



Vissensa  
Terms and Conditions



## VISSENSA TERMS & CONDITIONS

These Conditions apply to all Contracts entered into by Vissensa except for web shop sales (see clause 2.2).

### 1 INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

#### Definitions:

- 1.1.1 "**Business Day**" a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.1.2 "**Commencement Date**" has the meaning given in clause 2.4 (Acceptance of orders).
- 1.1.3 "**Conditions**" these terms and conditions as amended from time to time in accordance with clause 24.7 (Variation).
- 1.1.4 "**Contract**" the contract between Vissensa and the Customer for the supply of Goods and/or Services in accordance with these Conditions incorporating, where appropriate, the relevant Services Specification.
- 1.1.5 "**Control**" has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of Control shall be construed accordingly.
- 1.1.6 "**Controller**", "**processor**", "**data subject**", "**personal data**", "**personal data breach**", "**processing**" and "**appropriate technical measures**" as defined in the Data Protection Legislation.
- 1.1.7 "**Customer**" the person or firm who purchases the Goods and/or Services from Vissensa.
- 1.1.8 "**Customer Equipment**" all equipment (including mains electrical power and appropriate storage, systems software, cabling, and virtual systems) deployed by or on behalf of the Customer at the Hosting Site.
- 1.1.9 "**Data Protection Legislation**" the UK Data Protection Legislation, any European Union legislation relating to personal data, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).
- 1.1.10 "**Deliverables**" the deliverables, if any, set out in the Order which are produced or procured by Vissensa for the Customer.
- 1.1.11 "**Delivery Location**" has the meaning given in clause 3.1 (Time and place of delivery).
- 1.1.12 "**Digital Services**" the specific digital services provided to the Customer by Vissensa as identified in the appropriate Services Specification, which may include third party licensing services (such as MSP cloud licensing, antivirus and security products), backup and recovery services, cloud hosting services, provision of virtual machines and instances including cloud storage and virtual hardware (such as virtual firewalls and routers), VoIP telephony services, remote support and diagnostics, internet or private circuit (leased line) provisions, and access to Vissensa's or third-party helpdesks and monitoring services.
- 1.1.13 "**Force Majeure Event**" has the meaning given to it in clause 21 (Force majeure).
- 1.1.14 "**Goods**" the goods (or any part of them) set out in the Order.
- 1.1.15 "**Goods Specification**" the description(s) or specification(s) for the Goods in the Order.
- 1.1.16 "**Hosting Services**" the set-up, installation and configuration and ongoing provision of connectivity services through an internet service provider at a hosting facility, the precise details of which are set out in the Services Specification (if applicable).



- 1.1.17 "Hosting Site" Vissensa's data centre premises or any other premises within which Vissensa hosts Customer Equipment or equipment required to provide the Hosting Services.
  - 1.1.18 "Intellectual Property Rights" patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
  - 1.1.19 "Maintenance" any error corrections, updates and upgrades that Vissensa may provide or perform with respect to the Hosting Services.
  - 1.1.20 "Normal Business Hours" 9.00 am to 5.30 pm local UK time, each Business Day.
  - 1.1.21 "Order" the Customer's order for the supply of Goods and/or Services, being the Customer's order form, the Customer's written acceptance of the Supplier's quotation, and/or the Customer's online order. The Order incorporates any Goods Specification and Services Specification.
  - 1.1.22 "Services" the services, including where appropriate Digital Services and/or the Deliverables, supplied by Vissensa to the Customer as set out in the Services specification(s).
  - 1.1.23 "Services Specification" the description or specification for the Services in the Order.
  - 1.1.24 "UK Data Protection Legislation" all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive (2002/58/EC) (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
  - 1.1.25 "Virus" any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
  - 1.1.26 "Vissensa" Vissensa Limited registered in England and Wales with company number 06562743.
  - 1.1.27 "Vissensa Materials" has the meaning given in clause 10.1.8 (Customer's general obligations).
- 1.2 Interpretation:
- 1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
  - 1.2.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.3 Any words following the terms including, **include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.4 A reference to **writing** or **written** includes fax and email.

## 2 BASIS OF CONTRACT

2.1 **Exclusion of other terms.** Subject to clause 2.2, these Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. For the avoidance of doubt, any other terms which the Customer may attempt to incorporate by reference in any purchase order shall have no legal effect.

2.2 **Web shop sales.** If you purchase goods through our web shop at <https://shop.vissensa.com> then our web shop terms will apply to those purchases instead of these Conditions. You can view our web shop terms at [www.vissensa.com/wp-content/uploads/2020/11/Vissensa-Webshop-Terms-and-Conditions.pdf](http://www.vissensa.com/wp-content/uploads/2020/11/Vissensa-Webshop-Terms-and-Conditions.pdf).

2.3 **Offers.** Each Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.4 **Acceptance of Orders.** An Order shall only be deemed to be accepted when Vissensa issues written acceptance of the Order at which point and on which date a Contract shall come into existence ("**Commencement Date**"). Each Order constitutes a separate Contract and Vissensa may, at its absolute discretion, decline any Order.

2.5 **Excluded materials.** Any samples, drawings, descriptive matter or advertising issued by Vissensa and any descriptions of the Goods or illustrations or descriptions of the Services contained in Vissensa's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract nor have any contractual force.

2.6 **Corrections.** Vissensa reserves the right to correct typographical errors in its sales literature, on its website or appearing elsewhere, without notice to the Customer.

2.7 **Application to Goods/Service.** All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.8 **Quotations.** Unless expressly stated otherwise, any quotation given by Vissensa:

2.8.1 shall not constitute an offer;

2.8.2 shall remain valid for twenty eight (28) days from its date of issue only, unless otherwise expressly stated in the quotation;

2.8.3 shall be inclusive of labour insofar as it relates to Services;

2.8.4 shall be supplied EX WORKS insofar as it relates to Goods; and

2.8.5 shall be exclusive of VAT and equivalent taxes.

2.9 **Amendments to specifications.** Vissensa reserves the right to amend the Goods Specification and/or Services Specification if required by any applicable statutory or regulatory requirement. Vissensa shall notify the Customer if the amendments are material.

## 3 DELIVERY OF GOODS

3.1 **Time and place of delivery.** Vissensa shall deliver the Goods to the location set out in the Order or such other location as the parties may agree ("**Delivery Location**") at any time after Vissensa notifies the Customer that the Goods are ready.

- 3.2 **Completion of delivery.** Delivery of the Goods shall be completed on the completion of unloading of the Goods, or making the Goods available, at the Delivery Location.
- 3.3 **Time not of the essence.** Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Vissensa shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Vissensa with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.4 **Vissensa's liability for failing to deliver the Goods.** If Vissensa fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Vissensa shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Vissensa with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

**Vissensa's remedies if the Customer fails to take delivery of the Goods.**

- 3.5 If the Customer fails to take delivery of the Goods within three (3) Business Days of Vissensa notifying the Customer that the Goods are ready then Vissensa shall not be required to reattempt the failed delivery and, unless the Customer failed to take delivery due to a Force Majeure Event (in which case clause 21(Force majeure) shall apply):
- 3.5.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which Vissensa notified the Customer that the Goods were ready;
- 3.5.2 if Vissensa agrees to reattempt delivery then the Customer shall be liable for all costs associated with that reattempted delivery, in addition to the costs of the original attempted delivery; and
- 3.5.3 Vissensa shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.6 If ten (10) Business Days after the day on which Vissensa notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, Vissensa may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage, insurance and selling costs, charge the Customer for any shortfall below the price of the Goods.
- 3.7 Clauses 3.5 and 3.6 do not prejudice Vissensa's rights to recover the full contract price from the Customer.
- 3.8 **Delivery by instalments.** Vissensa may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 4 QUALITY OF GOODS

- 4.1 **General warranty.** Vissensa warrants that on delivery the Goods shall:
- 4.1.1 conform in all material respects with the Goods Specification; and
- 4.1.2 be free from material defects in design, material and workmanship.
- 4.2 **Fitness for purpose.** Vissensa makes no warranty, representation or guarantee as to the suitability of the Goods for any particular purpose or application except as explicitly stated in the Goods Specification. Any modifications or customisation required by the Customer which are not included in the Services Specification will be chargeable in accordance with clause 7.4 (No obligation to provide out-of-scope services).
- 4.3 **Manufacturer warranties.** Vissensa shall make reasonable endeavours to assign to the Customer the benefit of any manufacturer or supplier guarantee concerning the Goods.

4.4 **Customer's remedy for defective Goods.** Except as provided in this clause 4, Vissensa shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1 (General warranty). Subject to clause 4.5 (Warranty exceptions), Vissensa shall, at its option and as Customer's sole remedy, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

4.4.1 the Customer gives notice in writing within seven (7) days of delivery that some or all of the Goods do not comply with the warranty set out in clause 4.1 (General warranty);

4.4.2 Vissensa is given a reasonable opportunity of examining such Goods; and

4.4.3 the Customer (if asked to do so by Vissensa) returns such Goods to Vissensa's place of business at the Customer's cost.

4.5 **Warranty exceptions.** Vissensa shall not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:

4.5.1 the Customer has not first pursued all available recourse under the manufacturer's warranty assigned to it pursuant to clause 4.2 (Fitness for purpose), if any;

4.5.2 the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.4.1 (Customer's remedy for defective Goods);

4.5.3 the defect arises because the Customer failed to follow Vissensa's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods (which shall be deemed to include any instructions given by the manufacturer of the Goods in the physical documentations supplied with the Goods) or, in the absence of such instructions, good trade practice;

4.5.4 the defect arises as a result of Vissensa following any drawing, design or specification supplied by the Customer;

4.5.5 the Customer alters or repairs such Goods without the written consent of Vissensa;

4.5.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

4.5.7 the Goods differ from the Goods Specification as a result of changes made:

4.5.7.1 to ensure they comply with applicable statutory or regulatory standards; and/or

4.5.7.2 as part of the Services which have been performed in accordance with the Contract (or any other contract between the parties).

4.6 **Warranty for repaired/replaced Goods.** The terms of these Conditions shall apply to any repaired or replacement Goods supplied by Vissensa.

## 5 TITLE AND RISK

5.1 **Passing of risk.** The risk in the Goods shall pass to the Customer on completion of delivery (or deemed delivery) unless the Goods are delivered to Vissensa for configuration, in which case risk in and the obligation to insure the Goods shall pass to the Customer upon Vissensa's receipt of them for configuration.

5.2 **Passing of title.** Title to the Goods shall not pass to the Customer until Vissensa receives payment in full (in cash or cleared funds) for the Goods and any other goods that Vissensa has supplied to the Customer in respect of which payment has become due.

5.3 **Customer's responsibilities for the Goods.** Until title to the Goods has passed to the Customer, the Customer shall:

5.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Vissensa's property;

- 5.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Vissensa's behalf from the date of delivery;
  - 5.3.4 notify Vissensa immediately if it becomes subject to any of the events listed in clause 19.2.2 (Insolvency events); and
  - 5.3.5 give Vissensa such information regarding the Goods as Vissensa may require from time to time.
- 5.4 **Return of Goods.** If, before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 19.2.2 (Insolvency events) or Vissensa exercises its right to terminate under clause 19.3.1 (Further termination rights) then, without limiting any other right or remedy Vissensa may have, Vissensa may at any time:
- 5.4.1 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
  - 5.4.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 6 LEASING OF GOODS

- 6.1 Where agreed between the parties, Vissensa may hire Goods to the Customer subject to these Conditions and any Services Specification.
- 6.2 The Goods shall at all times remain the property of Vissensa, and the Customer shall have no right, title or interest in or to the Goods (save the right to possession and use of the Goods subject to these Terms and any applicable Services Specification)
- 6.3 The risk of loss, theft, damage or destruction of the Goods shall pass to the Customer on Delivery. The Goods shall remain at the sole risk of the Customer during the agreed rental period until such time as the Goods are redelivered to Vissensa. During the rental period, the Customer shall, at its own expense, obtain and maintain the following insurances:
- 6.3.1 insurance of the Goods to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as Vissensa may from time to time nominate in writing.
- 6.4 The Customer shall during the term of this Agreement:
- 6.4.1 ensure that the Goods are kept and operated in a suitable environment, used only for the purposes for which they are designed, and operated in a proper manner by trained competent staff in accordance with any operating instructions;
  - 6.4.2 maintain at its own expense the Goods in good and substantial repair in order to keep it in as good an operating condition as it was on the delivery date (fair wear and tear only excepted) including replacement of worn, damaged and lost parts, and shall make good any damage to the Goods;
  - 6.4.3 make no alteration to the Goods and shall not remove any existing component(s) from the Equipment without the prior written consent of Vissensa unless the component(s) is/are replaced immediately (or if removed in the ordinary course of repair and maintenance as soon as practicable) by the same component or by one of a similar make and model or an improved/advanced version of it. Title and property in all substitutions, replacements, renewals made in or to the Goods shall vest in Vissensa immediately upon installation;
  - 6.4.4 keep the Goods at all times at the Site and shall not move or attempt to move any part of the Goods to any other location without Vissensa's prior written consent;

- 6.4.5 permit Vissensa or its duly authorised representative to inspect the Goods at all reasonable times and shall grant reasonable access and facilities for such inspection;
  - 6.4.6 not, without the prior written consent of Vissensa, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Goods or allow the creation of any mortgage, charge, lien or other security interest in respect of them; and
  - 6.4.7 deliver up the Goods at the end of the rental period or on earlier termination of any Contract at such address as Vissensa requires, or if necessary allow Vissensa or its representatives access to any premises where the Goods are located for the purpose of removing them.
- 6.5 The Customer acknowledges that Vissensa shall not be responsible for any loss of or damage to the Goods arising out of or in connection with any negligence, misuse, mishandling of the Goods or otherwise caused by the Customer or its officers, employees, agents and contractors, and the Customer undertakes to indemnify Vissensa on demand against the same, and against all losses, liabilities, claims, damages, costs or expenses of whatever nature otherwise arising out of or in connection with any failure by the Customer to comply with these Conditions.

## 7 SUPPLY OF SERVICES

- 7.1 **General warranty.** Vissensa shall supply the Services to the Customer:
- 7.1.1 for such period(s) as specified in the Order; and
  - 7.1.2 in accordance with the Services Specification (and any service levels therein) in all material respects.
- 7.2 **Care and skill warranty.** Vissensa warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.3 **Time not of the essence.** Vissensa shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.4 **No obligation to provide out-of-scope services.** Unless expressly provided for in these Conditions, Vissensa has no obligation to supply the Customer any services which are not set out in the Services Specification. This includes, for example, special testing facilities. Such additional services may be offered by Vissensa at an additional charge.

## 8 ADDITION TERMS FOR HOSTING SERVICES

This clause only applies in the event that the Customer has ordered Hosting Services.

- 8.1 **Commencement notice.** Vissensa shall notify the Customer promptly upon the Hosting Service becoming available for use (a "**Commencement Notice**").
- 8.2 **Errors.** The Customer shall have five (5) working days from the date of the Commencement Notice to report any errors with the Hosting Service. If:
- 8.2.1 no such errors are reported then the performance of the Hosting Service is deemed to be accepted; or
  - 8.2.2 an error is reported then Vissensa will make all commercially reasonable efforts to rectify the issue. Once rectified to Vissensa's reasonable satisfaction, the Hosting Services shall be deemed to have been accepted by the Customer. If the error cannot, or is not, rectified within a reasonable period of time then the Customer may apply to Vissensa for a refund or credit note (to be calculated by Vissensa, acting reasonably) in respect of the part of the Hosting Service which is subject to the error. If the error materially affects a substantial part of the Hosting Service so as to render it materially inoperable despite



Vissensa's commercially reasonable efforts to rectify it then the Customer may instead terminate the Contract upon giving seven (7) days' written notice to Vissensa.

- 8.3 **Maintenance disruption.** Vissensa shall make commercially reasonable endeavours to minimise the disruption of Maintenance upon the Hosting Services, including by avoiding Maintenance being carried out during Normal Business Hours where practicable.
- 8.4 **Notice of Maintenance.** Vissensa shall endeavour to give at least 48 hours' notice of Maintenance which may interrupt the Hosting Services.
- 8.5 **Access to Customer Equipment.**
- 8.5.1 The Customer shall permit Vissensa such access (either physically or via remote access) to the Customer Equipment as Vissensa needs to provide the Hosting Services. This may include for the following reasons:
- 8.5.1.1 to address physical issues with the Customer Equipment that is causing disruption to the Customer's or Vissensa's services or environment;
- 8.5.1.2 where the continuation of Hosting Services relies on Customer Equipment that requires attention;
- 8.5.1.3 where the Customer has requested Vissensa attend to the Customer Equipment;
- 8.5.1.4 where necessary to comply with the law (including to comply with a lawful request for access made by a government agency or regulator or to comply with applicable legislation or a court order); or
- 8.5.1.5 where the data centre provider has requested intervention by Vissensa to mitigate or resolve a data centre issue to preserve Customer Equipment and/or data centre equipment and infrastructure.
- 8.5.2 Access will be requested using the applicable request for change ("**RFC**") process (being Vissensa's standard RFC process unless the parties have agreed in writing that a Customer-specific RFC process shall apply instead).
- 8.6 **Customer restrictions.** The Customer must:
- 8.6.1 procure that its staff and representatives comply with all applicable visitation procedures and conduct themselves safely and professionally at all times when visiting the Hosting Site;
- 8.6.2 not alter, interfere with or remove any equipment at the Hosted Site which is not Customer Equipment and shall only use such third party equipment for the purpose of, and to the extent strictly necessary, to receive the Hosting Services;
- 8.6.3 comply at all times with the IP address allocation rules of the Regional Internet Registry for Europe (RIPE); and
- 8.6.4 not use the Hosting Services to send or receive any material which is offensive, obscene, defamatory, infringes any person's Intellectual Property Rights, or which breaches any applicable law.
- 8.7 **Insurance and maintenance of Customer Equipment.** Unless otherwise stated in the Services Specification, the Customer is responsible for insuring, installing, configuring, modifying, updating and maintaining normal operation of all Customer Equipment in order to receive the Hosting Services. Unless otherwise permitted by these Conditions, Vissensa will not make changes to Customer Equipment without the Customer's prior agreement. Agreement may be obtained generally, e.g. under an ongoing support contract, or through the agreed request for change (RFC) procedure.
- 8.8 **Customer Equipment warranties.** The Customer warrants that Customer Equipment:

8.8.1 has been installed and configured correctly, is in good condition, and has been updated and maintained in accordance with industry best practice and the manufacturer's instructions;

8.8.2 is suitable for use in providing Hosting Services; and

8.8.3 complies with all applicable laws and regulations,

provided that the Customer shall not be in breach of this warranty if the Customer Equipment's nonconformity resulted from Vissensa's breach of the Contract.

8.9 **Customer Equipment defect. If:**

8.9.1 the Customer Equipment is found to have breached clause 8.8 (Customer Equipment warranties); or

8.9.2 Vissensa reasonably determines that the Customer Equipment materially interferes with, or disrupts, Vissensa's provision of the hosting services to other customers; or

8.9.3 the Customer Equipment puts Vissensa's or any third party's equipment or service provision at risk,

(each a "**Customer Equipment Defect**"),

then Vissensa may, without liability to the Customer and without prejudice to its other rights and remedies at law, temporarily suspend the Hosting Service and disconnect or power off any Customer Equipment until the Customer remedies the Customer Equipment Defect to Vissensa's reasonable satisfaction.

8.10 **Material breach resulting from Customer Equipment Defect.** If a Customer Equipment Defect persists for five (5) or more continuous days, or occurs more than three (3) times in any twelve (12) month period, then the Customer shall have materially breached the Contract for the purpose of clause 19.2.1(Termination for cause).

8.11 **No warranty that uninterrupted or error free.** Subject to any contrary terms in the Services Specification, Vissensa does not warrant that the Customer's use of the Hosting Services will be uninterrupted or error free.

8.12 **Relocation of Customer Equipment.** If Vissensa needs to relocate the Customer Equipment within the same Hosting Site then it shall endeavour to provide thirty (30) days' prior written notice to the Customer except in case of emergency. Unless necessitated by emergency or the parties' contrary agreement, the move will be performed outside of Normal Business Hours. Vissensa will endeavour to ensure that the move causes minimal disruption to the Customer.

## 9 **ADDITIONAL TERMS FOR DIGITAL SERVICES**

This clause only applies in the event that the Customer has ordered Digital Services.

9.1 **Commencement notice.** Vissensa shall notify the Customer promptly upon the Digital Service becoming available for use (a "**Commencement Notice**").

9.2 **Errors.** The Customer shall have five (5) working days from the date of the Commencement Notice to report any errors with the Digital Service. If:

9.2.1 no such errors are reported then the performance of the Digital Service is deemed to be accepted; or

9.2.2 an error is reported then Vissensa will make all commercially reasonable efforts to rectify the issue. Once rectified to Vissensa's reasonable satisfaction, the Digital Service shall be deemed to have been accepted by the Customer. If the error cannot, or is not, rectified within a reasonable period of time then the Customer may apply to Vissensa for a refund or credit note (to be calculated by Vissensa, acting reasonably) in respect of the part of the Digital Service which is subject to the error. If the error materially affects a substantial

part of the Digital Service so as to render it materially inoperable despite Vissensa's commercially reasonable efforts to rectify it then the Customer may instead terminate the Contract upon giving seven (7) days' written notice to Vissensa.

- 9.3 **Maintenance disruption.** Vissensa shall make commercially reasonable endeavours to minimise the disruption of Maintenance upon the Digital Services, including by avoiding Maintenance being carried out during Normal Business Hours where practicable.
- 9.4 **Notice of maintenance.** Vissensa shall endeavour to give at least 48 hours' notice of Maintenance which may interrupt the Hosting Services.
- 9.5 **Access to Customer Equipment.**
- 9.5.1 Where Digital Services are applied to Customer Equipment, the Customer shall permit Vissensa such access (either physically or via remote access) to the Customer Equipment as Vissensa needs to provide the Digital Services. This may include for the following reasons:
- 9.5.1.1 to address physical issues with the Customer Equipment that is causing disruption to the Customer's or Vissensa's services or environment;
- 9.5.1.2 where the continuation of Digital Services relies on Customer Equipment that requires attention;
- 9.5.1.3 where the Customer has requested Vissensa attend to the Customer Equipment;
- 9.5.1.4 where necessary to comply with the law (including to comply with a lawful request for access made by a government agency or regulator or to comply with applicable legislation or a court order); or
- 9.5.1.5 where the data centre provider has requested intervention by Vissensa to mitigate or resolve a data centre issue to preserve Customer Equipment and/or data centre equipment and infrastructure.
- 9.5.2 Access will be requested using the applicable request for change ("**RFC**") process (being Vissensa's standard RFC process unless the parties have agreed in writing that a Customer-specific RFC process shall apply instead).
- 9.6 **Updates to Vissensa equipment.** Vissensa reserves the right to push updates to its own equipment and software from time to time.
- 9.7 **Customer restrictions.** The Customer must:
- 9.7.1 not commit any act (or omit to do any act) or authorise any third party to commit any act which is in contravention of any third party licence;
- 9.7.2 only use any Goods or Service for its authorised and permitted purpose;
- 9.7.3 not use the Digital Services to send or receive any material which is offensive, obscene, defamatory, infringes any person's Intellectual Property Rights, or which breaches any applicable law;
- 9.7.4 not use the Digital Services to transfer or transmit any material in breach of any third party licence;
- 9.7.5 not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services.
- 9.8 **Third party licences.** Where the Digital Services include the provision of third party software products or services, the Customer shall comply with all third party licence terms applicable thereto.
- 9.9 **Third Party Goods warranty.** The Customer's attention is drawn to clause 4.3 above.



9.10 **No warranty that service is uninterrupted or error free.** Subject to any contrary terms in the Services Specification, Vissensa does not warrant that the Customer's use of the Digital Services will be uninterrupted or error free.

9.11 **Relocation of Vissensa equipment.** If Vissensa needs to relocate its equipment on which the Digital Services are provided then it shall endeavour to provide thirty (30) days' prior written notice to the Customer except in case of emergency. Unless necessitated by emergency or the parties' contrary agreement, the move will be performed outside of Normal Business Hours. Vissensa will endeavour to ensure that the move causes minimal disruption to the Customer.

## 10 CUSTOMER'S GENERAL OBLIGATIONS

10.1 **Customer's general obligations.** The Customer shall:

10.1.1 ensure that the terms of the Order and any information it provides in any Services specification or Goods Specification are complete and accurate;

10.1.2 co-operate with Vissensa in all matters relating to the Services, including by providing such information, assistance, physical and/or remote access to systems as Vissensa reasonably requests from time to time;

10.1.3 provide Vissensa, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities (including third party facilities) as reasonably required by Vissensa to provide the Services;

10.1.4 provide Vissensa with such information and materials as Vissensa may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;

10.1.5 prepare the Customer's premises (or such other location where the Services will be supplied) for the supply of the Services. In particular, the Customer shall ensure that the environment and working conditions comply with all relevant health and safety laws;

10.1.6 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;

10.1.7 comply with all applicable laws, including health and safety laws;

10.1.8 keep all materials, equipment, documents and other property of Vissensa ("**Vissensa Materials**") at the Customer's premises in safe custody at its own risk, maintain Vissensa Materials in good condition until returned to Vissensa, and not dispose of or use Vissensa Materials other than in accordance with Vissensa's written instructions or authorisation; and

10.1.9 comply with any additional obligations as set out in the Services Specification and the Goods Specification. where the Services include the provision of third party software products or services, the Customer shall comply with all third party licence terms applicable thereto.

10.2 **Remedies for Customer default.** If Vissensa's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (a "**Customer Default**"):

10.2.1 without limiting or affecting any other right or remedy available to it, Vissensa shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Vissensa's performance of such obligations;

10.2.2 Vissensa shall have no liability to the Customer for any costs or losses arising from its delay or suspension of the Services as permitted by clause 10.2.1; and

- 10.2.3 the Customer shall reimburse Vissensa on written demand for any costs or losses sustained or incurred by Vissensa arising directly or indirectly from the Customer Default.
- 10.3 The Customer shall appoint up to five (5) personnel as customer representatives. The customer representatives will be responsible for the triage and coordination of support calls to Vissensa and Vissensa will treat the customer representatives as being authorised to incur further costs on behalf of the Customer by instructing Vissensa to perform out-of-scope services unless the Customer expressly instructs otherwise in writing.
- 11 CHARGES AND PAYMENT**
- 11.1 **Price of Goods.** The price for Goods:
- 11.1.1 shall be the price set out in the Order; and
- 11.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods.
- 11.2 **Charges for Services.** Unless otherwise specified in the Order, the charges for Services shall be calculated on a time and materials basis as follows:
- 11.2.1 the charges shall be calculated in accordance with Vissensa's daily fee rates, as set out in the Order;
- 11.2.2 Vissensa's daily fee rates for each individual person are calculated on the basis of that person working 9.00 am to 5.30 pm on Business Days; and
- 11.2.3 Vissensa shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom Vissensa engages in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by Vissensa for the performance of the Services, and for the cost of any materials.
- 11.3 **Price variation.** Vissensa reserves the right to:
- 11.3.1 upon prior notice to the Customer, increase the charges for the Services on the first of January each year. The amount of the increase shall not exceed the aggregate of the following amounts:
- 11.3.1.1 3% of the current charges; and
- 11.3.1.2 the percentage increase in the Consumer Prices Index in the preceding twelve (12) month period multiplied by the current charges;
- 11.3.2 increase the price of the Goods and/or Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods/Services to Vissensa that is due to:
- 11.3.2.1 any factor beyond the control of Vissensa (including foreign exchange fluctuations, increases in taxes and duties, increases in labour, increase in materials or other manufacturing costs, increases in third party provider costs);
- 11.3.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods/Services ordered, or the Goods Specification; or the Services Specification; or
- 11.3.2.3 any delay or additional charges caused by any instructions of the Customer in respect of the Goods/Services or failure of the Customer to give Vissensa adequate or accurate information or instructions in respect of the Goods/Services; and

- 11.3.3 increase the charges for Services in accordance with the relevant Services Specification(s). This typically involves Vissensa passing on third party vendor price increases to the Customer.
- 11.4 **Invoicing.** Vissensa shall invoice the Customer in accordance with the Order. If the Order does not contain a charging schedule then Vissensa shall invoice for:
- 11.4.1 Goods on delivery;
- 11.4.2 non-repeating Services on completion of the Services; and
- 11.4.3 repeating Services monthly in advance
- although Vissensa reserves the right to invoice and require the payment (in whole or in part) prior to the commencement of the provision of the Service or ordering any Goods where it deems necessary.
- 11.5 **Payment of invoices.** The Customer shall pay each invoice submitted by Vissensa:
- 11.5.1 within 28 days of the date of the invoice unless different credit terms have been agreed by Vissensa and confirmed in writing to the Customer; and
- 11.5.2 in pounds sterling (the Customer shall bear its own foreign exchange fees) in full and in cleared funds to a bank account nominated in writing by Vissensa,
- and time for payment shall be of the essence of the Contract.
- 11.6 **VAT.** All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax and similar taxes chargeable from time to time (“**VAT**”). Where any taxable supply for VAT purposes is made under the Contract by Vissensa to the Customer, the Customer shall, on receipt of a valid VAT invoice from Vissensa, pay to Vissensa such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.
- 11.7 **Late payment.** If the Customer fails to make a payment due to Vissensa under the Contract by the due date then without limiting Vissensa’s remedies under clause 19 (Termination):
- 11.7.1 the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.7 will accrue each day at 4% a year above the Bank of England’s base rate from time to time, but at 4% a year for any period when that base rate is below 0%; and
- 11.7.2 Vissensa may without liability to the Customer suspend the Services until all amounts payable to Vissensa are settled in full.
- 11.8 **Set-off.** All amounts due to Vissensa under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 11.9 **Unspecified funds.** If Vissensa receives a payment from the Customer which does not refer to a particular invoice then Vissensa may, at its discretion, put that money towards payment of any one or more of the Customer’s outstanding invoices.
- 11.10 **Payment of service credits.** In the event that the Customer is entitled to payment of a service credit, Vissensa shall credit the amount of all service credits accrued in the current billing cycle against the Customer’s next invoice. Subject to clause 17.2 (Liability which is not limited), the payment of such service credits shall be the Customer’s sole and exclusive remedy for Vissensa’s breach of the relevant service levels.
- 12 LIEN**
- 12.1 **Lien.** Vissensa shall have a general and particular lien on the Customer Equipment and Goods in its possession (“**Lien Assets**”) as security for payment of all sums claimed by Vissensa from the

Customer in relation to Vissensa's provision of the Services (if any). The charges for the Services shall continue to accrue on any Lien Assets detained under lien.

12.2 **Right of sale.** If an invoice for the Charges is not paid in full on its due date for payment, Vissensa may, without prejudice to its other rights and remedies, give notice in writing to the Customer of its intention to sell or otherwise dispose of some or all of the Lien Assets if the amount outstanding is not paid in full within 14 days of the notice. If the amount due is not paid by the expiry of such period, Vissensa may sell or otherwise dispose of some or all of the Lien Assets as agent of the Customer and at the Customer's expense and risk, and shall remit the proceeds of sale or disposal to the Customer after deduction of all amounts due to Vissensa and the expenses incurred by Vissensa for the sale or disposal.

12.3 **No liability for price.** Vissensa shall not be liable for the price obtained for the sale or disposal of the Customer's equipment under this clause 12.

## 13 INTELLECTUAL PROPERTY RIGHTS

13.1 **Reserved rights.** Vissensa, or if applicable its licensor, retains all Intellectual Property Rights in or arising out of or in connection with:

13.1.1 the Services (other than Intellectual Property Rights in any materials provided by the Customer); and

13.1.2 all documents, drawings, plans, photographs, designs, specifications, illustrations and other printed matter provided to the Customer, including the Deliverables.

13.2 **Licence of Deliverables.** Vissensa grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of the Contract to use the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business for the duration of the Contract. The Customer shall not sub-license, assign or otherwise transfer the rights granted by this clause 13.2.

13.3 **Licence of customer materials.** The Customer grants Vissensa a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to Vissensa for the term of the Contract for the purpose of providing the Services to the Customer.

## 14 DATA PROTECTION

14.1 **Data protection compliance.** Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

14.2 **Applicable laws.** In this clause 14, "**Applicable Laws**" means (for so long as and to the extent that they apply to Vissensa) the law of the European Union, the law of any member state of the European Union and/or Domestic UK Law; and "**Domestic UK Law**" means the UK Data Protection Legislation and any other law that applies in the UK.

14.3 **Processing of personal data.** Without prejudice to the generality of clause 14.1 (Data protection compliance), to the extent that the supply of the Services and/or Deliverables requires Vissensa to act as the Customer's data processor, the following sub-clauses of this clause 14 shall apply.

14.4 **Lawful transfer.** The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Vissensa for the duration and purposes of the Contract.

14.5 **Processing restrictions.** Vissensa shall, in relation to any personal data processed in connection with the performance by Vissensa of its obligations under the Contract:

14.5.1 process that personal data only on the documented written instructions of the Customer unless Vissensa is required by Applicable Laws to otherwise process that personal data.



Such instructions are set out in the Schedule to these Conditions, subject to such variation as the parties may agree in the Order. Where Vissensa is relying on Applicable Laws as the basis for processing personal data, Vissensa shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Vissensa from so notifying the Customer;

- 14.5.2 ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
- 14.5.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and
- 14.5.4 not transfer any personal data to a third country unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
  - 14.5.4.1 the Customer or Vissensa has provided appropriate safeguards in relation to the transfer;
  - 14.5.4.2 the data subject (as defined in the Data Protection Legislation) has enforceable rights and effective legal remedies;
  - 14.5.4.3 Vissensa complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - 14.5.4.4 Vissensa complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- 14.5.5 assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 14.5.6 notify the Customer without undue delay on becoming aware of a personal data breach;
- 14.5.7 at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the Contract unless required by Applicable Law to store the personal data; and
- 14.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 14 and inform the Customer without undue delay if, in the opinion of Vissensa, an instruction infringes the Data Protection Legislation.

- 14.6 **Appointment and approval of sub-processors.** The Customer consents to Vissensa appointing the third party processors (and categories of processors) referred to in its Privacy Policy from time to time (<https://www.vissensa.com/privacy-policy/>) as a third-party processor of personal data under the Contract. Vissensa confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement substantially on that third party's standard terms of business which Vissensa confirms reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the Customer and Vissensa, Vissensa shall remain fully liable for all acts or omissions of any third party processor appointed by it pursuant to this clause 14. Vissensa shall notify the Customer in writing when it appoints additional sub-processors and the Customer shall be deemed to have approved of their appointment unless the Customer objects in writing within seven (7) days of receipt of said notice. If the Customer objects to the appointment of the sub-processor then, unless an alternate arrangement can be agreed between the parties, the Customer may terminate the Contract upon fourteen (14) days' notice.



14.7 **Substitution with standard clauses.** Either party may, at any time on not less than thirty (30) days' notice, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

## 15 CONFIDENTIALITY

15.1 **Duty of confidence.** Each party undertakes that it shall not at any time during the Contract, and for a period of three (3) years after termination or expiration of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs, except as permitted by clause 15.2 (Permitted disclosures).

15.2 **Permitted disclosures.** Each party may disclose the other party's confidential information:

15.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 15; and

15.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

15.3 **Use of confidential information.** No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 16 INDEMNITY

16.1 **Indemnity.** The Customer shall indemnify Vissensa against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by Vissensa arising out of or in connection with:

16.1.1 the Customer's breach or negligent performance or non-performance of the Contract; or

16.1.2 the enforcement of the Contract.

16.2 **Notice of claims.** If any third party makes a claim, or notifies an intention to make a claim, against Vissensa which may reasonably be considered likely to give rise to a liability under this indemnity (a "Claim") then Vissensa shall endeavour to:

16.2.1 as soon as reasonably practicable, give written notice of the Claim to the Customer, specifying the nature of the Claim in reasonable detail;

16.2.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Customer (such consent not to be unreasonably conditioned, withheld or delayed), provided that Vissensa may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Customer, but without obtaining the Customer's consent) if Vissensa reasonably believes that failure to settle the Claim would be prejudicial to Vissensa in any material respect; and

16.2.3 subject to the Customer providing security to Vissensa to Vissensa's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Customer may reasonably request to avoid, dispute, compromise or defend the Claim.

- 16.3 **Tax.** If a payment due from the Customer under this clause is subject to tax (whether by way of direct assessment or withholding at its source), Vissensa shall be entitled to receive from the Customer such amounts as shall ensure that the net receipt, after tax, to Vissensa in respect of the payment is the same as it would have been were the payment not subject to tax.
- 17 **LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**
- 17.1 **Scope.** The restrictions on liability in this clause 17 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 17.2 **Liability which is not limited.** Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 17.2.1 death or personal injury caused by negligence;
- 17.2.2 fraud or fraudulent misrepresentation; and
- 17.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 17.3 **Liability cap.** Subject to clause 17.2 (Liability which is not limited), Vissensa's total liability to the Customer in respect of all breaches of duty occurring within any contract year shall not exceed the cap, whereby:
- 17.3.1 “**cap**” means 100% of the total charges in the contract year in which the breaches occurred;
- 17.3.2 “**contract year**” means the twelve (12) month period starting on the Commencement Date and each successive twelve (12) month period thereafter; and
- 17.3.3 “**total charges**” means all sums paid by the Customer and all sums payable under the Contract in respect of goods and services actually supplied by Vissensa, whether or not invoiced to the Customer.
- 17.4 **Excluded losses.** Subject to clause 17.2 (Liability which is not limited), the following types of loss are wholly excluded by the parties:
- 17.4.1 loss of profits;
- 17.4.2 loss of sales or business;
- 17.4.3 loss of agreements or contracts;
- 17.4.4 loss of anticipated savings;
- 17.4.5 loss of use or corruption of software, data or information except to the extent the defaulting party's liability arises under 14 (Data protection);
- 17.4.6 loss of or damage to goodwill; and
- 17.4.7 indirect or consequential loss.
- 17.5 **Exclusion of implied terms.** Vissensa has given commitments as to the Goods' conformity with relevant specifications in clause 4.1 (General warranty). In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 17.6 **Notice of claims.** Unless the Customer notifies Vissensa that it intends to make a claim in respect of an event within the notice period, Vissensa shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire six (6) months from that date. The

notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.

17.7 **Survival.** This clause 17 shall survive termination of the Contract.

## 18 TERM

18.1 **Contracts for recurring Services.** To the extent that the Contract relates to the provision of continuous or recurring Services, the Services Specification will specify the duration of the initial term and the mechanism for the Contract automatically renewing for successive renewed terms thereafter. If the Services Specification does not so specify then the Contract shall continue for an initial period of 1 year and shall automatically renew for successive renewed terms of 1 year unless terminated in accordance with clause 19 (Termination).

18.2 **Contracts for non-recurring Services.** To the extent that the Contract relates to Services which are non-recurring (such as a relocation service), the Contract will automatically terminate upon completion of those Services unless terminated earlier in accordance with clause 19 (Termination).

## 19 TERMINATION

19.1 **Termination without cause.**

19.1.1 **Goods.** Subject to clause 20, either party may terminate any order for Goods without cause at any time prior to dispatch of the Goods.

19.1.2 **Recurring Services.** To the extent that the Contract relates to the provision of recurring Services, either party may terminate without cause upon giving at least three (3) months' written notice to the other to expire at the end of the current term (being either the initial term or a renewed term). However, if the Services Specification or the applicable online quotation sets out a different notice period then that notice period shall apply instead.

19.1.3 **Non-recurring Services.** Where the Contract relates to the provision of Services which are non-recurring (such as a relocation service), either party may terminate without cause upon giving at least three (3) months' written notice to the other prior to the Services commencing. However, if the Services Specification or the applicable online quotation sets out a different notice period then that notice period shall apply instead. If the Customer terminates under this clause then it shall reimburse Vissensa's reasonable costs which were incurred in preparation of providing the Services.

19.2 **Termination for cause.** Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

19.2.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within thirty (30) days after receipt of notice in writing to do so; or

19.2.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applies to court for or obtains a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction.

19.3 **Further termination rights.** Without affecting any other right or remedy available to it, Vissensa may terminate the Contract with immediate effect by giving written notice to the Customer if:

19.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment;

19.3.2 there is a change of Control of the Customer;

- 19.3.3 the Customer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 19.3.4 the Customer's financial position deteriorates to such an extent that in Vissensa's reasonable opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 19.4 **Suspension.** Without affecting any other right or remedy available to it, Vissensa may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and Vissensa if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 19.2.2 (Insolvency events) and/or clauses 19.3.3 and/or 19.3.4 (Further termination rights), or Vissensa reasonably believes that the Customer is about to become subject to any of them.

## 20 CONSEQUENCES OF TERMINATION

- 20.1 On termination of the Contract:
- 20.1.1 the Customer shall immediately pay to Vissensa all of Vissensa's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, Vissensa shall submit an invoice, which shall be payable by the Customer immediately on receipt;
  - 20.1.2 the Customer shall immediately pay to and/or reimburse Vissensa for all charges that are due to any third parties (such as but not limited to third party service providers) or otherwise due to any third party as a consequence of such termination;
  - 20.1.3 the Customer shall return all of Vissensa Materials and any Deliverables or Goods which have not been fully paid for or which are being leased to the Customer. If the Customer fails to do so, then Vissensa may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
  - 20.1.4 the Customer shall without undue delay remove the Customer Equipment from the Hosting Site by arrangement with Vissensa. If the Customer does not remove and collect the Customer Equipment within seven (7) days of the end of the Contract then the Customer authorises Vissensa to disconnect the Customer Equipment and store it until collected by the Customer. If the Customer does not collect the stored equipment within sixty (60) days of the Contract end then Vissensa may charge the Customer the cost of further storage or (at Vissensa's discretion) disposal of the equipment; and
  - 20.1.5 Vissensa shall be entitled to remove the Customer's data from its systems and any Vissensa Equipment and/or put the Vissensa Equipment to any use that it deems appropriate. Vissensa is not required to back up such data or return the same to Customer prior to any such removal, however should a request be made at the point of termination by the Customer, Vissensa will provide an export of such data at a cost to include but not limited to Vissensa's time and materials (and any third party costs) used to perform such export and transmission cost or transport charges in order to deliver the export.
- 20.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 20.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.
- 20.4 Internet Protocol (IP) addresses that has been provisioned as part of the Services remain the property of Vissensa and will be reassigned on termination of the Contract. It is the Customer's

responsibility to ensure that any Customer services that require IP addresses post-termination are redeployed with alternate IP addresses.

## 21 FORCE MAJEURE

21.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a "**Force Majeure Event**"). Without restricting the generality of this definition, the following shall be Force Majeure Events:

21.1.1 failure of, or faults in, third party software or services supplied by Vissensa provided Vissensa has made commercially reasonable efforts to mitigate the impact of such failure or faults upon the Customer;

21.1.2 Vissensa being unable to acquire goods or services owing to a shortage or restricted availability of them in the United Kingdom, provided Vissensa has made commercially reasonable efforts to source such goods or services from alternate UK suppliers for the same price;

21.1.3 Vissensa being unable to deliver goods or services as a result of travel restrictions imposed by, or on the advice of, the government or a relevant UK public body;

21.1.4 Network failure, systems fault, unauthorised use or access to the IT systems of Vissensa or Customer, provided such failure, fault or unauthorised use or access arose after Vissensa took all reasonable steps to maintain resilience and/or prevent the circumstances in question; and

21.1.5 a datacentre ceasing to be operational in whole or in part due to a major incident such as fire, flood, electrical failure, terrorist attack or cyber-attack, provided Vissensa has made commercially reasonable efforts to mitigate the impact of such incident upon the Customer. For the avoidance of doubt, where the Customer has paid charges in respect of a geo redundant data centre, this clause 21.1.5 shall not be an event of force majeure.

21.2 In the event of a Force Majeure Event delaying or preventing performance, 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. If the period of delay or non-performance continues for thirty (30) days then Vissensa may:

21.2.1 terminate this Agreement by giving three (3) days' written notice to the Customer; or

21.2.2 by written notice to the Customer specifying the obligations which have been affected by the Force Majeure Event, immediately relieve itself from performance of such obligations without liability to the Customer provided that Vissensa has made reasonable efforts to perform such obligations up until the date of the notice (notwithstanding the Force Majeure Event).

## 22 NON-SOLICITATION

22.1 In order to protect the legitimate business interests of Vissensa, the Customer covenants with Vissensa that it shall not (except with the prior written consent of Vissensa) employ or engage or otherwise facilitate the employment or engagement of any Restricted Person.

22.2 The Customer shall be bound by the covenant set out in clause 22.1 during the term of the Contract and for a period of six (6) months after termination or expiry of the Contract.

22.3 For the purposes of this clause 22, a "**Restricted Person**" shall mean any firm, company or person employed or engaged by Vissensa during the term of the Contract who has been engaged in the provision of the Services or the management of the Contract either as principal, agent, employee, independent contractor or in any other form of employment or engagement.

22.4 If the Customer commits any breach of this clause 22 then the Customer shall, on demand, pay to Vissensa a sum equal to one (1) year's basic salary or the annual fee that was payable by Vissensa to the Restricted Person plus the recruitment costs incurred by Vissensa in replacing such person. The parties confirm that these liquidated damages are reasonable and proportionate to protect the legitimate interest of Vissensa.

## 23 NOTICES

- 23.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 23.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - 23.1.2 sent by email, tagged with a 'read receipt', to the address specified in the Order.
- 23.2 Any notice shall be deemed to have been received:
- 23.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - 23.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
  - 23.2.3 if sent by email, at the time of transmission of an automated 'email read' receipt, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 23.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 23.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 24 GENERAL

### 24.1 Assignment and other dealings

- 24.1.1 Vissensa may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 24.1.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Vissensa.

24.2 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 24.2 shall not affect the validity and enforceability of the rest of the Contract.

24.3 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

24.4 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

## 24.5 **Entire agreement.**

24.5.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

24.5.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

24.5.3 Nothing in this clause shall limit or exclude any liability for fraud.

24.6 **Third party rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

24.7 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

24.8 **Precedence.** Should any of these Conditions conflict with the terms of the Order then the terms of the Order shall take precedence unless these Conditions expressly state otherwise.

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

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



**SCHEDULE**  
**DATA PROCESSING INSTRUCTIONS**

<b>Subject matter of processing:</b>	The Services purchased by the Customer and supplied by Vissensa pursuant to the Contract (which incorporates these Conditions).
<b>Duration of processing:</b>	For the duration of the Contract, subject to contrary agreement between the parties or the Customer instructing Vissensa to cease processing.
<b>Nature and purpose of processing:</b>	Collection, storage and use of personal data for the purposes of providing the Services, including in particular: <ul style="list-style-type: none"> <li>• the sharing of personal data with third party suppliers for the purpose of coordinating their provision of services to the Customer;</li> <li>• the customisation of computer hardware for use by the Customer, its staff and agents; and</li> <li>• accessing the Customer's personal data stored and processed on its systems insofar as necessary for Vissensa to provide technical support services.</li> </ul>
<b>Type of personal data:</b>	Personal data relating to the customer's staff, customers and agents.
<b>Categories of personal data:</b>	Name, postal address, telephone number, email address, job title, and such other categories of personal data as Vissensa may be required to process from time to time in order to supply the Services.

