relied on any representation save insofar as the same has expressly in this Agreement been made a representation and agrees that it shall have no remedy in respect of any misrepresentation which has not become a term of this Agreement, save that the agreement of the Client contained in this Clause 17.2 shall not apply in respect of any fraudulent or negligent misrepresentation, whether or not such has become a term of this Agreement.
- 17.3 The parties agree that the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

#### **18. NOTICES**

- 18.1 Any notice under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by recorded delivery or email to the address of the party set out in this Agreement or to any other person or address subsequently notified by one party to the other.
- 18.2 In the absence of evidence of earlier receipt any notice shall be deemed to be duly given:
  - 18.2.1 if delivered personally when left at the address referred to in the Service Schedule; or
  - 18.2.2 if sent by recorded delivery three (3) days after posting it; 18.2.3 if sent by email, when received.

#### **19. GOVERNING LAW**

This Agreement and any Service Schedule agreed hereunder shall be governed by, and construed in accordance with, the laws of England and Wales and the Client agrees to submit to the exclusive jurisdiction of the English courts.

## **Support Agreement**

It is agreed as follows:-

1. The expression "the Initial charge" shall have the meaning given to it in the Schedule hereto.
2. The contractor is authorised to support the Software referred to in the Schedule ("the Software") and agrees to provide the support services specified herein for the Software running on the System at the Location(s) all as specified in the Schedule.

#### **3. SUPPORT AND UPGRADE COVER**

Support and upgrade cover provided under this Agreement shall include:

- 3.1 Telephone Support. For an urgent problem, any employee or agent of the Client who has undergone the contractor's relevant training in respect of the Software can telephone the Contractor's Telephone Hotline which is available Monday to Friday from 08:30 to 17:30 excluding Public Holidays ("The Contractor's standard hours"). An urgent problem is degradation or failure of the System, defective Software distribution media, or Software performance inconsistent with documentation. Where problems do not delay or inhibit system operation the contractor may request that these are handled by written report. Clients must submit sufficient material and information to enable the contractor's support staff to duplicate the problem. The contractor's support staff will attempt to solve a problem immediately, or as soon thereafter as possible (and in the event will respond to a request for Telephone support within the period specified in the schedule). When appropriate, the contractor will endeavour to give an estimate of how long a problem may take to resolve. The Contractor will keep the Client informed of the progress of problem resolution and where the problem has not been resolved within 7 days will provide a written report to the Client explaining the problems.



- 3.2 On-Site Support will be provided by the contractor, if so specified in the Schedule, if and where appropriate in the event that telephone support does not resolve a Software problem. If further visits are requested these will be provided but (at the option of the Contractor) at the additional cost to the Client at the Contractor's standard rates of charge details of which will be provided to the Client on request (the contractor undertakes to attend the Client's premises if so requested within 48 hours of a request being received).
- 3.3 Remote Support The Client shall, where specified in the Schedule, have available the equipment and telecommunication lines to a specification agreed with the Contractor for on-line problem resolution.
- 3.4 Out-of Hours Support if so specified in the Schedule.
- 3.5 Consultancy advice on Software development, enhancements and modifications, together with estimates for the same shall be provided at the option of the contractor.
- 3.6 Upgrades – upgraded Software from the Software author is provided under the terms of the contract

#### **4 SUPPORT CHARGES**

- 4.1 The Support charges specified in the Schedule are payable upon receipt of the Contractor's invoice unless otherwise agreed in writing by the Contractor. The Contractor reserves the right to terminate or suspend any support if payment is in arrears.
- 4.2 The support charges will be the Initial Charge Specified in the Schedule and are subject to annual review upon 30 days prior written notice from the Contractor (and are subject to variation if the System is in the reasonable opinion of the contractor substantially altered). The support charge may also be amended due to changes in policy of the Software authors.
- 4.3 The Support charges payable under this Agreement are based on services provided during the contractor's standard hours unless otherwise specified in the Schedule. Additional or out-of-hours support is subject to a higher charge.
- 4.4 All charges referred to in this Agreement are exclusive and net of any taxes, duties or such other additional sums including, but without prejudice to the foregoing generality, Value Added Tax, and import or other duties, whether levied in respect of this Agreement, the Software, its uses or otherwise.

#### **5 SOFTWARE SUPPORT**

- 5.1 The Contractor agrees to provide support of the Software in accordance with the provisions of clause 1 of this Agreement provided that the Contractor shall not be obliged to assign named members of staff to this. 5.2 The contractor shall have the right to charge separately for services requested by the Client that are not specifically covered by this Agreement.

#### **6 THE CLIENT UNDERTAKES**

- 6.1 to supervise and control use of the Software and any supporting or diagnostic Software in accordance with the terms of this Agreement and the Software Licence. 6.2 to take any remedial or procedural steps reasonably suggested by the Contractor for the safe and efficient running of the System.

#### **7 SUPPORT AND UPGRADE COVER NOT INCLUDED and which shall be charged for separately if appropriate:-**

- 7.1.1 cost of installing upgraded Software is not included and will be quoted on a time Support of other Software, accessories, attachments, machines, systems or other devised not listed in the Schedule.
- 7.1.2 Rectification of lost or corrupted data arising for any reason other than the Contractor's own negligence.
- 7.2 Support rendered more difficult because of any changes, alterations, additions, modifications or variations to the Software, the System or operating environment other than by the Contractor.
- 7.3 Attendance to faults caused by using the Software outside design or other specifications or outside the provisions laid down in any specification, documentation or manual supplied with the Software.
- 7.4 Diagnosis and/or rectification of problems not associated with the Software.
- 7.5 Telephone Support where the support is provided to an employee or agent of the Client who has not undergone the contractor's relevant training on the time and fees basis.

#### **8 THE CONTRACTOR'S LIABILITY**

- 8.1 The Contractor shall not be liable to the Client for any loss or damage whatsoever or howsoever caused arising directly or in directly in connection with this Agreement, the Software, any supporting or diagnostic Software or hardware, its use, the System or other equipment, property or otherwise except to the extent that such liability may not be lawfully excluded.
- 8.2 Notwithstanding the generality of (a) above, the contractor expressly excludes liability for consequential loss or damage which may arise in respect of the Software, any supporting or diagnostic Software or hardware, its use, the System or other equipment, property or for loss of profit, business, revenue, goodwill or anticipated savings.
- 8.3 In the event that any exclusion or other provision contained in this Agreement be held invalid for any reason and the Contractor becomes liable for loss or damage that could otherwise have been limited, such liability shall be limited to the support charge paid by the Client to the Contractor in the year in question.
- 8.4 The contractor does not exclude liability for death or personal injury to the extent only that the same arises as a result of the negligence of the Contractor, its employees, agents or unauthorised representatives.

#### **9 FORCE MAJEURE**

The Contractor shall be under no liability to the Client in respect of anything that, apart from this provision, may constitute breach of this Agreement arising by reason of force majeure, namely, circumstances beyond the control of the Contractor.

#### **10. PRICE AND PAYMENT**

- 10.1 The Client shall pay to ACUTEK the Price as invoiced.
- 10.2 Unless otherwise stated in a Service Schedule, all valid invoices issued to the Client shall be payable within 30 days of the date of issue. The Client shall not be permitted to make any deduction from the Price whether in respect of set-off, counterclaim or otherwise.
- 10.3 The Price, and any additional charges payable hereunder, are exclusive of VAT, customs charges and duties, which shall be paid by the Client in the amount and manner prescribed by law.
- 10.4 ACUTEK may charge interest at the rate of 4% above the base lending rate of NatWest Bank Plc calculated daily from the due date until payment received in full.
- 10.5 Without prejudice to any of its other rights, ACUTEK shall be entitled to suspend its obligations under this Agreement or a Service Schedule for so long as any payment due there under remains outstanding.

10.6 Unless otherwise stated in a Service Schedule, invoices shall be issued in accordance with Clause 5.2 together with a schedule stating what Services the invoice(s) relates to (i.e. a "Summary Sheet"). If ACUTECH does not receive an email/fax 01675 462853 from you detailing any material issues you may have with the professional services within five days from receipt of this schedule, all such professional services shall be deemed to have been fully accepted by you and an invoice(s) will be raised accordingly."

#### 11. TERMINATION

11.1 This Agreement shall, save as may be provided for herein, continue for a minimum period of 12 months and, thereafter, either party may terminate this Agreement on the expiry of three months written notice to the other.

11.2 In addition to provisions for termination as herein provided, the contractor may, by notice in writing to the Client, terminate this Agreement if the Client is in breach of any term, of this Agreement. 11.3 Termination, howsoever or when so ever occasioned shall be subject to any rights and remedies either party may have under this Agreement.

#### 12. HEADINGS

The headings of the terms and conditions herein contained are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

#### 13. SEVERABILITY

In the event that any of the terms, conditions or provisions shall be determined invalid, unlawful or unenforceable to any extent such term, condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

#### 14. ASSIGNMENT AND DELIGNATION

14.1 The Client shall not, nor shall it purport to, assign, transfer grant any trust of or sub-contract any of its rights or obligations under this Agreement without the prior written consent of ACUTECH, such consent not to be unreasonably withheld or delayed.

14.2 The Contractor may authorise a distributor, dealer, service centre or other third party support organisation to provide the support services and/or to invoice the Client for and collect the charges specified herein as its designated representative.

#### 15. NOTICES

Any notice to be given by either party to the other may be sent by recorded delivery to the address of the other party as appearing herein or such other address as such party may from time to time have communicated to the other in writing and if so sent shall be deemed to be served forty eight hours following the date of posting.

#### 16. LAW

The parties hereby agree that this Agreement shall be construed in accordance with English Law

## Hosting Terms and Conditions

#### 1. DEFINITIONS

1.1 In these terms and conditions (unless the context otherwise requires):

**Acceptable Use Policy** means the ACUTECH policy for the Client's use of the Services, as set out on the ACUTECH Website, and as may be revised by ACUTECH;

**Activation Date** means with respect to an Order, the date on which the Services or any part thereof first become active and available for use by the Client under that Order;

**Associate** means in respect of any party hereto: any firm or body

corporate in which such party directly or indirectly:

owns more than half the capital or business assets; or

has the power to exercise more than half the voting rights; or has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing such firm or body corporate; or has the right to manage the business of such firm or body corporate;

any person, firm or body corporate which directly or indirectly has in or over such party the rights or powers listed in sub -clause (1) above (**a controller**); and

Any firm or body corporate in whom a controller directly or indirectly has the rights or powers listed in sub-clause (1) above.

**Charges** mean the charges payable by the Client to ACUTECH for the provision of the Services as set out in the ACUTECH Price

List and any other charges payable pursuant to this Contract;

**Commencement Date** means the date upon which this Contract is executed by both parties;

**Confidential Information** means all information whether verbal, written, stored or otherwise obtained including, but not limited to, data, facts and statistics about the business affairs, products, product development, trade secrets, know-how, personnel, Clients or suppliers of the disclosing party whether or not they are or were designated or marked as confidential together with all information derived by the receiving party from the foregoing which is by its nature confidential or proprietary;

**Contract** means the contract between ACUTECH and the Client comprising these Terms and Conditions, together with the Order Form and/or any other documents specifically incorporated into such contract, and/or any Schedules hereto; **Client** means the person, proprietorship, partnership or company named in the Order Form;

**Client Services** means the helpdesk support to be provided by ACUTECH as may be notified to the Client from time to time;

**Equipment** means any hardware and/or software owned, controlled, licensed or provided by the Client or otherwise made available for the purposes of receiving the Service;

**ACUTECH** means ACUTECH Ltd of St Peter's House, Church Hill, Coleshill, B46 3AL

**ACUTECH Price List** means the list of charges in force from time to time and available on the ACUTECH Website, together with the method of calculation of the charges;

**ACUTEC Website** means the website located at www.acutec .co.uk or such other website as may be notified by ACUTEC from time to time;

**Minimum Contract Period** means the Minimum Period and 30 days thereafter;

**Minimum Period** means the initial minimum period of time as set out in this Contract that the Client has agreed to receive and pay for the Services;

**Order** means an order placed by the Client with ACUTEC for the provision of Services;

**Order Form** means the ACUTEC written application form containing the details of an order placed by the Client;

**Service Failures** means any failure, error or defect in the provision of the Services arising from, caused by or contributed to by the acts or omissions of the Client or third parties including other providers of telecommunications, computers or other equipment or services including internet services; or any failure, error or defect arising as a result of causes beyond the reasonable control of ACUTEC;

**Service Level** in relation to the Services means the performance standard, if any, set out in this Contract;

**Services** means any hosting and/or associated services to be provided by ACUTEC to the Client pursuant to this Contract as described in the Order Form;

**Start Date** means the target date for the commencement of the provision of the Services to the Client.

**Third Party Service Provider** means any provider of any Third Party Services;

**Third Party Services** means any part of the Services which ACUTEC procures from a third party, including any third party services and/or equipment which ACUTEC uses in order to provide the Services.

1.3 The terms "includes" and "including" shall be construed as if followed by the words "without limitation".

1.3 Words importing the masculine shall include the feminine and neuter and vice-versa and words importing persons shall include body's corporate and unincorporated associations and partnerships. 1.4 The headings to the clauses of this Contract are for convenience only.

## 2 TERM AND START DATE

2.1 This Contract shall commence on the Commencement Date and shall continue (subject to earlier termination in accordance with the terms of this Contract) for the Minimum Period and thereafter unless and until terminated by either party giving to the other on or after the expiry of the Minimum Period not less than 30 days' prior written notice, such notice to expire not earlier than 30 days after the end of the Minimum Period.

2.2 ACUTEC shall use its reasonable endeavours to adhere to the Start Date. However, the Start Date and any other dates given in this Contract are estimates provided for planning purposes only. ACUTEC shall have no liability for any failure to meet the Start Date or any other date as, save as expressly provided elsewhere in this Contract, time is not of the essence in relation to any matter. 2.3 No order shall be binding upon ACUTEC unless and until accepted in writing by ACUTEC.

## 3 OBLIGATIONS OF ACUTEC

3.1 ACUTEC shall provide the Services in accordance with the terms of this Contract. ACUTEC shall use all reasonable endeavours to activate and make the Services available by any date specified or agreed to by ACUTEC. ACUTEC shall not be liable for any failure to meet such date. The Services shall commence on the Activation Date notified by ACUTEC.

3.2 The Services are provided solely for use by the Client in the course of the Client's business.

3.3 ACUTEC shall use reasonable skill and care when providing the Services, but do not guarantee that the Services shall be continuously available to the Client or free from Service Failures.

3.4 In the event of unavailability of the Services for reasons other than Service Failures, ACUTEC shall reimburse the Client by way of a credit to the Client's account an amount calculated in accordance with this clause 3.4 ("Service Credit"). The Service Credit shall be the sole remedy of the Client in respect of any unavailability of the Services to the exclusion of any other remedy of the Client in contract or tort (including negligence or otherwise). The Service Credit shall be equivalent to a percentage of the Charges paid by the Client in respect of the month in which the unavailability occurred and shall be calculated in accordance with the table set out below.

Availability	Percentage refund
90% to 99.9%	15%
75% to 89.9%	50%
75% or below	100%

3.5 ACUTEC shall not be obliged to provide the Services to the Client:

3.5.1. If the Client enters into this Contract otherwise than in the course of its business; or

3.5.2. If the Client uses the Services otherwise than in the course of its business; or

3.5.3. If the Client is not located in a geographic location where the Services can be received; or 3.5.4.

Where there is a technical reason why the Client would not be able to receive the Services.

3.6 The Client must immediately report any fault to ACUTEC via the Client Services, providing sufficient information to enable ACUTEC to investigate the problem. ACUTEC shall log the time of receipt of all such reports.

3.7 Where ACUTEC spend time investigating a fault reported by the Client and conclude that there has been a Service Failure ACUTEC reserves the right to charge the Client for all reasonable costs and expenses incurred in investigating the report and the Client agrees to pay such charges.

## 4 OBLIGATIONS OF THE CLIENT

4.1 The Client shall only use the Services in accordance with the terms of this Contract, the Acceptable Use Policy, any relevant manuals provided by ACUTEC from time to time and any other reasonable operating instructions given to the Client by ACUTEC

4.2 The Client agrees not to use the Services in a way which would:

- 4.2.1. Contravene or cause ACUTEC to contravene any laws or regulations including, but not limited to, the Communications Act 2003 ("the Act"), and any licence under the Act which is applicable to ACUTEC;
- 4.2.2. Contravene the Acceptable Use Policy;
- 4.2.3. Cause a degradation of the Services to any other Client of ACUTEC;
- 4.2.4. Contravene any reasonable operating instructions or other instructions (including, without limitation, any manual) which ACUTEC may provide from time to time;
- 4.2.5. Involve the sending of unsolicited marketing or advertising materials;
- 4.2.6. Result in the transmission or storage of any material which is intended to be a hoax call to emergency services or the sending of any pornographic, obscene or abusive, defamatory, menacing or offensive nature or which would result in the breach of any third party's intellectual property rights, confidential information or privacy; or
- 4.2.7. Breach or cause ACUTEC to breach any applicable data protection legislation including, but not limited to, the Data Protection Act 1998.
- 4.3 All software used to provide the Services and made available for use by the Client pursuant to this Contract ("**Software**") is provided subject to the licensing conditions and restrictions of the Software manufacturer, supplier or licensor, details of which shall be made available on request. The Client shall observe and comply with these licensing conditions, including any restrictions on the use, copying, recompilation and transfer of the Software.
- 4.4 Notwithstanding any provision to the contrary, the Software licence ("**Software Licence**") may be terminated by the manufacturer, supplier or licensor in accordance with its terms; and in addition (without prejudice to the generality of the foregoing) the Client shall ensure that any Software is only used during the continuance of this Contract in accordance with a valid and subsisting Software Licence.
- 4.5 Any obligation under this Contract on the Client to do, or refrain from doing, any act or thing shall include an obligation upon the Client to procure that each of its Associates also do, or refrain from doing, such act or thing.
- 4.6 Except to the extent and in the circumstances expressly required to be permitted by law, the Client shall ensure that neither it nor any third party shall copy, alter, modify, adapt, translate, decompile, disassemble or reverse engineer the Software.

- 4.7 The Client agrees to indemnify ACUTEC against any claims, proceedings or threatened proceedings from third parties and against any loss or damage suffered by ACUTEC arising from any breach by the Client of its obligations under this Contract including this clause 4, and for all costs and expenses reasonably incurred by ACUTEC in investigating and defending any such claims, proceedings or threatened proceedings; such indemnity to continue notwithstanding the termination of this agreement by either party.

## **5 EQUIPMENT**

- 5.1 The Client shall be responsible for providing all necessary hardware, software, network facilities and telecommunications services to access and make use of the Services provided by ACUTEC.
- 5.2 The Client shall ensure that the Equipment:
  - 5.2.1. Is capable or enabling access to the public switched telecommunications network using exchange lines provided by BT or alternative carrier;
  - 5.2.2. Is supplied and maintained in a safe condition and good working order;
  - 5.2.3. Meets the minimum technical specifications required to be compatible with the Service; and
  - 5.2.4. Conforms at all times with the relevant standard designated by all relevant legislation, including the Act and all applicable regulations, instructions and orders.
- 5.3 ACUTEC shall not be under any obligation to connect or keep connected any Equipment if it does not so conform or if it is liable to cause or does cause death, personal injury or damage to property or to impair the quality of the Services provided by ACUTEC.

## **6 CHARGES AND PAYMENT**

- 6.1 The Client shall pay ACUTEC the Charges as specified in this Contract and as subsequently varied pursuant to this Contract. Charges shall be payable by the Client with effect from the Activation Date.
- 6.2 ACUTEC may vary all or any of the Charges at any time on giving not less than 30 days' notice to the Client to pass through any changes made by a Third Party Service Provider.
- 6.3 ACUTEC may increase all or any of the Charges at any time on giving not less than 30 days' notice to take account of any increase in ACUTEC costs of providing the Services.
- 6.4 ACUTEC may increase the Charges at any time on giving not less than 30 days' notice to reflect any increase in the charges prevailing in the marketplace for services comparable to the Services.
- 6.5 ACUTEC may at any time on notice to the Client amend any terms as to payment so as to ensure that it is paid the Charges on or prior to the date on which ACUTEC is to pay any Third Party Service Provider in respect of the Services or goods to which such charges relate.
- 6.6 All Charges are stated exclusive of Value Added Tax (VAT) or other applicable taxes. The Client shall be responsible for paying VAT and other applicable taxes which shall be included in ACUTEC invoices at the applicable rate(s).
- 6.7 ACUTEC shall issue invoices for the Services in accordance with the billing dates specified in this Contract.
- 6.8 The Client shall pay within 14 days of the date of the ACUTEC invoice, by means of a Direct Debit mandate, unless otherwise agreed by ACUTEC. The Client shall not be entitled to set-off, contra or withhold any payment due to ACUTEC against any sums of whatsoever nature that are due to the Client from ACUTEC or that the Client claims are due from ACUTEC, and time of payment of all sums under this Contract is of the essence.
- 6.9 Where Charges are not paid by the Client in accordance with this clause 6 above ACUTEC may require the Client to pay all sums due under this Contract on demand, and reserve the right to charge:
  - 6.9.1. Interest (both before and after any judgment) on all amounts overdue from the Client pursuant to The Late Payment of Commercial Debts (Interest) Act 1998 at the rate of statutory interest in force from time to time accruing on a daily basis from the due date of payment until receipt by ACUTEC of the overdue amount (including any accrued interest and compensation, PLUS 6.9.2. Compensation arising out of late payment pursuant to section 5A of The Late Payment of Commercial Debts Regulations 2002.

## **7 SECURITY OF THE SERVICE**

- 7.1 ACUTEC provide no guarantee or warranty as to the security of the Services and the Client shall indemnify and hold ACUTEC harmless against any claim or demand of whatsoever nature and howsoever arising as a result of the said security or any failure thereof.
- 7.2 Where the Client is aware or becomes aware of any matter which the Client knows or ought reasonably to be expected to know constitutes a threat to the security of the Services, then the Client has a duty pursuant to this Contract immediately to advise ACUTEC of such matter.
- 7.3 The Client is responsible for all use and misuse of any passwords giving access to the Services.

7.4 ACUTEK and its Third Party Service Providers and/or other sub-contractors shall be entitled to inspect and monitor from time to time all usage being made of the Services including communications being made and received to verify compliance with this Contract.

7.5 ACUTEK may at any time vary the Services:

7.5.1. If it needs to do so to comply with any applicable safety or other statutory requirements; or 7.5.2. Where the change does not materially detract from the quality or performance of the Services.

## 8 VARIATION OF SERVICES

8.1 ACUTEK shall be entitled, upon giving not less than 30 days notice to the Client where practical, to make variations and additions to the Service from time to time (acting reasonably) including:-

8.1.1. To improve or add to the Services;

8.1.2. To make changes for operational reasons where these do not have a materially adverse effect on the Services; and/ o 8.1.3. To pass through any change made by a Third Party Service Provider to any Third Party Services; and/or

8.1.4. In order to comply with any law or legal obligation (whether under common law, statute, tort or otherwise), or any change to any law or legal obligation; and/or

8.1.5. In order to comply with any final order, provisional order, direction, notice, specification, designation or consent made by the Office of Communications; and/or

8.1.6. In order to maintain the integrity or security of the Service and/or any part of the systems use or to provide the Service. For the avoidance of doubt, ACUTEK shall not be obliged to give any greater notice of any changes by a Third Party Service Provider than the Third Party Service Provider gives to ACUTEK.

8.2 ACUTEK may at any time change the Services:

8.2.1 If it needs to do so to comply with any applicable safety or other statutory requirements; or 8.2.2

Where the change does not materially detract from the quality or performance of the Services.

8.3 In relation to any Third Party Services, including any elements which are sub-contracted to or supplied by third parties, and any third party premises that may host any systems used to provide the Services, the following terms will apply:

8.3.1 ACUTEK shall use all reasonable endeavours to monitor and supervise the supply of such Third Party Services, but ACUTEK shall not otherwise be responsible for or liable for any malfunction, failure, non-operation, default, or non-availability of such Third Party Services, unless due to ACUTEK ' negligence or default;

8.3.2 If the third party changes its specifications for the Third Party Services after the date of this Contract, or that third party replaces the same with a new version, or ceases to supply the same, or ACUTEK decides to replace the same ACUTEK shall be entitled (without prejudice to any of its other rights and remedies) to substitute for the Third Party Services an alternative which shall as far as is reasonably possible provide substantially the same functionality, and to make a reasonable resulting variation to the Charges and other terms of this Contract. ACUTEK would as far as practicable pre-plan this with the Client;

8.3.3 If the third party increases its charges for the Third Party Services, ACUTEK shall be entitled to make a resulting increase to the Charges to pass on the cost increase in accordance with clause 6.2; and

8.3.4 ACUTEK may change the Third Party Service Provider at any time. In such case, this may involve a temporary suspension in the Service and re setup.

## 9 SUSPENSION OF SERVICES

9.1 ACUTEK reserves the right to interrupt the service or change the technical specification of the Services for operational reasons (such as maintenance or service upgrades) or because of an emergency. In these circumstances where possible ACUTEK will give notice to the Client of such interruption however, the Client shall have no claim against ACUTEK for any such interruption.

9.2 ACUTEK may suspend the provision of the Services or any part thereof in its absolute discretion and without notice if:

9.2.1 The Client fails, or ACUTEK believes the Client will fail, to meet any of its obligations under this Contract including, but not limited to;

9.2.1.1. Failure to make payment pursuant to clause 6; or

9.2.1.2 Failure to comply with the Acceptable Use Policy;

9.2.2. Technical limitations exist or arise which make the provision of the Services impossible or materially limit the functionality or performance of the Services; or

9.2.3. In the opinion of ACUTEK the Client's conduct may result in the breach of any law or is otherwise prejudicial to the interests to ACUTEK; or

9.2.4. In the opinion of ACUTEK it is necessary for operational reasons such as upgrades to the Services or regular or emergency maintenance; or

9.2.5. ACUTEK are obliged to comply with any order, instruction or request of a competent governmental, emergency services organisation or regulatory or other authority; or

9.2.6. ACUTEK is entitled to terminate this Contract under clause 10 or 12; or

9.2.7. Any Third Party Service Provider temporarily suspends or takes out of use the Services for operational purposes.

9.3 ACUTEK shall, where practical, give the Client notice of intention to suspend the Services and, in relation to suspension for the reasons stated in Clauses 9.2.2., 9.2.4 or 9.2.5 above, shall restore the Services as soon as ACUTEK are reasonably able to do so.

9.4 If ACUTEK exercise their right to suspend the Services this shall not restrict their right to terminate this Contract.

9.5 The Client shall indemnify and hold ACUTEK harmless against any claim or demand of whatsoever nature and howsoever arising as a result of suspension pursuant to this clause.

## 10 TERMINATION

10.1 ACUTEK may terminate this Contract with immediate effect by notice in writing if the Client:

10.1.1. Fails to pay any sums due to ACUTEK whether pursuant to clause 6 or within 30 days of receiving a written payment demand from ACUTEK; or

10.1.2. Fails to comply with the Acceptable Use Policy; or

10.1.3. Fails to remedy a material breach of this Contract capable of remedy within 30 days of receiving the notice specifying the breach; or 10.1.4. is in material breach of this Contract and that breach cannot be remedied; or

10.1.5. Commits persistent breaches of the Contract whether remedied or not.

10.2 ACUTEK may terminate this Contract with immediate effect by notice in writing if the Client;

10.2.1 Changes the structure, ownership or shareholding of its business; or 10.2.2. Any of the circumstances set out in clause 3.5 occurs.

10.3 Either party may terminate this Contract with immediate effect by notice in writing to the other party if the other:

- 10.3.1. Commits a material breach of this Contract and (where capable of remedy) fails to remedy the breach within 30 days of a written notice to do so; or
- 10.3.2. is the subject of a bankruptcy order, or becomes insolvent, or makes any arrangement or composition with or assignment for the benefit of their creditors, or goes into voluntary (otherwise than for reconstruction or amalgamation), compulsory liquidation or a receiver or manager or administrator or administrative receiver is appointed over their assets, anything analogous to, equivalent or similar to the above occurs to a party in any jurisdiction governing that party; or
- 10.3.3. Ceases trading; or
- 10.3.4. is unable to pay its debts as and when they fall due within the meaning of section 123 of the insolvency Act 1986.
- 10.4. In the event of termination of this Contract by ACUTEC pursuant to Clauses 10.1 or 10.2.1 10.3 or 10.6.1 during the Minimum Contract Period the Client shall be deemed to have repudiated this Contract and shall pay to ACUTEC, in addition to any unpaid Charges due at the date of termination, an amount equal to the remaining Charges for Services that the Client would have incurred up to the end of the Minimum Contract Period had the termination not taken place, less an accelerated payment discount at the Bank of England base rate current at the date of termination calculated on a daily basis to take account of early receipt. The provisions of this clause 10.4 are without prejudice to any other rights and remedies of ACUTEC.
- 10.5. ACUTEC may terminate this Contract if there is a material impact on its ability to provide the Services for whatsoever reason and shall, insofar as it is able to do so, give the Client due notice of the said termination.
- 10.6. ACUTEC may terminate this Contract with immediate effect by notice in writing to the Client if:
  - 10.6.1. The Client fails to comply with any of the material terms or conditions of this Contract and the Client does not remedy such failure within 14 days of request to do so; or
  - 10.6.2. ACUTEC is informed by any Third party Service Provider that such Third Party Service Provider is required to cease any Third Party Services (in whole or in part) by a competent regulatory authority (e.g. pursuant to a withdrawal, revocation or non-renewal of authorisations); or
  - 10.6.3. Any Third Party Service Provider supporting the Services ceases to do so for whatever reason; or
  - 10.6.4. Any Third Party Services cease to be provided (in whole or in part) by any Third Party Service Provider to ACUTEC or for use or resale by ACUTEC for whatever reason; or
  - 10.6.5. Any Third Party Service Provider changes the terms of its provision of telecommunications services to ACUTEC for the Services beyond the reasonable control of ACUTEC; or
  - 10.6.6. If any Third Party Services which are essential to the provision of the Services ceases to be available at all or at an appropriate capacity and there shall not be available any suitable replacement; or
  - 10.6.7. If any authorisation licence or other permission for ACUTEC or any Third Party Service Provider under the Act is revoked, withdrawn or not renewed for whatever reason.
- 10.7. The Client shall indemnify and hold ACUTEC harmless against any claim or demand of whatsoever nature and howsoever arising as a result of termination pursuant to this clause 10.8. Upon termination of this Contract each party shall return to the other party any Confidential Information of the other which it has in its possession.

## 11 TERMINATION BY THE CLIENT

- 11.1. Where the Client purports to terminate this Contract after expiry of the Minimum Contract Period other than in accordance with clause 2.1 or 10.3 ACUTEC shall be entitled (without prejudice to any of its other rights) to treat such purported termination as a repudiator breach and accept such repudiation by terminating this Contract in which case the Client shall pay to ACUTEC an amount equivalent to the cost of 30 days Charges which the Client would have incurred had the Client given 3 months prior written notice of termination in accordance with clause 2.1.
- 11.2. Where the Client purports to terminate this Contract during the Minimum Contract Period other than in accordance with clause 10.3, ACUTEC shall be entitled (without prejudice to any of its other rights and remedies) to treat such purported termination as a repudiator breach and accept such repudiation by terminating this Contract in which case the Client shall pay to ACUTEC, in addition to any unpaid Charges due at the date of termination, an amount equal to the remaining Charges for Services that the Client would have incurred up to the end of the Minimum Contract Period had the termination not taken place, less an accelerated payment discount at the rate of the Bank of England base rate current at the date of termination calculated on a daily basis to take account of early receipt.

## 12 FORCE MAJEURE

- 12.1. Neither party shall be obliged to carry out any obligation under this Contract (other than the Client's obligation to pay the Charges and to indemnify ACUTEC) where performance of such obligation is prevented due to any cause beyond a party's reasonable control including but not limited to, any act of God, severe weather, failure or shortage of power supplies, flood, drought, lightning or fire, labour shortage or labour dispute, the act or omission from the Government, highways authorities, other telecommunications operators or administrations or other competent authority, the obstruction by a third party of line of sight between microwave installations, war, military operations, or riot, or difficulty, delay or failure in manufacture, production or supply by third parties of the Services resulting from the same or a similar type of force majeure event and breakdown of any Equipment.
- 12.2. If any event described in clause 12.1 lasts more than 14 days from the date of its commencement and that event prevents either party from performing all or a material part of its obligations during that period either party may terminate this Contract by giving 30 days written notice to the other party.
- 12.3. A party relying on this clause 12 shall use reasonable endeavours to mitigate the effects of a force majeure event.

## 13 INFORMATION AND CONFIDENTIALITY

- 13.1. The Client will provide ACUTEC with any information which ACUTEC may reasonably require to enable it to proceed with the performance of its obligations under this Contract.
- 13.2. The Client acknowledges that ACUTEC reserve the right to review or edit any of the Client's information (including but not limited to information about the calls made such as origin, destination, duration, route and time) or third party information which the Client uses in connection with the Services for the purposes of any of the following:
  - 13.2.1. Performing its obligations under this Contract;
  - 13.2.2. Correcting, maintaining and improving the Services;
  - 13.2.3. Ensuring that the Client is complying with the Acceptable Use Policy;
  - 13.2.4. Monitoring the performance of the Services including the Client's usage;
  - 13.2.5. Collating information to provide non-specific statistics to assist in ACUTEC ' or any ACUTEC third party supplier's business planning;
  - 13.2.6. Complying with applicable laws, regulations and statutory instruments; or
  - 13.2.7. Complying with any request for information or disclosure from a Court or other appropriately authorised body.

- 13.3 Neither party shall disclose to any third party without the prior written consent of the other party any Confidential Information which is received from the other party as a result of this Contract except that ACUTECH may disclose Confidential Information to its suppliers and sub-contractors and employees of its Associates who will comply with the obligations of confidentiality on ACUTECH set out in this clause 13. Each party agrees that any Confidential Information received by it from the other party shall only be used for the purposes of the performance of its obligations and/or the exercise of its rights. These restrictions shall not apply to any information which:
- 13.3.1. Is or becomes generally available to the public other than as a result of a breach of an obligation under this clause 13; or
  - 13.3.2. Is acquired from a third party who owes no obligation of confidence in respect of the information; or
  - 13.3.3. Is or has been independently developed by the recipient; or
  - 13.3.4. Is required by any Court of competent jurisdiction or by a governmental or regulatory authority or where there is a legal right, duty or requirement to disclose such Confidential Information.
- 13.4 ACUTECH and the Client each agree to comply with their respective obligations under applicable data protection legislation (including the Data Protection Act 1998) and maintain all relevant registrations, including (in relation to the Client) such registrations and consents as the Client should obtain and maintain to enable ACUTECH to process personal data in connection with the performance by ACUTECH of its obligations under this Contract.
- 13.5 Any and all data supplied by the Client is held and may be used and disclosed in accordance with ACUTECH ' current privacy policy available on the ACUTECH Website.
- 13.6 Notwithstanding anything to the contrary, ACUTECH shall be entitled to put any data obtained under or in connection with this Contract into a computerized directory and may use and disclose such data in order to enable ACUTECH to provide the Services and market other products and services to the Client.
- 13.7 Notwithstanding anything to the contrary, the Client agrees that ACUTECH shall be entitled, when required by law, to disclose to government agencies passwords, decryption codes, and details of the Client's information processed using the Services, upon written notice to the Client
- 13.8 The provisions of this clause 13 shall survive the termination of this Contract.

#### **14 INTELLECTUAL PROPERTY**

- 14.1 The Client must not without the express consent of ACUTECH use ACUTECH's trade names, trademarks or service marks.
- 14.2 Copyright in all software, documents, drawings and information supplied to the Client in connection with this Contract remain vested in ACUTECH or the copyright owner. Such software, documents, drawings and information are confidential and will not be copied, disclosed or used (except for the purpose for which they were supplied) without ACUTECH's prior written consent.

#### **15 LIMITATION OF LIABILITY**

- 15.1 ACUTECH shall not be liable whether in contract, tort (including negligence), and breach of statutory duty or otherwise for:
- 15.1.1. Loss of profits, anticipated profits, production, business, business opportunity, goodwill, revenue, or anticipated savings (whether direct or indirect); or
  - 15.1.2. Loss of, corruption of, or damage to data or software (whether direct or indirect); or
  - 15.1.3. Loss of use of any computer or equipment (whether direct or indirect); or
  - 15.1.4. Wasted management or staff time (whether direct or indirect); or 15.1.5. Any special indirect or consequential loss or damage; or
  - 15.1.6. Any loss suffered by any third party or any liability to any third party for the purposes of the foregoing, "loss" includes a partial loss or reduction in value as well as a complete or total loss.
- 15.2 The total liability of ACUTECH (other than liability governed by clause 15.3) arising out of or in connection with this Contract (whether arising in contract, in tort, including negligence, as a result of breach of statutory duty or otherwise howsoever) is limited to a sum equivalent to the total of Charges paid to ACUTECH in the previous 12 months or £150.00 (whichever the greater), for any one cause of action or series of causes of action arising out of the same event, act or omission (the "Per Claim Cap") and, in aggregate, to a sum equivalent to 200% of the Per Claim Cap for any and all causes of action arising in any 12 month period.

- 15.3 ACUTECH's liability (whether arising in contract, in tort (including negligence), or as a result of breach of statutory duty or otherwise howsoever) for damage to tangible property shall be limited to £5000.00 in respect of each incident or series of connected incidents. For the purposes of this clause, neither data nor software constitutes "tangible property".
- 15.4 Nothing in this Contract shall exclude or restrict the liability of either party for:
- 15.4.1. Death or personal injury arising as a result of its negligence; or
  - 15.4.2. For its fraud; or
  - 15.4.3. for any other liability which cannot be excluded or limited by law.
- 15.5 The express terms of this Contract are in lieu of all warranties, conditions, terms, undertakings and obligations whether oral or in writing and whether express or implied by statute, common law, custom, trade usage, course of dealings or otherwise, all of which are hereby excluded to the fullest extent permitted by law
- 15.6 ACUTECH are not liable to the Client for the acts or omissions of any other party, including other providers of telecommunications, computers or other equipment or services including internet services.
- 15.7 No delay in enforcing any of the provisions of this Contract shall affect or restrict the rights of ACUTECH arising under this Contract.
- 15.8 ACUTECH shall not be in breach of this Contract or under any liability for any failure to perform or for delay in performing any obligation under this Contract (in whole or in part) to the extent that the performance of such obligation is prevented, frustrated, hindered or delayed as a result of any breach of this Contract by the Client or any voluntary act or omission of the Client.

#### **16 SEVERABILITY**

Each provision of this Contract operates separately. If any provision of this Contract is held to be invalid in whole or part such provision shall be deemed not to form a part of the Contract and the enforceability of the remainder of the Contract shall not be affected.

#### **17 VARIATION AND ASSIGNMENT**

- 17.1 Notwithstanding any other provision of this Contract, ACUTECH may vary this Contract at any time by notice in writing to the Client if it needs to do so to comply with terms contained in ACUTECH ' contracts with any Third Party Supplier or any law or statutory obligation and will:
- 17.1.1 Notify the Client within 48 hours of ACUTECH being notified or otherwise becoming aware of the need for the said change
  - 17.1.2 Use its reasonable endeavours to ensure that any change to the Contract does not result in any deterioration in the Services.
- 17.2 Without prejudice to any and/or all of the provisions of this Contract, ACUTECH may in its absolute discretion:

- 17.2.1 Assign or otherwise transfer the benefit of this Contract or any part thereof to any third party; or 17.2.2 Subcontract the performance of this Contract or any part thereof to one or a number of third parties.
- 17.3 The Client shall not assign, sub-contract or otherwise transfer this Contract or any of its rights or obligations arising under it without the written consent of ACUTEC .
- 17.4 Except as expressly permitted under this Contract, no variation to the terms of this Contract shall be valid unless agreed to in writing by a duly authorised representative of each party.
- 17.5 The Client warrants and represents that it is entering into this Contract in the course of a business.
- 17.6 Nothing in this Contract is to be construed as establishing or implying any partnership or joint venture between the parties, or as appointing any party as agent or employee of any other party. No party shall hold out any other party as its partner or joint venture.

## **18 ENTIRE CONTRACT**

- 18.1 The Contract as herein defined constitutes the entire contract between ACUTEC and the Client and supersedes all prior negotiations, representations, proposals, understandings and undertakings whether written or oral relating to its subject matter.
- 18.2 In the event of any conflict between the Terms and Conditions of this Contract and the terms of any other document, then these Terms and Conditions shall take precedence.
- 18.3 Each party acknowledges that in entering into this Contract (and any other document to be entered into pursuant to it) it does not rely on any representation, warranty, collateral contract or other assurance of any person (whether party to this Contract or not) that is not set out in this Contract or the documents referred to in it.

## **19 NO WAIVER**

Any waiver of any breach of any provision of the Contract will not constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions of the Contract.

## **20 COUNTERPARTS**

This Contract may be executed in any number of counterparts each of which when executed and delivered shall be an original but all the counterparts together shall constitute one and the same document.

## **21 NOTICES**

- 21.1 Notices given under this Contract must be in writing and may be delivered by hand or first class post to the following addresses:
- 21.1.1 To ACUTEC at the address of the ACUTEC office shown on the Order Form or any alternative address which ACUTEC notifies to the Client;
- 21.1.2 To the Client at the address to which the Client asks ACUTEC to send invoices, the address of the Client shown on the Order Form or, if the Client is a company, to its registered office. A party may change its address for service of notices by notice to the other in accordance with this clause.
- 21.2 A notice shall be treated as having been received:
- 21.2.1 If delivered by hand between 9.00 am and 5.00 pm on a Business Day (which time period is referred to in this clause as **Business Hours**), when so delivered; and if delivered by hand outside Business Hours, at the next start of Business Hours; and
- 21.2.2 If sent by first class post, at 9.00 am on the second Business Day after posting if posted on a Business Day and at 9.00 am on the third Business Day after posting if not posted on a Business Day.
- 21.3 In proving that a notice has been given it shall be conclusive evidence to prove that delivery was made, or that the envelope containing the notice was properly addressed and posted (as the case may be).
- 21.4 For the purposes of this clause "Business Day" means a day other than a Saturday, Sunday or public holiday in England and Wales.

## **22 THIRD PARTY RIGHTS**

A third party that is not a party to this Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract.

## **23 OPERATIVE LAW**

This Contract shall be construed in accordance with and governed by the laws of England and in the event of any dispute relating to or arising from this Contract the parties agree to submit to the non-exclusive jurisdiction of the English Courts