



# Egton - TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES TO EGTON

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## Egton - TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES TO EGTON

### 1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this condition apply in these terms and conditions (**Conditions**).

**Contract:** the Customer's purchase order and the Supplier's acceptance of it, or the Customer's acceptance of a quotation for Services by the Supplier under condition 2.2.

**Customer:** the person, firm or company who purchases Services from the Supplier.

**Customer's Equipment:** any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

**Deliverables:** all Documents, products and materials developed by the Supplier or its agents, subcontractors, consultants and employees in relation to the Services in any form, including [computer programs, data, reports and specifications (including drafts).

**Document:** includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**In-put Material:** all Documents, information and materials provided by the Customer relating to the Services including (without limitation), [computer programs, data, reports and.

**Intellectual Property Rights:** all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

**Pre-existing Materials:** all Documents, information and materials provided by the Supplier relating to the Services which existed prior to the commencement of the Contract including [computer programs, data, reports and specifications.

**Services:** the services to be provided by the Supplier under the Contract as set out in the quotation given by the Supplier and accepted by the Customer, together with any other services which the Supplier provides, or agrees to provide, to the Customer].

**Supplier:** Egton Medical Information Systems Limited whose registered offices is at Fulford Grange, Micklefield Lane, Leeds, LS19 6BA.



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**Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier or its subcontractors and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

**VAT:** value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Headings in these conditions shall not affect their interpretation.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.5 A reference to **writing** or **written** includes faxes but not e-mail.
- 1.6 Any obligation in the Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.7 References to conditions are to the conditions of the Contract.

### **2. APPLICATION OF CONDITIONS**

- 2.1 These Conditions shall:
  - (a) apply to and be incorporated into the Contract; and
  - (b) prevail over any inconsistent terms or conditions contained, or referred to, in the Customer's purchase order, confirmation of order, acceptance of a quotation, or specification or other Document supplied by the Customer, or implied by law, trade custom, practice or course of dealing.
- 2.2 The Customer's purchase order, or the Customer's acceptance of a quotation for Services by the Supplier, constitutes an offer by the Customer to purchase the Services on these Conditions. No offer placed by the Customer shall be accepted by the Supplier other than:
  - (a) by a written acknowledgement issued and executed by the Supplier; or
  - (b) (if earlier) by the Supplier starting to provide the Services,



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when a contract for the supply and purchase of the Services on these Conditions will be established. The Customer's standard terms and conditions (if any) attached to, enclosed with or referred to in any purchase order or other Document shall not govern the Contract.

- 2.3 Quotations are given by the Supplier on the basis that no Contract shall come into existence except in accordance with condition 2.2. Any quotation is valid for a period of 30 days from its date, provided that the Supplier has not previously withdrawn it.

### **3. COMMENCEMENT AND DURATION**

- 3.1 The Services supplied under the Contract shall be provided by the Supplier to the Customer from the date specified in the quotation.
- 3.2 Subject to condition 11, the Services supplied under the Contract shall continue to be supplied for the period specified in the quotation.

### **4. SUPPLIER'S OBLIGATIONS**

- 4.1 The Supplier shall use reasonable endeavours to provide the Services, and to deliver the Deliverables to the Customer, in accordance in all material respects with the quotation.
- 4.2 The Supplier shall use reasonable endeavours to meet any performance dates specified in the quotation, but any such dates shall be estimates only and shall not be of the essence for performance of the Services.
- 4.3 The Supplier shall use reasonable endeavours to observe all health and safety rules and regulations, and any other reasonable security requirements that apply at any of the Customer's premises and that have been communicated to it under condition 5.1(e), provided that it shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

### **5. CUSTOMER'S OBLIGATIONS**

- 5.1 The Customer shall:
- (a) co-operate with the Supplier in all matters relating to the Services;
  - (b) provide the Supplier, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, with access to the Customer's

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premises, office accommodation, data and other facilities as required by the Supplier;

- (c) provide to the Supplier, in a timely manner, such In-put Material and other information as the Supplier may require and ensure that it is accurate in all material respects;
- (d) be responsible (at its own cost) for preparing and maintaining the relevant premises for the supply of the Services, including identifying, monitoring, removing and disposing of any hazardous materials from any of its premises in accordance with all applicable laws, before and during the supply of the Services at those premises, and informing the Supplier of all of the Customer's obligations and actions under this condition 5.1(d);
- (e) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises;
- (f) ensure that all Customer's Equipment is in good working order and suitable for the purposes for which it is used in relation to the Services and conforms to all relevant United Kingdom standards or requirements;
- (g) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Services, the installation of the Supplier's Equipment, the use of In-put Material and the use of the Customer's Equipment in relation to the Supplier's Equipment [insofar as such licences, consents and legislation relate to the Customer's business, premises, staff and equipment], in all cases before the date on which the Services are to start;
- (h) keep, maintain and insure the Supplier's Equipment in good condition, and shall not dispose of or use the Supplier's Equipment other than in accordance with the Supplier's written instructions or authorisation.

5.2 If the Supplier's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Customer, its agents, subcontractors, consultants or employees, the Supplier shall not be liable for any costs, charges or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

5.3 The Customer shall be liable to pay to the Supplier, on demand, all reasonable costs, charges or losses sustained or incurred by the Supplier (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of

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its obligations under the Contract, subject to the Supplier confirming such costs, charges and losses to the Customer in writing.

### **6. CHARGES AND PAYMENT**

6.1 In consideration of the provision of the Services by the Supplier, the Customer shall pay the charges as set out in the quotation, which shall specify whether they shall be on a time and materials basis, a fixed price basis or a combination of both. Condition 6.2 shall apply if the Supplier provides Services on a time and materials basis. Condition 6.3 shall apply if the Supplier provides Services for a fixed price. The remainder of this condition 6 shall apply in either case.

6.2 Where Services are provided on a time and materials basis:

- (a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the quotation and as amended from time to time by the Supplier giving not less than one month's written notice to the Customer;
- (b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between [8.00 am] and [5.00 pm] on weekdays (excluding public holidays);
- (c) the Supplier shall be entitled to charge an overtime rate of 150% of the standard daily fee rate on a pro-rata basis for each part day or for any time worked by individuals whom it engages on the Services outside the hours referred to in condition 6.2(b);
- (d) all charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate;
- (e) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in condition 6.2(f); and
- (f) the Supplier shall invoice the Customer monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in this condition 6.2. Each invoice shall set out the time spent by each individual whom it engages on the Services and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

6.3 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in the quotation. The total price shall be paid to the Supplier (without deduction or set-off), as set out in the quotation.



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- 6.4 Any fixed price and daily rate contained in the quotation excludes:
- (a) the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services. Such expenses, materials and third party services shall be invoiced by the Supplier [at cost]; and
  - (b) VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 6.5 The Customer shall pay each invoice submitted to it by the Supplier, in full and in cleared funds, within 30 days of receipt to a bank account nominated in writing by the Supplier.
- 6.6 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay the Supplier on the due date, the Supplier may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Clydesdale Bank plc, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. The Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
  - (b) suspend all Services until payment has been made in full.
- 6.7 Time for payment shall be of the essence of the Contract.
- 6.8 All sums payable to the Supplier under the Contract shall become due immediately on its termination, despite any other provision. This condition 6.8 is without prejudice to any right to claim for interest under the law, or any such right under the Contract.
- 6.9 The Supplier may, without prejudice to any other rights it may have, set off any liability of the Customer to the Supplier against any liability of the Supplier to the Customer.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1 As between the Customer and the Supplier, all Intellectual Property Rights and all other rights in the Deliverables and the Pre-existing Materials shall be owned by the Supplier. Subject to condition 7.2 and the quotation, the Supplier licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such



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extent as is necessary to enable the Customer to make reasonable use of the Deliverables and the Services. If the Contract terminates, this licence shall automatically terminate.

- 7.2 The Customer acknowledges that, where the Supplier does not own any Pre-existing Materials, the Customer's use of rights in Pre-existing Materials is conditional on the Supplier obtaining a written licence (or sub-licence) from the relevant licensor or licensors on such terms as will entitle the Supplier to license such rights to the Customer.

### **8. CONFIDENTIALITY AND THE SUPPLIER'S PROPERTY**

- 8.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Supplier, its employees, agents, consultants or subcontractors and any other confidential information concerning the Supplier's business or its products which the Customer may obtain.

- 8.2 The Customer may disclose such information:

- (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under the Contract; and
- (b) as may be required by law, court order or any governmental or regulatory authority.

- 8.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this condition 8.

- 8.4 The Customer shall not use any such information for any purpose other than to perform its obligations under the Contract.

- 8.5 All materials, equipment and tools, drawings, specifications and data supplied by the Supplier to the Customer (including Pre-existing Materials and the Supplier's Equipment) shall, at all times, be and remain [as between the Supplier and the Customer] the exclusive property of the Supplier, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to the Supplier, and shall not be disposed of or used other than in accordance with the Supplier's written instructions or authorisation.



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### **9. LIMITATION OF LIABILITY**

#### **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CONDITION**

9.1 This condition 9 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents, consultants, and subcontractors) to the Customer in respect of:

- (a) any breach of the Contract;
- (b) any use made by the Customer of the Services, the Deliverables or any part of them; and
- (c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these Conditions limits or excludes the liability of the Supplier:

- (a) for death or personal injury resulting from negligence; or
- (b) for any damage or liability incurred by the Customer as a result of fraud or fraudulent misrepresentation by the Supplier; or
- (c) for any liability incurred by the Customer as a result of any breach by the Supplier of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.

9.4 Subject to condition 9.2 and condition 9.3

- (a) the Supplier shall not be liable for:
  - (i) loss of profits; or
  - (ii) loss of business; or
  - (iii) depletion of goodwill and/or similar losses; or
  - (iv) loss of anticipated savings; or
  - (v) loss of goods; or
  - (vi) loss of contract; or
  - (vii) loss of use; or
  - (viii) loss of corruption of data or information; or

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- (ix) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (b) the Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance, or contemplated performance, of the Contract shall be limited to the price paid for the Services.

### **10. DATA PROTECTION**

The Customer acknowledges and agrees that details of the Customer's name, address and payment record may be submitted to a credit reference agency, and personal data will be processed by and on behalf of the Supplier in connection with the Services.

### **11. TERMINATION**

11.1 Without prejudice to any other rights or remedies which the parties may have, either party may terminate the Contract without liability to the other immediately on giving notice to the other if:

- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment; or
- (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
- (c) the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
- (d) 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 **OR** (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply]; or
- (e) 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 for the sole purpose of a scheme for a solvent amalgamation of that other party

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with one or more other companies or the solvent reconstruction of that other party]; or

- (f) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party [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];
- (g) 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; or
- (h) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver; or
- (i) 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
- (j) 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; or
- (k) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 11.1(d) to condition 11.1(j) (inclusive); or
- (l) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- (m) there is a change of control of the other party (as defined in section 574 of the Capital Allowances Act 2001).

### 11.2 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall return all of the Supplier's Equipment, Pre-existing Materials and Deliverables. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and

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- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

11.3 On termination of the Contract (however arising), the following conditions shall survive and continue in full force and effect:

- (a) condition 7;
- (b) condition 8;
- (c) condition 9;
- (d) condition 11; and
- (e) condition 22.

### **12. CORRUPT GIFTS AND PAYMENTS**

The term “Prohibited Act” means:

Offering, giving or agreeing to give to any person employed by or otherwise associated with EMIS any gift or consideration of any kind as an inducement or reward:

- for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement;
- for showing or not showing favour or disfavour to any person in relation to this Agreement;
- entering into this Agreement where commission has been paid or has been agreed to be paid by the Supplier or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment of such commission have been disclosed in writing to EMIS; and includes (without limitation)
- committing any offence under the Prevention of Corruption Acts 1889-1916 or the Bribery Act 2010; or
- committing any offence under any Act creating offences in respect of bribery or fraudulent acts; or at common law, in respect of fraudulent acts in relation to this Agreement or any other related agreement; or defrauding or attempting to defraud EMIS.

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### **13. FORCE MAJEURE**

The Supplier shall have no liability to the Customer under the Contract if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by acts, events, omissions or accidents beyond its reasonable control, including (without limitation) strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier 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 subcontractors.

### **14. VARIATION**

14.1 The Supplier may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If the Supplier requests a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it.

14.2 Subject to condition 14.1, no variation of the Contract or these Conditions or of any of the documents referred to in them shall be valid unless it is in writing and signed by or on behalf of each of the parties.

### **15. WAIVER**

15.1 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.

15.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

### **16. SEVERANCE**

16.1 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of



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the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.

- 16.2 If a provision of the Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

### **17. ENTIRE AGREEMENT**

- 17.1 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

- 17.2 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract), as expressly provided in the Contract.

- 17.3 Nothing in this condition shall limit or exclude any liability for fraud.

### **18. ASSIGNMENT**

- 18.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, mortgage, subcontract, declare a trust of] or deal in any other manner with all or any of its rights or obligations under the Contract.

- 18.2 The Supplier may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

- 18.3 Each party that has rights under the Contract is acting on its own behalf and not for the benefit of another person.

### **19. NO PARTNERSHIP OR AGENCY**

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

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### **20. RIGHTS OF THIRD PARTIES**

A person who is not a party to the Contract shall not have any rights under or in connection with it.

### **21. NOTICES**

21.1 Any notice required to be given under the Contract shall be in writing and shall be delivered personally, or sent by pre-paid first-class post, recorded delivery or by commercial courier to the other party and for the attention of the person specified in the quotation, or as otherwise specified by the relevant party by notice in writing to the other party.

21.2 Any notice shall be deemed to have been duly received if delivered personally, when left at the address and for the contact referred to in the quotation or, if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

21.3 This condition 21 shall not apply to the service of any in any proceedings or other documents in any legal action.

21.4 A notice required to be given under or in connection with the Contract shall not be validly served if sent by e-mail.

### **22. GOVERNING LAW AND JURISDICTION**

22.1 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.

22.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).