

1 Scope

1.1 These general terms and conditions of support (the "Terms") are the terms on which Xantaro UK Limited, a company registered in England and Wales with company number 7656440 and whose registered address is at 4 Prince Albert Road, London, NW1 7SN ("Xantaro") provides its support services to its customers.

1.2 These Terms shall apply to and are incorporated into any contract between Xantaro and its customer for the provision of support services ordered by the customer (the "Customer") in writing whether by email or by telephone, where a Contract for such services has been formed in accordance with clause 2.1 below.

1.3 These Terms apply to the exclusion of and prevail over any terms or conditions that the Customer seeks to impose or incorporate, or which are implied by law, trade, custom, practice or course of dealing, unless agreed otherwise and confirmed in writing by Xantaro.

2 Formation of Contract

2.1 Unless otherwise agreed in writing by Xantaro, any quote provided by Xantaro shall not constitute an offer. If the Customer wishes to purchase services that are set out in the quote, it will need to place an order in writing whether by post or email or by telephone.

2.2 By placing an order, the Customer submits an offer to purchase Services (as defined below) in accordance with these Terms. Xantaro may, at its sole discretion, accept the Customer's offer. The offer will be deemed to be accepted when Xantaro issues written confirmation to the Customer that it has accepted the order, or, in absence of a written confirmation, upon issuance of the Service Voucher, whichever is earlier, at which point and on which date a contract shall come into existence (the "Commencement Date"), incorporating these Terms (the "Contract"). If Xantaro has not accepted the Customer's order within 14 days of its receipt, the offer will be deemed rejected.

2.3 The Contract (which is comprised of the relevant order and the corresponding order confirmation and these Terms in combination with Xantaro's referenced service definition(s), if any) constitutes the entire agreement between Xantaro and the Customer. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Xantaro that is not set out in the Contract. Nothing in this clause shall limit or exclude any liability for fraud.

2.4 If the Customer cancels any Contract, then

- (a) whether or not cancellation takes place before provision of the Services begins, the Customer shall pay Xantaro a cancellation fee of ten percent of the cancelled Contract price as compensation for Xantaro's efforts and loss of revenue, irrespective of and without prejudice to any other legitimate remedy that Xantaro may have; and
- (b) for any cancellation, the Customer shall bear all costs that result from any goods or services ordered by Xantaro from a manufacturer or other third party supplier in order to fulfil the Contract and that cannot be cancelled at the time of the Customer's cancellation.

3 Scope of Service

3.1 Unless otherwise agreed in writing by Xantaro, the scope of services to be provided under the Contract (the "Services") is set out in the Service Voucher and will be provided in accordance with these Terms. Any amendments to the Service Voucher must be agreed by Xantaro in writing.

3.2 The Service Voucher summarizes products agreed between Xantaro and the Customer to be supported for the purposes of a Contract (the "Supported Products") and the Services and sets out which service modules will apply to the Supported Products. The following service modules are available:

- (a) Hotline Support (see clause 8);
- (b) Remote Support (see clause 9);
- (c) Hardware Replacement/Onsite Service (see clause 10); and/or
- (d) Software Update Service (see clause 11).

3.3 The charges for the Services (the "Service Fees") are, unless otherwise agreed in writing by Xantaro, set out in the Service Voucher.

3.4 At the request of the Customer Xantaro may, in its sole discretion, also provide the following services (which fall outside the scope of the Services) at additional cost and subject to separate terms and conditions:

- (a) Installation and configuration of new hardware;
- (b) Integration of new hardware into the existing system environment;
- (c) On-Site-Support in excess of corrective maintenance;
- (d) Training; and/ or
- (e) Consulting regarding system enhancement and hardware upgrades.

4 Service Vouchers

4.1 In order to confirm and conveniently display and record the Services, Xantaro shall issue a service voucher for each Contract (the "Service Voucher") listing the Supported Products that are subject to the Service as well as the Services and the applicable service levels. The start date for performance of the Services ("Service Start Date") shall be the date set out in the Contract.

4.2 In case there has been no agreement on a Service Start Date in the Contract, Xantaro shall use reasonable endeavours to start the Services as close as possible to the communicated preferred start date of the Customer. Any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

5 Term and Termination

5.1 The term of the Services is set out in the Contract, and will be for an initial term of no less than one year from the specified Service Start Date unless set out otherwise in the quote provided by Xantaro. The term may not be terminated for convenience before its expiry unless the Customer cancels a Contract and pays Xantaro the amounts specified in clause 2.4.

5.2 Subject to earlier termination in accordance with its terms, the Parties may choose to renew the Contract upon expiry of the then-current term by mutual agreement.

5.3 Without limiting its other rights or remedies, either party may terminate a Contract with immediate effect by giving written notice to the other if:

- (a) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the Insolvency Act 1986;
- (b) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (c) the other party applies to court for, or obtains, a moratorium under Part 1 of the Insolvency Act 1986;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (e) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (g) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or
- (i) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

5.4 Without limiting its other rights or remedies, Xantaro may terminate a Contract without liability and with immediate effect by giving written notice to the Customer if the Customer:

- (a) fails to pay any amount due under the Contract on the due date for payment and is in default of any previous payment that is due and owing;
- (b) makes any alterations to the Supported Products without prior notice or approval of Xantaro which, in Xantaro's

opinion, materially affect its ability to carry out its obligations under the Contract;

- (c) repeatedly breaches its obligations in clause 13 of these Terms or any material term of the Contract which breach is irremediable or if such breach is remediable, fails to remedy the breach within a period of 30 days after being notified in writing to do so;
- (d) has materially or persistently breached its confidentiality obligations set out in clause 18;
- (e) commits a material breach of any other term of this Contract,
 - (1) where breach is irremediable or
 - (2) if such breach is remediable, the Customer fails to remedy that breach within 30 days after being notified in writing to do so.

5.5 Without limiting its other rights or remedies, the Customer may terminate a Contract with immediate effect by giving written notice to Xantaro if:

- (b) Xantaro repeatedly performs the services in an unsatisfactory manner, which repeatedly leads to problems that would be categorized as priority 1 or 2 according to the service level definition, such that problems of such a level have occurred more than 2 per month in 3 consecutive months; or
- (c) Xantaro materially breaches any material obligation under the Contract,
 - (1) where breach is irremediable or
 - (2) if such breach is remediable, Xantaro fails to remedy that breach within 30 days after being notified in writing to do so.

5.6 On termination for whatever reason, without prejudice to the rights and remedies of either party, any and all amounts due for the Services, any Additional Services (and any other services outside the scope of the Services, including (without limitation) amounts due for services performed in accordance with clause 13.2, that are not subject to a separate Contract with Xantaro) performed up to the date of termination shall be payable by the Customer.

6 Requirements for the provision of Services

6.1 Where support services are ordered in connection with products that are not purchased from Xantaro simultaneously, the provision of support services is dependent on the products being in an appropriate technical condition and placed at a suitable operation site. Products will be deemed to be in an appropriate condition if, in Xantaro's reasonable opinion:

- (a) they have been regularly serviced as required by Xantaro or the manufacturer (and no other party) from the start of their operation; and
- (b) they have only been altered or moved to a different operating site with the prior consent of the manufacturer or Xantaro, and any such alteration or move has had no effect on the operation or quality of the relevant product.

6.2 If the foregoing requirements are not met, Xantaro is entitled to charge the Customer for any reinstatement fees invoiced by the manufacturer or for necessary technical checkups and remedial works by the manufacturer or Xantaro.

7 Place of Performance

7.1 The place of performance for Onsite Services (as defined in clause 10.1(c)) will be the operating site of the Customer and the installation site as set out in the Service Voucher. If no operation site is specified in the Service Voucher, the place of performance of the Onsite Services shall be at the delivery address notified to Xantaro by the Customer in writing when ordering the Services, or otherwise the installation site for the Supported Products.

7.2 Any transfer of a Supported Product to another operating site is subject to the Customer giving at least one week's prior written notice and Xantaro's written approval. Xantaro shall only continue providing Services for the Supported Product without additional charge or amendment to the terms of the Contract if the transfer does not cause additional expense, time and/or work – for example if similar products at the new site are already being serviced by Xantaro. If the transfer would cause additional expenses, time, or work, Xantaro may withhold its consent to the transfer until the parties have agreed necessary changes to the Service Fee to reflect the additional expense, time and/or work connected with servicing the Supported Product at the new site and any other relevant terms of the Contract. Until such changes have been agreed Xantaro shall be under no obligation to provide its Services in relation to the Supported Products that have been transferred. If spare part pooling was agreed upon as part of the Services described in the Service Voucher, agreed arrival or exchange

times or similar agreed performance times shall be on a reasonable endeavours basis until completion of any necessary spare part transfer.

7.3 If, in the sole opinion of Xantaro (acting reasonably), the transfer leads to unacceptably high additional expense, time and/or work, Xantaro is entitled to terminate its obligation to provide the Services in respect of those transferred Supported Products by written notice. The effective date of such termination will be the date that the Supported Product is transferred. Upon such termination any and all amounts due for the Services, any Additional Services (and any other services outside the scope of the Services, including (without limitation) amounts due for services performed in accordance with clause 13.2, that are not subject to a separate Contract with Xantaro) performed in relation to the transferred Supported Product under the Contract up to the effective date of termination shall be payable by the Customer. In the event of any such termination and to the extent such amounts have not already been paid by Customer, Xantaro is entitled to charge (and the Customer agrees to pay) for any costs that result from any goods or services ordered by Xantaro from a manufacturer or other third party supplier in order to fulfil the Contract and that cannot be cancelled at the time of such termination.

8 Module: Hotline Support – XTAC

8.1 If the Service includes the hotline support module (as described in the service definition), Xantaro shall supply and the Customer shall take and pay for the hotline support services which shall comprise of a Technical Assistance Centre ("XTAC") accessible to the Customer 24 hours a day, seven days a week, to which the Customer may report malfunctions or failure notices. Xantaro will, through the XTAC, use reasonable endeavours to assist the Customer in troubleshooting and resolving technical faults in the Supported Products in accordance with the reaction times specified in the service levels set out in the applicable service definition (the "Service Levels"), according to priority. The XTAC is also the point of contact for the Customer to order any Additional Services. A detailed description of the ticket system and contact information can be found in the description of Service set out in the applicable service definition.

8.2 Getting the right information from the Customer is crucial for quick problem resolution. Therefore, the Customer shall ensure that only its technically qualified staff shall report malfunctions or failure notices to the XTAC. The Customer shall describe any problem in as much detail as possible and provide the XTAC with specific system information, relevant to the particular the Supported Product (and requirements of the manufacturer of such Supported Product). In case the description of the problem is not sufficient, the XTAC will inform the Customer about such insufficiency. Xantaro is entitled to charge on a time and material basis any additional time and work that, in its sole opinion of Xantaro, results from any lack of technical knowledge of the person reporting the malfunction or failure notice to the XTAC.

8.3 Xantaro is entitled to charge on a time and material basis for any requested and provided services that relate to equipment other than Supported Products.

8.4 Upon request, Xantaro may also provide general consulting services for the Customer and its employees at additional charge and subject to separate terms and conditions. This consulting may cover general configuration, installation and handling of the products.

8.5 To allow for compliance with the reaction times set out in the Service Levels, the Customer shall notify the XTAC about any priority 1 and 2 problems via telephone. For the priority categories as well as the corresponding reaction and other times, please see the Service Levels set out in the Service Voucher.

9 Module: Remote Support

If the service includes remote support (as described in the Service Voucher), Xantaro shall provide and the Customer shall take and pay for the remote support services which comprise remote diagnosis and, where possible, remote correction of faults in the Supported Products. If remote support cannot be carried out via existing secure IP connections (e.g. SSH), Xantaro will notify the Customer about the cost for necessary equipment/configuration to achieve accessibility and will install and/or configure such equipment at additional costs and subject to separate terms and conditions.

10 Module: Hardware Replacement and Onsite Support Service

10.1 If the Service includes the hardware replacement and onsite service module (as further described in the Service Voucher), Xantaro shall provide and the Customer shall take and pay for the hardware replacement and onsite support service. If at any time during the term of the Contract a hardware defect is detected by the Customer in relation to a Supported Product, replacement hardware will, depending on the Service Levels:

- (a) be shipped after receipt of the defective product;
- (b) be delivered within the notified arrival time (as set out in the "Advanced Replacement Notification"); or
- (c) arrive at the place of performance (as set out in clause 7 above) within the agreed arrival time together with a technician that will install the hardware replacement (the "Onsite Service").

10.2 The Customer shall send the defective hardware back to Xantaro using appropriate packaging. Risk of loss, damage or destruction passes to Xantaro upon receipt of the defective product.

10.3 The replacement product will take the place of the defective product upon replacement and the terms and conditions of the Contract shall apply to the replacement product as they do to the product that has been replaced including, without limitation, any retention of title provisions in relation to such products.

11 Module: Software Update Service

11.1 If the Service includes the software update service module (as further described in the service definition), Xantaro shall supply and the Customer shall take and pay for the software update service. In relation to the software update service Xantaro shall provide the Customer with any software updates and software upgrades that the applicable vendor may release and which are covered by the vendor's software service free of charge, provided such updates or upgrades are available from the vendor without additional cost. If the vendor charges extra fees for such updates or upgrades that provide additional features, the Customer may purchase such up-dates or upgrades from Xantaro.

11.2 Any software updates or upgrades will be delivered subject to and on the terms of the relevant vendor's software licence. The licence conditions will be delivered together with the updates or upgrades and are available from the vendor or from Xantaro for review. Xantaro will not grant any rights to software updates or upgrades in addition to the rights granted by such manufacturer's software licence.

11.3 Software that was delivered during any update or upgrade shall be subject to the same restrictions on use as the previous software (subject to any updated software licence terms that the relevant software vendor may specify). In particular, without limitation, the licence for the updated software's use will remain restricted to use with hardware with the specified serial number.

11.4 The Customer shall indemnify and hold Xantaro harmless against any loss or damage that it may suffer or incur as a result of the Customer's use of the software in breach of the applicable software licence and/or the terms and conditions in the Contract. Xantaro may treat any breach of the terms of a third party licence as a breach of these Terms.

11.5 The Customer shall install the software updates and upgrades within such reasonable timescales as Xantaro may specify. Without prejudice to the terms of clause 17, neither Xantaro nor any software vendor will be liable in any way for any losses or damages that the Customer may suffer as a result of failure to install updates or upgrades. Xantaro may upon specific request and at additional cost assist the Customer in installing the updates or upgrades.

11.6 All maintenance services for hardware require a version of the installed software that is still supported by the manufacturer. Xantaro will inform the Customer at regular intervals about software that will no longer be supported by the manufacturer and upcoming software updates and upgrades, if requested by the Customer because it has no access to such information of from the manufacturer.

12 Services beyond the Scope of Service

12.1 The following services ("Additional Services") are outside the scope of the Services and will not be covered by the Service Fee:

- (a) installation of new equipment, enhancement or alteration of existing equipment;
- (b) replacement of worn parts or expendable items;
- (c) resolving of problems, system outage or other damages that occur on equipment other than Supported Products;
- (d) alteration of software – the provision of bug fixes and software patches remains the responsibility of the manufacturer;
- (e) general overhaul or modernization of the system;
- (f) work that has to be carried out due to the transfer of products to another operating site;
- (g) resolving of problems, system outage or other damages that result from misuse of the Supported products (usage not conforming with the manufacturer's specifications or re-recommendations) by persons

- other than staff of Xantaro or persons used by Xantaro to perform its obligations;
- (h) resolving of problems, system outage or other damages that were otherwise caused intentionally, or result from gross negligence, by persons other than staff of Xantaro or persons subcontracted by Xantaro to perform its obligations;
- (i) resolving of problems, system outage or other damages that result from the usage of software other than up-to-date software delivered and recommended by Xantaro, or from the usage of accessories not delivered by Xantaro, to the extent the Customer cannot substantiate that the problems were not caused by the usage of such software or accessories; and
- (j) resolving of problems, system outage or other damages that result from force majeure or other unpredictable incidents such as lightning strike or irregularities in power supply.

12.2 For optimum support Xantaro will, if a problem is reported and if, in the sole opinion of Xantaro, but acting reasonably, the problem can be resolved reasonably quickly and easily, use reasonable endeavours to resolve the problem as quickly as practicable, even if the requested service is not covered by the Services. Xantaro may charge any such Additional Services (and any other services falling outside the scope of the Service and Additional Services that are not subject to a separate Contract with Xantaro (such as, without limitation, services carried out pursuant to clause 13.2)) according to clause 15.3 of these Terms. Xantaro will notify the Customer about the additional cost as soon as practicable after it becomes evident that the service is beyond the scope of the Service.

13 Co-operation Obligations of the Customer

13.1 The Customer shall provide all reasonable assistance and cooperation to Xantaro in its performance of the Services (and any Additional Services), as and when required and appropriate. The Customer shall comply with the following obligations:

- (a) The Customer shall appoint a contact person who shall:
 - (1) be available to liaise with, and to respond to queries from, Xantaro in relation to the performance of the Service;
 - (2) (if required by the Customer) request Additional Services; and
 - (3) notify Xantaro of any malfunctions and failure notices.
- (b) The Customer shall conduct data backups including configuration data at least every business day. The Customer is fully responsible for regularly conducting such data backups and Xantaro shall have no responsibility or liability in relation to any loss or corruption of data. If corrective maintenance services are to be performed, the Customer will make an additional backup before such services are performed.
- (c) On the occurrence of malfunction or failure notice the Customer shall notify Xantaro immediately. The Customer shall monitor the symptoms and the hardware and software environment carefully and provide a description of the malfunction or fault notice including error logs and other useful data together with such notification.
- (d) The Customer shall notify Xantaro in writing in a timely manner of any modifications of the system environment or other service relevant circumstances which impact Xantaro's delivery of the Services (and the Customer shall not carry out any such changes without first agreeing with Xantaro any revised terms and conditions (and amendments to the Service Voucher) that might apply.
- (e) As required and applicable, the Customer shall grant employees or subcontractors of Xantaro full, safe and uninterrupted access (including remote access) to the Customer's systems, facilities Supported Products and place of performance of the Services and – where required – instruct and procure that its personnel fully cooperate with Xantaro in the performance of the Services. The Customer shall ensure that the carrying out of the Services can commence immediately upon the arrival of the Xantaro or subcontractor personnel and that the Services may be performed without interruption caused by the Customer.
- (f) The Customer shall follow Xantaro's instructions regarding system operation and recommendations for trouble-shooting.
- (g) Where the Services are to be performed at the Customer's site (the Onsite Services) the Customer shall provide all necessary workspaces and restrooms, heating, lighting, electricity, water and any other facilities required by Xantaro to perform the Services and shall take reasonable care to ensure Xantaro's employees' and / or subcontractors' health and safety.
- (h) Where required, the Customer shall provide easily accessible space for sheltered and secure storage for materials.
- (i) If any security or health and safety regulations or requirements apply to the place of performance (e.g. carrying out of services only in the

presence of a second person), the Customer undertakes to meet the necessary prerequisites in order to allow for the immediate and unobstructed performance of the Services without additional work and expense to Xantaro.

- (j) The Customer shall comply with, and shall not in any way attempt to circumvent or avoid, any security procedures, protocols or settings that Xantaro requires or implements in order to deliver the Services.

13.2 Xantaro shall be entitled to charge for any additional work and expense that it carries out / incurs, in the event that a repair task or other Service cannot be carried out (or cannot be carried out within the required time) for reasons attributable to the fault of the Customer (its officers, employees, contractors or agents), which include but are not limited to:

- (a) the Customer failing to comply with any of its obligations under the Contract;
- (b) if the reported error or defect not appearing during onsite inspection;
- (c) modifications of the system environment or other service relevant circumstances impacting Xantaro's delivery of the Services or
- (d) the Customer failing to keep an appointment.

13.3 Additionally, Xantaro is not liable in any way if it is unable to perform its obligations under the Contract where this results from any of the circumstances described in clause 13.2 (a)–(d) (inclusive).

14 Intellectual Property

14.1 All intellectual property rights of whatever nature in or arising out of or in connection with the provision of Services by Xantaro shall be owned by Xantaro (or its licensors) and the Contract does not transfer any intellectual property rights to the Customer.

14.2 In respect of any hardware, software or other materials not directly provided to the Customer from Xantaro, the Customer acknowledges that to the extent that Xantaro may be required to use any third party software or intellectual property rights in order to provide the Service, then the Customer hereby grants to Xantaro all necessary rights and permissions that may be required for any such use to enable Xantaro to fulfil its obligations under the Contract; and the Customer represents and warrants to Xantaro that Xantaro will not require any further permissions from or be required to make any payments to any third parties in respect of any such use. Where the Customer has purchased any hardware or software from Xantaro, the Customer shall comply with the terms of the relevant licence, including in respect of any third party hardware or software; and Xantaro shall be entitled to treat any failure by the Customer to comply with the provisions of any such licence as a material breach of this Contract.

15 Payment

15.1 All prices are stated exclusive of VAT or similar taxes, which shall be payable in addition by the Customer at the applicable rate.

15.2 The Customer shall pay the Service Fee for the Services. Xantaro shall invoice the Customer for the Services 12 months in advance. Each invoice is due and payable in full, without deduction or set off, 10 days from the date of the relevant invoice. Time for payment is of the essence.

15.3 Any Additional Services (or other services falling outside the scope of the Services) will be invoiced on a time and material basis according to the hourly and daily wages and expenses as set out in Xantaro's then- current price list. The foregoing does not apply if the parties have expressly agreed upon different fees and expenses in writing.

15.4 The Customer may not offset any counterclaims or exercise a right of deduction or set-off in respect of any amounts due and payable to Xantaro.

15.5 If the Customer fails to pay any amounts to Xantaro when due, then without prejudice to Xantaro's other rights and remedies, Xantaro shall be entitled to

- (a) suspend provision of all or part of the Services and/or any Additional Services without liability until full payment is received and
- (b) charge interest on the overdue amount at the rate of 4 per cent per annum above the then current Bank of England base rate accruing on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

16 Warranty

16.1 The Terms and this Contract do not affect any warranty rights relating to purchase of products from Xantaro which are contained in any separate agreement between Xantaro and the Customer.

16.2 Xantaro warrants that the Services (and any Additional Services) will be performed with reasonable care and skill.

16.3 In the event that during term of a Contract Xantaro receives written notice from the Customer of any breach by Xantaro of the warranty set out in clause 16.2, Xantaro shall at its own option and expense, use reasonable endeavours to remedy that breach within a reasonable period following receipt of such notice. Such remedy may be performed by written or electronic instruction to the Customer or by providing a workaround.

16.4 If Xantaro provides a workaround to remedy a breach of warranty, Xantaro may reasonably change the configuration of the Supported Products, if and insofar as it does not materially adversely affect the operation of such products (either collectively or on their own).

16.5 The Customer is not entitled to appoint any third party to remedy the deficiency nor to charge Xantaro for the resulting costs, without the express prior written consent of Xantaro.

16.6 Xantaro shall not be liable for breach of the warranty at clause 16.2 (above) to the extent that any failures result from

- (a) the Customer having altered or caused any third party to alter the Supported Products without the prior written consent of Xantaro;
- (b) the Customer failing to inspect the Services performed promptly and/or failing to report and describe detected defects or defects that would have been apparent upon such prompt inspection.

16.7 This clause sets out the Customer's sole remedy and Xantaro's entire liability for breach of clause 16.2.

16.8 Any warranty claim the Customer may have pursuant to these Terms must be commenced no later than 6 (six) months after termination of a Contract.

16.9 To the extent Xantaro performs Services and there is a failure which results from a defect of a Supported Product covered by the Service, the Customer hereby assigns to Xantaro the benefit of all warranty claims it may have against manufacturers and suppliers in relation to the relevant Supported Product under Service to enable Xantaro to enforce such warranty for the benefit of the Customer. Xantaro hereby accepts such assignment.

16.10 For the avoidance of doubt, the Customer is not entitled to reduce the Service Fee if Xantaro can successfully assert a warranty claim against the manufacturer or third party supplier of a Supported Product to require such person to remedy the relevant defect or to provide a suitable alternative remedy.

16.11 Except as expressly stated, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into a Contract, whether by statute, common law or otherwise, are hereby excluded.

17 Limitation of Liability

17.1 This clause 17 is drafted in order to strike a fair and reasonable balance between the Customer and Xantaro and to allocate risk between the parties in a way that is fair and reasonable bearing in mind the parties' respective knowledge of their businesses, the availability of insurance to protect against risks and the level of Service Fees. Xantaro has carefully considered the basis upon which it can provide the Services commercially bearing these things in mind and this clause 17 sets out the extent to which it considers that it is fair and reasonable for it to accept liability and where the Customer accepts risk for itself in the use of the Services.

17.2 Nothing in any Contract excludes liability for:

- (a) death or personal injury caused by the negligence of Xantaro, or its officers, employees, contractors or agents;
- (b) fraud or fraudulent misrepresentation; or
- (c) any other liability which cannot be excluded by law.

17.3 Subject to clause 17.2 Xantaro shall under no circumstances whatever be liable to the Customer for any losses or damages which may be suffered by the Customer (or any person claiming through the Customer), whether the same are suffered directly or indirectly or are immediate or consequential, and whether the same arise in contract, tort (including negligence), breach of statutory duty, or otherwise, which fall within any of the following:

- (a) any special, indirect or consequential losses, costs, charges, expenses or damages;
- (b) punitive damages;
- (c) loss of profits or revenue;
- (d) loss of anticipated savings;
- (e) loss of business or sales;
- (f) loss of contracts;
- (g) loss of use;
- (h) loss of opportunity;

- (i) loss arising from any viruses in any deliverables or downloaded using the deliverables, or for any damage caused to any computer or other device on which a deliverable is downloaded on or used upon as a result of such viruses;
- (j) loss of or corruption to programming and any and all data including, but not limited to, the customer data;
- (k) loss or damage to reputation;
- (l) depletion of goodwill and/ or similar losses;
- (m) loss arising from any delay to the Customer's project(s) including any increased costs;
- (n) claims against the Customer by any third party; or
- (o) losses (regardless of their nature) for any delay or failure by Xantaro to perform its obligations under the Contract as a result of a force majeure event,

and such liability is excluded whether it is foreseeable, known, foreseen or otherwise.

17.4 Xantaro shall in no circumstances be liable or responsible for (or for the consequences of)

- (a) any failure to meet its obligations under the Contract or in any way otherwise if such failure is caused by any breach of Contract by the Customer or by any act or omission of:
 - (1) the Customer or its employees, agents or representatives; or
 - (2) any third party (other than a subcontractor of Xantaro);
- (b) defects or errors resulting from any modifications of the Supported Products or the deliverables made by any person other than Xantaro without Xantaro's prior written consent;
- (c) use of the Supported Products other than strictly in accordance with any applicable documentation, or other instructions, provided by Xantaro, the manufacturer or any third party supplier (as the case may be), or defects or errors due to operator error;
- (d) installation of any Supported Products by the Customer other than strictly in accordance with the requirements of the manufacturer or third party supplier of such Supported Products;
- (e) any defect or error in any hardware or software used in conjunction with the Supported Products;
- (f) defects or errors caused by the malicious or negligent activities of the Customer or its employees, subcontractors or any other third parties;
- (g) defects or errors in any way related to the Customer not affording Xantaro access (whether remotely or on-site) to the Supported Products;
- (h) any loss or damage arising out of any failure by the Customer to keep up to date security copies of customer data and any computer programs and data used, in accordance with the Supported Products or the deliverables in accordance with good computing practice; or
- (i) defects or errors caused by any failure to implement software updates or upgrades.

17.5 Xantaro may provide the Customer with guidance in respect of the Supported Products, Services and deliverables which might be suitable for the Customer, but the Customer accepts responsibility for the Services and deliverables for which it places an order to achieve its intended results if it does not comply with the guidance provided by Xantaro and Xantaro shall not be liable for ensuring that the Services or deliverables meet the Customer's requirements.

17.6 Subject to clause 17.2, Xantaro's liability to the Customer under or in connection with any Contract, whether in contract, tort (including negligence or breach of statutory duty), misrepresentation, through indemnification or otherwise, shall be for direct and reasonably foreseeable costs and damages only, and shall in no circumstances exceed:

- (a) for each and every claim, a sum equal to fifty percent (50%) of the Service Fee payable by the Customer in any 12-month period ending on any anniversary of the Commencement Date (the "Contract Year") in which the liability arises under the specific Contract; and
- (b) in any event, a sum equal to € 1,000,000 (one million Euros) in the aggregate.

18 Confidentiality and Data Protection

18.1 Each party shall, during the term of the Contract and thereafter, keep confidential all, and shall not use for its own purposes (other than for the implementation of the Contract), nor without the prior written consent of the other disclose to any third party (except its professional advisers or as may be required by any law or legal or regulatory authority) any information that is marked "confidential" or is reasonably understood by the receiving party to be of a confidential nature (including, without limitation, trade secrets and information of a commercial value) which may become known to such party from the other party during the performance of the Contract and which relates to the other party (or any of its associated or affiliated companies) ("Confidential Information"). When in doubt, each party shall request

permission from the other party prior to disclosure or other use of Confidential Information.

18.2 Disclosed information shall not be considered Confidential Information if:

- (a) it has been developed by one party independently and without recourse to Confidential Information of the other party;
- (b) at the time of the disclosure, it is lawfully in the possession of the receiving party free of any restriction as to its use or disclosure, or any other restrictions as to its use or disclosure, prior to or after it being furnished by the other party (provided that the source of such information has the legal right to use and disclose it and is not subject to subject to any agreement or other duties of confidentiality in respect of it); or
- (c) at the time of the disclosure, it is in the public domain other than by breach of the Contract (or any other contract between Xantaro and the Customer).

18.3 Each party may disclose the other party's Confidential Information to its employees, officers, agents or sub-contractors ("Representatives") who need to know such information for the purposes of performing the Services. Each party shall ensure that all Representatives to whom it discloses the other party's Confidential Information complies with this clause 18 and enter into and observe individual confidentiality agreements on terms no less restrictive than those set out in this clause 18.

18.4 If there is any inconsistency between the confidentiality obligations set out in these Terms and any other confidentiality obligations in any existing non-disclosure or confidentiality agreement between Xantaro and the Customer, the most restrictive confidentiality obligations shall prevail.

18.5 Each party shall comply with its obligations under data protection laws applicable in the United Kingdom in relation to the Services.

18.6 To the extent that Xantaro may be acting as a processor in relation to any personal data supplied to it by the Customer or to which it otherwise has access in connection with provision of any Services, the data processing agreement set out here <https://www.xantaro.net/co-uk/xantaro-uk-data-protection-agreement/> is hereby incorporated into this Contract and shall apply between the parties:

19 Force Majeure

Neither party shall be in breach of any Contract nor liable for any delay in performing, or failure to perform, any of its obligations under any Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

20 Third Party Rights

No one other than a party to the Contract shall have any right to enforce its terms.

21 Independent Contractors

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as an agent for, or to bind, the other party in any way.

22 Variation

Unless otherwise set out in these Terms, no variation of a Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Xantaro.

23 Assignment and other Dealings:

23.1 The Customer shall not, without the prior written consent of Xantaro (such consent not to be unreasonably withheld) assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under a Contract.

23.2 Xantaro may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under a Contract and may subcontract or delegate in any manner any or all of its obligations under a Contract to any third party or agent.

24 Severance

If any provisions or part-provision of a Contract is adjudged by a court of competent jurisdiction to be invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provisions such that, as

amended, it is valid, legal and enforceable and to the greatest extent possible, achieves the intended commercial result of the original provision. If such amendment is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification or deletion of a provision or part-provision shall not affect the validity and enforceability of the rest of the Contract.

25 Notices

25.1 Any notice or other communication required to be given to a party under or in connection with a Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.

25.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the proper address, if sent by pre-paid first class post, at 9.00 am on the second business day after posting; if delivered by commercial courier or other next working day delivery service, on the date and at the time that the recorded by the delivery company; or, if sent by email, one business day after transmission.

25.3 The provisions of this notices clause shall not apply to the service of any proceedings or other documents in any legal action.

26 Waiver

No failure or delay by a party to exercise any right or remedy provided under a Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict its further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

27 Governing Law, Jurisdiction

27.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

27.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with a Contract or its subject matter or formation (including non-contractual disputes or claims).