

NET EFFECT (FMS) LIMITED

TERMS AND CONDITIONS
FOR THE SUPPLY OF SERVICES

1 Interpretation

1.1 In these Conditions the following expressions shall have the following meanings:

“Charges”	the Standard Charges plus any Out of Hours Charges and any Other Charges;
“Client”	the person named on the Contract for whom Net Effect has agreed to provide the Service in accordance with these Conditions;
“Commencement Date”	the commencement date set out in the Contract;
“Conditions”	the standard terms and conditions for the supply of the Service set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between Net Effect and the Client as set out in the Contract;
“Contract”	the contract for the provision of the Service comprising these Conditions and the sheet(s) to which these Conditions are attached;
“Document”	includes, in addition to a document in writing, any map, plan, graph, drawing or photograph, any film, negative, tape or other device embodying visual images and any disc, tape or other device embodying any other data;
“Force Majeure”	any cause beyond Net Effect’s reasonable control including, without limitation, any act of God, war, terrorism, civil disturbance, requisitioning, governmental or parliamentary restrictions, prohibitions or enactments of any kind, import or export regulations, strike lock-out or trade dispute (whether involving its own employees or those of any other person), difficulties in obtaining workmen or materials, breakdown of machinery, fire or accident;
“Input Material”	any Documents or other materials, and any data or other information provided by the Client relating to the Service;
“Insolvency Event”	the occurrence of any one or more of the following events: (a) an encumbrancer takes possession or an administrator, out-of-court administrator, administrative receiver, receiver, trustee or other similar officer is appointed over the whole or any part of the undertaking, property or assets of the relevant party; (b) a distress or execution is levied or enforced upon or sued out against any asset of the relevant party and such distress or execution is not discharged within seven (7) days; (c) the relevant party compounds or proposes or enters into any reorganisation or other voluntary or special arrangement with its creditors or one or any class of them; (d) the relevant party is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (as amended); (e) the relevant party (being an individual or firm, any or one or

more of such individuals or such firm) becomes bankrupt or (being a company) goes into liquidation or (in any case) an order is made or an effective resolution is passed or any analogous proceedings or action are taken with a view to the winding up, liquidation, dissolution or bankruptcy of the relevant party (save for the purpose of and followed by an amalgamation or reconstruction on terms previously approved in writing);

(f) anything which, under the law of any jurisdiction, is analogous to any of the acts or events specified above; or

(g) the relevant party ceases, or threatens to cease, to carry on business or any substantial part thereof;

“Minimum Term”	the minimum term, if any, set out in the Contract;
“Named Person”	the individual named in the Contract who will provide the service on behalf of Net Effect subject to these Conditions or such other individual(s) notified in writing to the Client by Net Effect from time to time;
“Net Effect”	Net Effect (FMS) Limited, a company (registered in England and Wales under number 6220911) whose registered office is at Eastbourne House, 2 Saxbys Lane, Lingfield, Surrey RH7 6DN;
“Notice Period”	the notice period set out in the Contract for terminating the Contract in accordance with Condition 8.2;
“Out of Hours Charges”	charges at the rates detailed in the Contract applicable out of Working Hours, as amended from time to time in accordance with these Conditions;
“Output Material”	any Documents or other materials, and any data or other information provided by Net Effect relating to the Service;
“Other Charges”	any other charges incurred for the provision of the Service including, without limitation, any expenses;
“Service”	the service to be provided by Net Effect for the Client as more particularly referred to in the Contract and such additional or other services as may be agreed between the parties from time to time;
“Standard Charges”	charges at the rates detailed in the Contract applicable during Working Hours, as amended from time to time in accordance with these Conditions; and
“Working Hours”	eight (8) hours if working full days or four (4) hours if working half days, Monday to Friday (excluding bank and public holidays).

1.2 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.3 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

2 Supply of the Service

2.1 Net Effect shall provide the Service to the Client subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any order is made or purported to be made, by the Client. Any changes or additions to the Service or these Conditions must

be agreed in writing by Net Effect and the Client.

- 2.2 The Client shall, at its own expense, supply Net Effect with all necessary Documents or other materials, and all necessary data or other information relating to the Service, within sufficient time to enable Net Effect to provide the Service in accordance with the Contract. The Client shall ensure the accuracy of all Input Material.
- 2.3 The Client shall, at its own expense, retain duplicate copies of all Input Material and insure against its accidental loss or damage. Net Effect shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Client from the time of delivery to, or to the order of, the Client.
- 2.4 Net Effect shall use all reasonable endeavours to provide the Service in accordance with the Contract, subject to these Conditions, but the Client acknowledges and agrees that time of performance of the Service is not of the essence of the Contract.
- 2.5 Further details about the Service, and advice or recommendations about its provision or utilisation may be made available on written request.
- 2.6 Net Effect may correct any typographical or other errors or omissions in any brochure, promotional literature, quotation or other document relating to the provision of the Service without any liability to the Client.
- 2.7 Net Effect may at any time, without notifying the Client, make any changes to the Service which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Service.
- 2.8 Net Effect will use its own initiative in deciding how the Service should be provided and will have complete flexibility as to the hours worked but will nonetheless assist the Client by making all reasonable attempts to work within an overall agreed timetable, observe health and safety regulations and comply with all reasonable operational requirements relating to working hours and security.
- 2.9 Net Effect shall have absolute discretion as to whether the Service is provided by the Named Person or whether it is provided by a substitute or sub-contracted to another person.

3 Status of Net Effect

- 3.1 The Client acknowledges and agrees that Net Effect is an independent contractor and has full and exclusive control over how the Service is to be provided. Both parties agree and intend that this legal relationship is one of giving and accepting independent specialist services and specifically is not a relationship of master and servant or employer and employee.
- 3.2 The Client acknowledges and agrees that Net Effect is entitled to seek, apply for, accept and perform contracts to supply goods and services to third parties any time either before, after or concurrently with this Contract, including without limitation competitors of the Client, as it determines in its sole discretion. The Client acknowledges and agrees that it does not have first call on the services of Net Effect or the Named Person and cannot require Net Effect to give the Client any priority over another client.
- 3.3 Both parties agree that both Net Effect and the Named Person shall not be entitled to:
 - 3.3.1 receive holiday pay or bank holiday pay or special absence pay in any circumstances from the Client;
 - 3.3.2 receive sick pay in any circumstances from the Client;
 - 3.3.3 partake in any grievance procedure offered to employees of the Client and as an independent contractor is not entitled to the benefit of any statutory employment rights; nor

3.3.4 receive any Client benefits or partake in any pension scheme run by the Client.

3.4 Net Effect shall be responsible for all income tax liabilities and national insurance or similar contributions in respect of the Charges and any additional sums paid.

4 Unavailability of Named Person

If the Named Person is unavailable to provide the Service at any time for any reason, Net Effect will notify the Client of such unavailability as soon as possible and shall, in its sole discretion, either:

4.1 Provide a replacement individual for the period of such unavailability; or

4.2 Notify the client of an alternative time when the Named Person (or a replacement individual) could provide the Service and, subject to the Client's agreement, the Named Person (or a replacement individual) shall provide the Service at such alternatively agreed time subject to these Conditions; or

4.3 Notify the client that the Service cannot be provided during such period of unavailability but will resume once such period of unavailability has passed subject to these Conditions.

5 Charges

5.1 Subject to any special terms agreed in the Contract, the Client shall pay the Charges and any additional sums which are agreed between Net Effect and the Client for the provision of the Service or which, in Net Effect's sole discretion, are required as a result of the Client's instructions or lack of instructions, the inaccuracy of any Input Material or any other cause attributable to the Client.

5.2 The Client shall reimburse to Net Effect all reasonable expenses incurred by Net Effect in the course of performing the Service for the Client including all reasonable travelling, subsistence and other expenses.

5.3 Net Effect shall be entitled to vary the Charges from time to time by giving not less than thirty (30) days written notice to the Client.

5.4 All charges quoted to the Client for the provision of the Service are exclusive of any applicable Value Added Tax, for which the Client shall be additionally liable if applicable at the applicable rate from time to time.

5.5 Net Effect shall be entitled to invoice the Client following the end of each fortnight in which the Service is provided, or at other times agreed with the Client.

5.6 The Charges and any additional sums payable shall be paid by the Client (together with any applicable Value Added Tax, and without set off or other deduction) within fourteen (14) days of the date of Net Effect's invoice.

5.7 If payment is not made by the due date, Net Effect shall be entitled, without limiting any other right it may have, to:

5.7.1 charge interest on the outstanding amount (both before and after any judgement) at the rate of four percent (4%) above the base rate from time to time of Barclays Bank Plc from the due date until the outstanding amount is paid in full;

5.7.2 suspend provision of the Service without liability to the Client until the outstanding amount is paid in full and any times agreed for the provision of the Service shall be amended accordingly; and/or

5.7.3 terminate this Contract in accordance with Condition 8.4 below.

6 Rights in Input Material and Output Material

- 6.1 The property and any copyright and all other intellectual property rights in:
- 6.1.1 any Input Material shall belong to the Client; and
 - 6.1.2 any Output Material shall, unless otherwise agreed in writing between the Client and Net Effect, belong to Net Effect, subject only to the right of the Client to use the Output Material for the purposes of utilising the Service.
- 6.2 Provided that the following shall not apply to any Documents or other materials, data or other information which are required by law to be disclosed or are public knowledge at the time when they are provided by either party, and shall cease to apply if at any future time they become public knowledge though no fault of the other party:
- 6.2.1 any Input Material, or other information provided by the Client, which is so designated by the Client shall be kept confidential by Net Effect; and
 - 6.2.2 all Output Material, or other information provided by Net Effect, which is so designated by Net Effect shall be kept confidential by the Client.
- 6.3 The Client warrants that any Input Material, and its use by Net Effect for the purpose of providing the Service, will not infringe the copyright or any other rights of any third party, and the Client shall indemnify Net Effect against any loss, damages, costs, expenses or other claims arising from any such infringement.

7 Warranties and Liability

- 7.1 Net Effect warrants to the Client that the Service will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with, and within the times referred to in, the Contract.
- 7.2 Where Net Effect supplies, in connection with the provision of the Service, any goods (including Output Material) supplied by a third party, Net Effect does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Client the benefit of any warranty, guarantee or indemnity given by the person supplying the goods to Net Effect.
- 7.3 Net Effect shall have no liability to the Client for any loss, damage, costs, expenses or any other claims for compensation, arising from any Input Material or instruction supplied by the Client which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival on non-arrival, or any other fault of the Client.
- 7.4 Except in respect of fraud, fraudulent misrepresentation, death or personal injury caused by the negligence of Net Effect, its employees or agents, or as expressly provided in these Conditions:
- 7.4.1 Net Effect shall not be liable to the Client by reason of any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or indirect, special or consequential loss, damage, costs, expenses (whether caused by the negligence of Net Effect, its employees or agents or otherwise) which arise out of or in connection with the provision of the Service or their use by the Client; and
 - 7.4.2 the entire liability of Net Effect under or in connection with the Contract (whether for breach of contract, tort (including negligence), breach of statutory duty or otherwise) shall not exceed two hundred percent (200%) of the total Charges (excluding any Other Charges) for the provision of the Service in the twelve (12) months up to and including the date upon which the circumstances giving rise to the claim arose, per claim and in aggregate.
- 7.5 If the Client does not consider that Net Effect's limit of liability as detailed in the Contract (particularly but without limitation Condition 7) will be sufficient to protect its interests, the

Client should contact Net Effect and Net Effect will be pleased to discuss with the Client whether it is able to amend its limits and/or increase its insurance cover accordingly. The Client accepts that Net Effect shall be entitled to charge the Client, and the Client shall pay, an additional fee for accepting any different limit if Net Effect agrees to do so.

- 7.6 Net Effect shall not be liable to the Client, or be deemed to be in breach of the Contract, by reason of any delay in performing, or any failure to perform, any of Net Effect's obligations in relation to the Service, if the delay or failure was due to any event of Force Majeure. Should any such event of Force Majeure occur for longer than thirty (30) days Net Effect may cancel or suspend this Contract without incurring any liability for any loss or damage thereby occasioned.

8 Term and Termination

- 8.1 The Contract shall commence on the Commencement Date specified in the Contract or at such other date agreed in writing between the parties.
- 8.2 The Contract shall continue from the Commencement Date for the Minimum Term (if any) and, thereafter (or at any time if there is no Minimum Term), either party shall be entitled to terminate the Contract at any time by giving prior written notice to the other of not less than the Notice Period referred to in the Contract.
- 8.3 Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other, if the other:
- 8.3.1 commits any breach of this Contract and (if capable of remedy) fails to remedy the breach within thirty (30) days after being required by written notice to do so;
 - 8.3.2 suffers any Insolvency Event.
- 8.4 Net Effect may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the Client if the Client fails to pay when due the Charges in accordance with Condition 5.6 and fails to remedy such breach within seven (7) days after being required by written notice to do so.
- 8.5 The Client shall provide Net Effect with at least thirty (30) days prior written notice of any proposed change of control ("control" having the meaning attributed to it in Section 840 of the Income and Corporation Taxes Act 1988) of the Client and, without prejudice to the Client's obligation in this respect, Net Effect may (without limiting any other remedy) at any time immediately terminate the Contract by giving written notice to the Client if the Client suffers any change of control.
- 8.6 Upon the termination of the Contract for whatever reason, all charges for the Service carried out up until the date of termination shall become immediately due and payable by the Client to Net Effect.

9 Dispute Resolution

- 9.1 If either party wishes to raise a dispute relating to this Contract, it shall notify the other party in writing of such dispute and the reasons for such dispute. Representatives of the parties shall then meet and use reasonable endeavours to try to resolve the dispute as soon as reasonably practicable. If the representatives are unable to resolve a dispute within fourteen (14) days from the date of service of the notice of dispute, either party may take such other legal action as it considers appropriate in order to resolve the dispute.

10 General

- 10.1 These Conditions (together with the terms, if any, set out in the Contract) constitute the entire agreement between the parties, supersede any previous agreement or understanding and may not be varied except as agreed in writing between the parties. All other terms and

conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

- 10.2 The Contract is personal to the Client and the Client shall not assign, transfer or sub-contract or purport to assign, transfer or sub-contract to any other person any of its rights or obligations under the Contract without the prior written consent of Net Effect.
- 10.3 Net Effect may assign, transfer or sub-contract any of its rights and obligations under the Contract to any other party without the consent of the Client.
- 10.4 Any notice required or permitted to be given under these Conditions shall be in writing addressed to the other party at its address detailed in the Contract or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 10.5 No failure or delay by Net Effect in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by Net Effect of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 10.6 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 10.7 A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 10.8 English law shall apply to the Contract, and the parties agree to submit to the exclusive jurisdiction of the English Courts.