

## Part A: General Terms and Conditions

These General Terms apply to any Contract between the Customer and Cipher-IT. The subsequent Parts B and C set out the specific terms applicable to the Products and Services.

### A.1. DEFINITIONS

A.1.1 In these General Terms:

- (a) **"Acceptance Criteria"** means the acceptance criteria (if any) attached to, or referred to in, the Order;
- (b) **"Business Days"** means any day of the week which is not a Saturday, Sunday or any bank holiday in the United Kingdom;
- (c) **"Cipher-IT"** means Cipher-IT Limited incorporated and registered in England and Wales with company number 4097631 whose registered office is at Fulford House, Newbold Terrace, Leamington Spa, CV32 4EA;
- (d) **"Commencement Date"** means the date specified as such in the Contract Term Sheet;
- (e) **"Confidential Information"** means any information disclosed by one party to the other party under or in anticipation of any Contract which is confidential commercial, financial, marketing, technical information, know-how, trade secrets and/or other information in any form or medium whether disclosed orally or in writing before or after the Commencement Date, together with any reproductions of such information in any form or medium or any part(s) of this information (and "confidential" means that the information, either in its entirety or in the precise configuration or assembly of its components, is not publicly available);
- (f) **"Contract"** means any agreement between the parties for the supply of Product(s) or the performance of the Services on the basis of an Order (and as may be confirmed in an Order Confirmation), which shall incorporate the Terms;
- (g) **"Contract Term Sheet"** means the document to which these Terms are attached;
- (h) **"Covered Systems"** has the meaning given to it at Clause C.3.2;
- (i) **"Customer"** means the person confirmed as being the "Customer" in the Contract Term Sheet;
- (j) **"Deliverable(s)"** means any item which is delivered as part of or following the performance of the Professional Services;
- (k) **"Equipment"** means any hardware (including components), software media and spare parts listed in the Order;
- (l) **"Installation Services"** means the installation services listed in the Order;
- (m) **"IPR"** means patents, registered designs, trade marks and service marks (whether registered or not), domain names, copyright, database rights, moral rights, design right, and all similar property rights including those subsisting (in any part of the world) in inventions, designs, drawings, performances, computer programs, semiconductor topographies, confidential information, business names, goodwill and the style of presentation of goods or services and in applications for protection of any of the above rights;
- (n) **"Minimum Term"** means the minimum term stated in the Contract Term Sheet or, if no such term is stated, one (1) year from the Commencement Date;
- (o) **"Order"** means an order for the sale or licensing of Products or the performance of Services submitted by the Customer to Cipher-IT in hard copy form ("**Purchase Order**") or in electronic form ("**Electronic Order**");
- (p) **"Order Confirmation"** means an acknowledgement which may be issued by Cipher-IT in response to an Order;
- (q) **"Price"** means collectively the Product Charge, Support Services Charge, Remote Support Services Charge and Professional Services Charge;
- (r) **"Product Charge"** means the price payable by the Customer to Cipher-IT, for the sale or licensing of the Products, as specified in the Order;
- (s) **"Products"** means collectively, the Equipment, Software or Deliverables;
- (t) **"Professional Services"** means the professional services which are listed in the Order;

- (u) **“Professional Services Charge”** means the price payable by the Customer to Cipher-IT, for the performance of the Professional Services and/or sale or licensing of the Deliverables, as specified in the Order;
- (v) **“Remote Services”** means any services which are to be provided by Cipher-IT remotely and which may include all or any of the Support Services;
- (w) **“Remote Support Services Charges”** means the price payable by the Customer to Cipher-IT for the performance of the Remote Support Services (but not Support Services), as specified in the Order;
- (x) **“Services”** means the supply of the Products, the Installation Services, the Remote Support Services and/or the Professional Services;
- (y) **“Software”** means (a) the software listed in the Order, (b) any Updates, and (c) any related user manuals or other documentation;
- (z) **“Sign-Off Form”** means the Sign-Off Form attached to, or referenced in, the Order;
- (aa) **“Support Services”** means the support services listed in the Order;
- (bb) **“Support Services Charge”** means the price payable by the Customer to Cipher-IT, for the performance of the Support Services, as specified in the Order.
- (cc) **“Terms”** means these terms and conditions;
- (dd) **“Trademarks”** means all names, marks, logos, designs, trade dress and other brand designations whether registered or unregistered used in connection with the Products and/or Services.
- (ee) **“Updates”** means subsequent releases for the Software which have been purchased from Cipher-IT by the Customer and installed on the Software.

A.1.2 Capitalised words and expressions which are not defined in this Clause have the meanings set out elsewhere in these Terms.

A.1.3 The headings to clauses are inserted for convenience only and shall not affect the interpretation or construction of the Conditions.

A.1.4 Words imparting the singular shall include the plural and vice versa. Words imparting a gender include every gender and references to persons include an individual, company, corporation, firm or partnership.

A.1.5 The words "other" and "including" and the phrase "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible and the word "including" shall mean "including without limitation".

A.1.6 References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).

## **A.2. APPLICABILITY, OFFERS, QUOTATIONS**

A.2.1 Unless expressly stipulated otherwise, these Terms apply to all Contracts between the Customer and Cipher-IT relating to the sale or licensing of the Products and/or the performance of the Services and supersede all prior or contemporaneous oral and/or written communications, proposals, warranties and representations with respect to the subject matter of the Contract. The Contract contains the entire agreement between the parties in relation to its subject matter and each party irrevocably and unconditionally waives any right it may have to claim damages for, and/or to rescind the Contract because of breach of any warranty not contained in the Contract, or any misrepresentation whether or not contained in the Contract, unless such misrepresentation was made fraudulently. For the avoidance of doubt, any conditions of purchase or any other standard conditions of the Customer set forth in or referred to on the Order, correspondence, stationery or other trade forms are hereby expressly declared inapplicable to any Contract and notice of rejection to which is hereby given.

A.2.2 No purported alteration or variation of these Terms shall be effective unless it is in writing, refers specifically to the Contract and is signed by duly authorised representatives of both parties.

A.2.3 In the event of any inconsistency between any clause or schedule in a Contract, the following order of precedence will apply (in descending order):

- (a) the appropriate specific Part B or C (as the case may be) of these Terms;
- (b) the general Part A of these Terms;
- (c) the Order Confirmation; and
- (d) the Order.

A.2.4 Quotations by Cipher-IT are not binding on Cipher-IT and shall constitute an invitation to treat and shall, with respect to the prices specified, remain valid for a period of thirty (30) days from date of issue. All Orders placed with Cipher-IT by the Customer for Products or Services shall constitute an offer to Cipher-IT and shall not come into being until accepted by Cipher-IT. Cipher-IT's acceptance of an Order is effective upon the earlier of: (a) Cipher-IT's issuance of an Order Confirmation or (b) Cipher-IT's delivery of the Products or commencement of the performance of the Services.

### **A.3. ORDERING**

#### **A.3.1 Ordering Procedure.**

- (a) Customer may order Products or Services by:
  - (i) submitting an Electronic Order in the manner requested by Cipher-IT; or
  - (ii) submitting a Purchase Order to Cipher-IT (and the Customer acknowledges that Electronic Orders for certain Products or Services may, at Cipher-IT discretion, need to be confirmed in a Purchase Order), in each case specifying the Products or Services required and referencing the Cipher-IT quotation date and number(s).
- (b) Cipher-IT's acceptance of the Order is effective upon the earlier of:
  - (i) Cipher-IT's issuance of an Order Confirmation to the Customer; or
  - (ii) Cipher-IT's delivery of the Products or commencing performance of the Services.
- (c) The identification of the Products or Services in the Order together with either (a) confirmation in any Order Confirmation or (b) delivery of the Product to the Customer or commencement of the performance of the Services, will constitute a Contract and create a binding commitment for the purchase of those Products or Services.

A.3.2 The Services will commence on dates set out in the Order or as may otherwise be agreed in writing between the parties. In the absence of any agreement:

- (a) the Installation Services will commence as soon as commercially practicable after the date of delivery of the Product and shall conclude on the date of acceptance of the Products (as referred to in Clause B.1.6); and
- (b) the Professional Services will commence on the date that Cipher-IT first start performing the Professional Services (or such other date as may be agreed by the parties) and shall conclude on the date of acceptance of the Deliverable (or such other date as may be agreed by the parties); and
- (c) the Support Services will commence on the date Cipher-IT first start performing the Support Services and will continue thereafter until terminated in accordance with Clause A.14.

A.3.3 For the purposes of placing Electronic Orders, Customer represents and warrants:

- (a) that it will keep confidential any unique user ID and password which Cipher-IT assigns to Customer; and
- (b) that all of Customer's employees who submit Orders are authorised by Customer to do so.

#### **A.4. PRICES AND PAYMENT**

- A.4.1 The prices for the Products and Services are the Price.
- A.4.2 All Prices for the Products and/or Services are based on delivery of the Products to the Customer's address for delivery, or performance of the Services as specified in the Order. All Prices are for delivery or performance in the United Kingdom unless otherwise specified in the Order and are exclusive of V.A.T. and any other taxes and duties imposed. Installation of Products is only included in the Price if and insofar as this is expressly stated in the Order.
- A.4.3 The Prices may at the absolute discretion of Cipher-IT be reviewed from time to time or as otherwise stated in the Order.
- A.4.4 The Price for Software (including all license fees relating to such Software) are neither contingent upon nor dependent on any further deliverables and/or services from Cipher-IT (including, the installation or support of such Software).
- A.4.5 Unless otherwise agreed in writing by Cipher-IT, the Customer shall pay all invoices as follows:
- (a) for remote Services and Support Services: monthly in advance; and
  - (b) for Product Charge on placement of Order; and
  - (c) for all other Price, monthly in arrears.

Without prejudice to the generality of the foregoing, all payments due to Cipher-IT shall be made to Cipher-IT within thirty (30) days of the date of Cipher-IT's invoice. All payments of the Price shall be without any deduction or set off.

- A.4.6 Where the Customer fails to pay any amount payable by it under any Contract, Cipher-IT will be entitled to charge the Customer interest on the overdue amount from the due date up to the date of actual payment at the rate of 4 per cent per annum above the base rate for the time being of the Bank of England. Such interest will accrue and be compounded on a daily basis.
- A.4.7 Where the Customer fails to pay any amount payable by it under any Contract then Cipher-IT may at its absolute discretion suspend any Services immediately until such outstanding sum is paid in full by the Customer.

#### **A.5. IPR OWNERSHIP AND LICENSING**

- A.5.1 Each party shall retain its own pre-existing IPR. Nothing in any Contract or these Terms shall transfer or otherwise vest in the Customer any ownership in any Software or IPR of a third party.
- A.5.2 License terms.
- (a) Cipher-IT shall at its option:
    - (i) procure the grant to Customer of a license to use; or
    - (ii) sublicense the Customer to use, the Software in the terms set out in Part B of these Terms.
  - (b) Cipher-IT and/or the licensor(s) of the Software (and/or any of their independent audit firms) may, upon reasonable notice, examine and audit the records and systems of Customer to ensure compliance with any license granted or procured by Cipher-IT.
  - (c) Customer may not alter or obscure any proprietary rights notice appearing on any Cipher-IT or third party supplied hardware, Software or materials, and must include such notices on any copies of such Software or materials.

## **A.6. CUSTOMER OBLIGATIONS**

A.6.1 Customer shall fulfill all applicable Customer obligations under a Contract and acknowledges:

- (a) that performance of a Contract by Cipher-IT is conditional upon Customer's fulfilment of such obligations; and
- (b) that Cipher-IT shall be entitled to charge the Customer for any additional services which Cipher-IT provides as a result of the Customer's failure to do so (the charges for such services being in accordance with Cipher-IT's current time and materials rates).

A.6.2 The Customer will co-operate with Cipher-IT and will provide safe and timely access to its premises and computer equipment, including remote access, adequate working space, facilities and any other services, personnel, information or materials that Cipher-IT may reasonably require to perform Cipher-IT's obligations under the Contract.

A.6.3 Each Party will comply with all applicable laws regarding collection and use of data under a Contract. Each party ("Party A") consents to the other party ("Party B") using and processing data of Party A (to the extent such use and processing is necessary for the purposes of the Contract) and will ensure that, where it provides Party B with data relating to another, it has obtained that other's consent to Party B using and processing such data.

## **A.7. RESTRICTED ACTIVITIES**

A.7.1 Products, Services and technical data delivered by Cipher-IT may be subject to export controls and/or the trade laws of other countries. The Customer will comply with all such laws and obtain all licenses to export, re-export or import as may be required after delivery to the Customer.

## **A.8. WARRANTY**

A.8.1 The express terms and conditions of these Terms shall apply in place of all warranties, conditions, terms, representations, statements, undertakings and obligations whether expressed or implied by statute, common law, custom, usage or otherwise, all of which are excluded to the fullest extent permitted by law. In particular Cipher-IT does not warrant that Products are fit for a particular purpose unless specifically stated and agreed to the contrary in the Order.

## **A.9. LIABILITY**

A.9.1 This clause A.9 sets out the entire liability of Cipher-IT (including any liability for the acts or omissions of its sub-contractors) in respect of any breach of a Contract and any representation, statement or tortious act or omission including negligence arising under or in connection with a Contract.

A.9.2 Nothing in this Agreement shall exclude or limit Cipher-IT liability for death or personal injury caused by its negligence or for fraudulent misrepresentation or for any liability that cannot legally be excluded or limited.

A.9.3 Cipher-IT shall not be liable for any economic loss of whatever nature (whether or not such loss or damage was foreseen, direct, foreseeable, known or otherwise), including loss of anticipated profits, loss of actual profits (direct or indirect), loss of anticipated savings, loss of business, loss of data or for any indirect, special or consequential loss or damage howsoever caused or any losses arising as a result of any third party bringing a claim in respect of any nature whatsoever.

A.9.4 Subject to Clause A.9.2 and A.9.3, Cipher-IT's liability in respect of any loss or damage flowing from any one event or series of connected events under any Contract whether for breach of contract or statutory duty, breach of warranty, misrepresentation or in tort (including negligence) will be limited as follows:

- (a) in the case of the Products (except for Deliverables) and (if applicable) Installation Services, to the Product Charge;
- (b) in the case of the Remote Support Services, to the Remote Support Services Charge; and
- (c) in the case of the Professional Services (including Deliverables), to the Professional Services Charge,

but in no event shall Cipher-IT's aggregate liability under any Contract whether for breach of contract or statutory duty, breach of warranty, misrepresentation or in tort (including negligence) exceed the Price.

A.9.5 Cipher-IT will not be liable for any delay or failure caused by:

- (a) errors in programs, coding information, data or operating instructions supplied by Customer;
- (b) the late arrival or non-arrival of material from Customer; or
- (c) defects in any Customer hardware or Customer software (including any software licenced to Customer by third parties).

A.9.6 The Customer acknowledges the extent of Cipher-IT's exclusion or limitation of its liability under the Contract and shall insure against or bear itself any loss for which Cipher-IT has excluded or limited its liability and agrees that Cipher-IT shall have no further liability to the Customer.

#### **A.10. CONFIDENTIAL INFORMATION**

A.10.1 A party receiving Confidential Information (the "**Recipient**") may use it only for the purposes for which it was provided under a Contract. Confidential Information may be disclosed only to employees (including employees of Cipher-IT) or contractors obligated to the Recipient under similar confidentiality restrictions and only for the purposes for which it was provided under the Contract.

A.10.2 The obligations set out in Clause A.10.1 do not apply to information which:

- (a) is rightfully obtained by the Recipient without breach of any obligation to maintain its confidentiality;
- (b) is or becomes known to the public through no act or omission of the Recipient;
- (c) the Recipient develops independently without using Confidential Information of the other party; or
- (d) is disclosed in response to a valid court or governmental order, if the Recipient has given the other party prior written notice and provides reasonable assistance so as to afford it the opportunity to object.

#### **A.11. INTELLECTUAL PROPERTY CLAIMS**

A.11.1 Cipher-IT will use its reasonable endeavours to assign to, or procure for the benefit of, the Customer any IPR indemnity generally made available to Cipher-IT or at Cipher-IT's option made publicly available by any third party manufacturer or distributor of the Products. The Customer acknowledges that:

- (a) any such indemnity will be subject to such terms and conditions as may be imposed by such third party manufacturer or distributor; and
- (b) Cipher-IT shall not, and shall not be required to, grant any indemnity to Customer for any intellectual property infringement or otherwise.

A.11.2 This Clause states the entire liability of Cipher-IT and exclusive remedies of Customer for any claim(s) that Products infringe a third party's IPR.

## **A.12. TRADEMARKS**

- A.12.1 The Customer may not remove or alter any Trademarks, nor may it include any trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations on any Products or Services. Customer agrees that any use of Trademarks by Customer will inure to the sole benefit of Cipher-IT (or the owner of such Trademarks).
- A.12.2 The Customer agrees not to incorporate any Trademarks into Customer's trademarks, service marks, company names, Internet addresses, domain names, or any other similar designations.

## **A.13. PUBLICITY**

- A.13.1 Subject to the other party's ("**Party A**") prior written consent (such consent not to be unreasonably withheld or delayed), each party ("**Party B**") may use Party A's name in promotional materials, including press releases, presentations and customer references relating to the sale of the Products or provision of the Services. These permissions are free of charge for worldwide use by Party B in any medium.

## **A.14. CONTRACT TERMINATION**

- A.14.1 Either party may terminate a Contract immediately by written notice:
- (a) if the other party commits a non-remediable material breach of that Contract;
  - (b) if the other party fails to cure any remediable material breach within thirty (30) days of being notified in writing of such breach; or
  - (c) if the other party is deemed to be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or the other party calls a meeting for the purpose of passing a resolution to wind up its company (other than for the purposes of a solvent reconstruction or amalgamation), or such a resolution is passed or the other party presents or has presented a petition to wind up or present or have presented a petition to appoint an administrator or have an administrative receiver or receiver appointed to the whole or any part of the other party's business, undertaking, property or assets; or
  - (d) on giving at least ninety (90) days notice to expire after, but not during, the Minimum Term.
- A.14.3 Following termination of a Contract (for whatever reason):
- (a) subject to Clause A.14.4, each party will deliver to the other any property (including any Confidential Information) of the other in its possession or control relating to that Contract; and
  - (b) Cipher-IT may at its option deliver to the Customer any Deliverables (whether finished or unfinished) and Customer shall pay the Professional Services Charge for such Deliverable.
- A.14.4 Following termination of the Contract by the Customer pursuant to Clause A.14.1, the use of the Software by Customer will continue in accordance with and subject to the terms and conditions of the applicable license provided always that the Customer has paid Cipher-IT the Price for such Software.
- A.14.5 Rights and obligations under a Contract (including these Terms) which by their nature should survive, will remain in effect after performance, termination or expiration of the Contract.

#### **A.15. SUBCONTRACTING, ASSIGNMENT AND THIRD PARTY RIGHTS**

- A.15.1 Cipher-IT shall be entitled to subcontract all or any part of its obligations under this Contract without the prior consent of the Customer.
- A.15.2 The Customer shall not be entitled to assign, charge or transfer the Contract (or any part or parts thereof) without the prior written consent of the other party.
- A.15.3 The Contracts (Rights of Third Parties) Act 1999 shall not apply to these Terms and a person who is not a party to the Contract (including any employee, officer, agent, representative or sub contractor of either party) shall not have the right (whether under the Contracts (Rights of Third Parties) Act or otherwise) to enforce any term which expressly or by implication confers a benefit on that person without the express prior agreement in writing of the parties which agreement must refer to this Clause A.15.3. Even if a person who is not a party to these Terms and/or any Contract has a right to enforce any term by virtue of the aforementioned Act, the parties may vary or cancel these Terms or any Contract without requiring the consent of such third party.

#### **A.16. MISCELLANEOUS**

- A.16.1 A party is not liable under any Contract for non-performance caused by events or conditions beyond that party's reasonable control. This provision does not relieve either party of its obligation to make payments then owing. In the event any such event continues beyond a period of ninety (90) days either party may terminate the Contract.
- A.16.2 Cipher-IT shall have no liability to the Customer under any Contract if it is prevented from or delayed in performing its obligations under any Contract, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of Cipher-IT or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors (a "**Force Majeure Event**").
- A.16.3 All written notices required under any Contract must be delivered in person or by means evidenced by a delivery receipt or acknowledgement and will be effective upon receipt. Notices communicated by electronic mail or facsimile will be deemed to be written.
- A.16.4 Any express waiver or failure to exercise promptly any right under any Contract will not create a continuing waiver or any expectation of non-enforcement.
- A.16.5 If any provision of these Terms is held invalid by any law or regulation or by any court or arbitrator, such invalidity will not affect the enforceability of other provisions.
- A.16.6 To the extent applicable, each party shall comply with the provisions of the Data Protection Act 1988.
- A.16.7 The parties each warrant that they have full capacity and authority and all necessary consents to enter into and to perform their respective obligations set out in a Contract.
- A.16.8 Governing Law and Dispute Resolution.
- (a) The parties will use reasonable efforts to resolve any dispute arising out of the Terms through a meeting of appropriate managers from each party. If the parties are unable to resolve the dispute, either party may escalate the dispute to its executives. If an executive level meeting fails to resolve the dispute within thirty (30) days after escalation, either party may seek any available legal relief. This provision will not affect either party's right to seek injunctive or other provisional relief at any time.
- (b) Subject to Clause A.16.7(a), the parties agree that the Courts of England and Wales shall have exclusive jurisdiction to resolve any dispute. All disputes will be governed by English law.



## **Part B: Specific Terms of Sale and Delivery.**

The specific terms set forth in this Part B apply to any Contracts made between the Customer and Cipher-IT for the procurement of Products. The General Terms set forth in Part A apply to, and form an integral part of, these specific terms.

### **B.1. PRODUCT DELIVERY**

- B.1.1 Cipher-IT will use its reasonable endeavours to meet any delivery date(s) identified or stated in the Order. For the avoidance of doubt time shall not be of the essence in relation to any dates stated in the Order.
- B.1.2 The Products shall be delivered by Cipher-IT to the delivery address indicated by Customer in the Order (provided such address is in the United Kingdom) (the **"Delivery Address"**). Without prejudice to Clause B.1.3, the risk of loss and/or damage to the Products passes to Customer at the time of delivery by or on behalf of Cipher-IT to the Delivery Address.
- B.1.3 Title to the Equipment shall be retained by Cipher-IT until payment in full is made by the Customer for the relevant Equipment, including any relevant amounts as referred to in Clause A.4. Equipment delivered to the Customer with retention of title may not be resold, pledged or proposed as security for a claim of a third party.
- B.1.4 Changing delivery arrangements.
- (a) Cipher-IT may make Product substitutions and modifications that do not cause a material adverse effect in overall Product performance.
  - (b) Unless otherwise stated in the Order, Cipher-IT may make and invoice for partial deliveries.
- B.1.5 The Customer shall immediately check the Products delivered for deficiencies in quantity and for external damage to the packaging and indicate any deficiencies and/or damage on the accompanying transport documents. Failure by the Customer to make such indication shall render any claims relating to quantity or obvious damage null and void.
- B.1.6 The Customer will have three (3) Business Days after delivery of Products at the Delivery Address to inspect and test Products. In the absence of any written notice to Cipher-IT reporting any defects, Products will be deemed accepted by Customer three (3) Business Days after receipt at the Delivery Address. In the event that Cipher-IT installs Products for the Customer, acceptance will be deemed to occur upon successful completion of the manufacturer's standard diagnostic testing by Cipher-IT of the installed Products. If a defect is reported to Cipher-IT within the period specified above, the provisions of Clause B.3.2 will apply.
- B.1.7 Cipher-IT will use its reasonable endeavours to ensure the Products comply with any specification set out in the Order.

## **B.2. LICENSE TERMS FOR SOFTWARE PRODUCTS**

- B.2.1 CIPHER-IT shall procure the grant to the Customer of or, at its option, sub-license to the Customer a non-exclusive and non-transferable license to use the Software provided to the Customer hereunder for its internal use only, subject to:
- (a) any restrictions set out in the Contract as to the permitted number of users and CPUs; and
  - (b) any supplemental license terms accompanying the Software (CIPHER-IT shall provide Customer with a copy of such supplemental license terms upon Customer's request).
- B.2.2 All IPR in and to the Software and all other rights not expressly granted to the Customer are reserved to the owner of such Software and the owner thereof retains title to and all IPR in all copies.
- B.2.3 Except as prohibited by applicable law, Customer may not make copies of Software, other than for archival purposes, or modify, decompile, or reverse-engineer any Software.
- B.2.4 The Customer may not transfer any operating system software license with its related Equipment without the prior written consent of CIPHER-IT.
- B.2.5 As between the Customer and CIPHER-IT, the Software is proprietary to CIPHER-IT (or the appropriate third party rights owner (s)) and the Customer acquires no rights in or to the Software other than those granted in accordance with this Clause B.2.
- B.2.6 The Customer shall use reasonable endeavors to prevent any violation of CIPHER-IT's (or the applicable licensor's) proprietary rights in the Software and shall promptly report to CIPHER-IT any such violation that comes to its attention. In particular, the Customer shall ensure that each user of the Software, before starting to use the Software, is made aware that the Software is proprietary to CIPHER-IT (or the applicable licensor) and that it may only be used and copied in accordance with the license.

## **B.3. PRODUCT WARRANTY**

- B.3.1 CIPHER-IT will use its reasonable endeavours to assign to, or procure for the benefit of, the Customer any warranties generally made available by any third party manufacturer or distributor of the Products. Save as expressly provided in the Order:
- (a) CIPHER-IT does not provide any warranty relating to the Products; and
  - (b) all Products are provided without any obligation for CIPHER-IT to maintain or support such Products.
- B.3.2 Customer's sole and exclusive remedy and CIPHER-IT's entire liability for breach of any warranties, conditions, terms, representations, statements, undertakings and/or obligations in relation to the Products will be (at CIPHER-IT's option): (a) the repair of defective Product; (b) the replacement of defective Product or (c) the issuance of a credit note to the Customer in respect of such Product. Title in all defective Equipment (or parts thereof) which are removed shall transfer back to CIPHER-IT.
- B.3.3 No warranty will apply to any Product which has been:
- (a) modified, altered or adapted without CIPHER-IT's prior written consent;
  - (b) abused or used in a manner other than in accordance with the relevant manual;
  - (c) repaired by any third party (other than by CIPHER-IT or any third party contracted by CIPHER-IT to perform any of CIPHER-IT's obligations under any Contract);
  - (d) improperly installed by any party other than CIPHER-IT (or any third party contracted by CIPHER-IT to perform any of CIPHER-IT's obligations under any Contract); or
  - (e) used with equipment or software not covered by the warranty, to the extent that the problems are attributable to such use.

## **Part C: Specific Terms of Services.**

The specific terms set forth in this Part C apply to any Contracts made between Customer and Cipher-IT for the performance of Services. The General Terms set forth in Part A apply to, and form an integral part of, these specific terms.

### **C.1. INSTALLATION SERVICES**

C.1.1 Installation Services are as confirmed in the Order.

### **C.2. REMOTE SERVICES**

C.2.1 In respect of all Remote Services and any other Services which may in any way be delivered remotely, Customer:

- (a) agrees that Cipher-IT may access Products and/or Covered Systems remotely at Customer's site, and may process and store Product and/or Covered Systems data in order to remotely monitor, manage and service Products and/or Covered Systems (all such data will be treated by Cipher-IT as Customer Confidential Information, except that Customer permits disclosure for the purposes of fulfilling the Contract);
- (b) commits to procure and maintain a Cipher-IT-specified bridge or gateway appropriate to the systems or networks involved, at Customer's expense; and
- (c) assumes responsibility for all telecommunications and internet access charges related to the Remote Services.

C.2.2 If Customer fails to permit or facilitate Remote Support Services, Cipher-IT may decline to deliver such Remote Support Services and charge such additional charges or impose such other conditions for the delivery of Services which would otherwise be provided remotely and/or suspend the provision of such Services.

C.2.3 If the Customer fails to make any payments due under the Contract then Cipher-IT may suspend any Remote Support Services forthwith until payment of any outstanding payment is made in full.

### **C.3. SUPPORT SERVICES**

C.3.1 Support Services are as confirmed in the Order.

C.3.2 Support Services will be delivered to the Customer's sites in the United Kingdom and for the systems indicated on the relevant Order (respectively, "**Customer Sites**" and "**Covered Systems**"). Customer will give Cipher-IT at least thirty (30) days' written notice prior to relocating Covered Systems, which notice must specify the new site. Support of relocated Covered Systems is subject to inspection and re-certification of the relocated systems at Cipher-IT's applicable time and materials rates.

C.3.3 Customer will perform routine system preventative maintenance and cleaning. Prior to requesting support from Cipher-IT, Customer will comply with all applicable suppliers' operating and troubleshooting procedures or such other procedures as may otherwise be provided by Cipher-IT. If such efforts are unsuccessful in eliminating the malfunction, Customer will promptly notify Cipher-IT. Customer will establish and maintain a procedure external to Covered Systems so that Customer can reconstruct lost or altered files, data or programs.

C.3.4 Requests for Support Services may be made only by Customer personnel who possess the necessary expertise and training (as from time to time defined by Cipher-IT) to diagnose and resolve system and software malfunctions with direction by Cipher-IT.

C.3.5 Support Services do not include services required due to:

- (a) improper use, abuse, accident, or neglect;
- (b) alterations, modifications, or attempts to repair Covered Systems that Cipher-IT has not authorised;
- (c) causes external to a Covered System, such as failure to maintain environmental conditions within the operating range specified by the manufacturer;
- (d) attachment of a Covered System to equipment, software, or other items not provided or approved by Cipher-IT;
- (e) re-locations or attempts to relocate Covered Systems; or
- (f) failure to maintain software and Covered Systems at Cipher-IT-specified minimum release levels or configurations necessary to keep a Covered System within the terms of the manufacturer's applicable end of life support policy, or to properly install remedial replacement parts, patches, software updates or subsequent releases as directed by the manufacturer and/or Cipher-IT,

and any Support Services Cipher-IT delivers as a result of any such event will be invoiced separately at Cipher-IT's applicable time and material rates.

C.3.6 Any parts of the Covered System replaced as part of the Support Services are supplied on an exchange basis. The replacement of parts is at Customer's cost and expense. The parts may be new or like new. The parts replaced shall, upon their removal from the Covered System, become the property of Cipher-IT.

#### **C.4. PROFESSIONAL SERVICES**

C.4.1 Professional Services (if any) shall be detailed in the Order.

C.4.2 Any Deliverables (if any) to be delivered by Cipher-IT to the Customer shall be set out in the Order.

C.4.3 Cipher-IT grants the Customer a non-exclusive, non-transferable license to use the Deliverables solely for its own business purposes and such other purposes (if any) as may be specified in the Order.

C.4.4 Deliverables shall be subject to the terms for acceptance as set out in the Acceptance Criteria. Acceptance shall be deemed to occur upon the earlier of the following:

- (a) successful completion of the acceptance tests relating to such Deliverable(s);
- (b) use by the Customer or any third party on behalf of the Customer (other than, for this purpose, Cipher-IT) of the Deliverable(s) other than for acceptance testing purposes;
- (c) failure by Customer to carry out (either at all or within seven (7) days of any request to do so by Cipher-IT) any acceptance tests required to be undertaken by Customer; or
- (d) signature by Customer of the Sign-Off Form.

#### **C.6 ON-SITE MATERIALS**

C.6.1 Customer will segregate, safeguard and designate as the property of Cipher-IT all tools, parts, spares, equipment and materials placed on a Customer site and for which title is not transferred to Customer ("**On-Site Materials**").

C.6.2 On-Site Materials may only be used by authorised persons of the Customer. Customer will have no right or interest in the On-Site Materials, and will not grant any liens or security interests therein. Customer assumes all risk of loss or damage to On-Site Materials that may occur prior to their return and receipt by Cipher-IT.

C.6.3 Within ten (10) days after termination or expiration of any Contract, Customer will deliver to Cipher-IT any On-Site Materials related to such Contract, with a bill of lading, freight charges prepaid and fully insured.

## **C.7. NON-SOLICITATION**

- C.7.1 Customer will not, without the prior written consent of Cipher-IT, Recruit any personnel (including any personnel of Cipher-IT) assigned by Cipher-IT to perform any Services until one (1) year after completion of the applicable Services.
- C.7.2 "**Recruit**" means to initiate personal contact for the purposes of hiring, but does not include responding to an unsolicited application, receiving unprompted responses to advertisements, or receiving candidates who are, without Customer involvement, presented to Customer by a recruiting firm.
- C.7.3 If Customer hires personnel in violation of this Clause C.7, Customer immediately will pay Cipher-IT liquidated damages in an amount equal to the hired employee's total compensation for the six (6) months preceding the date of hiring.

## **C.8. SERVICE WARRANTIES**

- C.8.1 Cipher-IT warrants that it will perform the Services in a good and workmanlike manner and that it shall use its reasonable endeavours to ensure the Services are performed with due skill, care and diligence.
- C.8.2 Customer's sole and exclusive remedy and Cipher-IT's entire liability for breach of the above warranties will be re-performance of Services within a reasonable time following notification in writing by Customer to Cipher-IT of such breach.
- C.8.3 Any claim for breach of the above warranty must be made in writing and notified to Cipher-IT within thirty (30) days of performance of the Services at issue.

## **C.9. IPR OWNERSHIP AND LICENSE TERMS FOR SERVICE DELIVERABLES**

- C.9.1 Cipher-IT shall own all IPR in the Deliverables. Rights not expressly granted under any Contract are reserved to Cipher-IT. Customer's rights to use Deliverables are set out in Clause C.9.2 below.
- C.9.2 License terms.
- (a) Cipher-IT grants to Customer a non-exclusive and non-transferable license to use Deliverables for its internal use only, subject to:
    - (i) any restrictions set out in the Order as to the permitted number of users and CPUs (if applicable); and
    - (ii) any supplemental license terms accompanying the Deliverable or as specified in the appropriate Order (if any).
  - (b) Except as prohibited by applicable law, Customer may not:
    - (i) make copies of Deliverables, other than for archival purposes; or
    - (ii) modify, de-compile, or reverse-engineer Deliverables.

## **C.10. PRICES AND PAYMENT**

- C.10.1 The charges for Services are included in the Price and shall be payable in accordance with Clause A.4.
- C.10.2 The stated charges are exclusive of VAT and other taxes and duties and unless otherwise expressly stated in the Order are exclusive of the following items (for which Customer is responsible):
- (a) reasonable travel expenses associated with any consulting services in the amount actually incurred by Cipher-IT;
  - (b) reasonable and necessary out-of-pocket expenses associated with consulting services;
  - (c) costs incurred by Customer or its employees in connection with their participation in educational services;
  - (d) transportation and insurance charges related to On-Site Materials; and
  - (e) the costs of operating supplies and accessories.
- C.10.3 If the Customer fails to pay any amounts due under the Contract or in accordance with clause A.4 then Cipher-IT may at its absolute discretion cease or suspend the Service forthwith and without any notice to the Customer until the outstanding amount is paid in full.

**C.11. MISCELLANEOUS**

- C.11.1 Cipher-IT may make Service substitutions and modifications that do not cause a materially adverse effect in overall Service performance.
- C.11.2 Customer acknowledges that Services are solely for Customer's internal use, and Customer may not provide, lease, or resell Services, directly or indirectly, to any third party, unless, and only to the extent that, Customer is authorised by Cipher-IT in writing to do so.

