

**SOFTCAT LIMITED**  
**TERMS & CONDITIONS FOR CUSTOMERS**

The following terms and conditions (“Terms”) apply to all transactions with Softcat Limited which are not covered by the Softcat Master Services Agreement and shall apply to the exclusion of all other terms and conditions, irrespective of the date of any alternative terms and conditions which may be sent to Softcat. These Terms shall become binding on the Customer on the earlier of: (i) An Order is accepted by Softcat; (ii) The Customer signing or agreeing in writing to an Order; (iii) the Customer agreeing these Terms in writing (which may include email or acceptance through EchoSign; (iv) the Customer paying any amount towards any item specified in the Customer Schedule; (v) Softcat delivering or installing (where applicable) any Product or Service; or (vi) the Customer using or accessing any Product or Service.

**1 Interpretation**

1.1 In these Terms, the following expressions shall have the meanings prescribed:-

<b>“Confidential Information”</b>	All information, technical data or know-how, (whether written, oral or by another means and whether directly or indirectly) relating to the disclosing party (“Disclosing Party”) whether created before or after the Date of this Agreement including, but not limited to, research, products, services, customers markets, software, developments, inventions, processes, designs, drawings, engineering, marketing or finances, which is reasonably deemed to be confidential or proprietary. Confidential Information includes the information of a Third Party that is in the possession of one of the parties hereto and is disclosed to the other party hereto in confidence. Confidential Information does not include information, technical data or know-how which: (i) is in the possession of the receiving party at the time of disclosure, as shown by the receiving party’s files and records immediately prior to the time of disclosure; or (ii) prior to or after the time the disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the receiving party, or (iii) is expressly approved in writing for release by the disclosing party or (iv) is independently developed by the receiving party without the use of any Confidential Information of the other party.
<b>“Consequential Loss”</b>	Without limitation, pure economic loss, loss of profit, loss of revenue, loss of data, loss of business and/or depletion of goodwill or anticipated savings, legal costs and any other indirect, consequential, special or punitive loss.
<b>“Consultancy Services”</b>	Specialist IT advisory and reporting work which Softcat may undertake for the Customer from time to time as set out in an Order.
<b>“Customer”</b>	The person, company or other body purchasing the Hardware, Software and/or Services from Softcat pursuant to an Order.
<b>“Customer Schedule”</b>	The document setting out the agreed charges and fees for Products and or Services and all other information relevant to the Order, which may take the form of Customer Schedule, Quotation, Order, or Services Proposal.
<b>“Hardware”</b>	The IT and/or computer and communications hardware to be supplied to the Customer by Softcat, as set out in an Order.
<b>“Intellectual Property Rights”</b>	Rights of any nature whatsoever, whether registered or unregistered including, without limitation, any patent, right in a design, copyright, trade mark, utility model, service mark, database right and other intellectual property right whether or not capable of registration as may exist anywhere in the world or in the future.
<b>“Maintenance”</b>	The support and maintenance service(s) to be provided to the Customer by Softcat as set out in the Order.
<b>“Order”</b>	A written or oral tender, offer, quotation, agreement, delivery relating to the supply of Products or the delivery of Services by or on behalf of Softcat.
<b>“Products”</b>	Any Hardware or Software or other goods supplied by Softcat to the Customer as set out in the Order.
<b>“Quotation”</b>	The written statement provided by Softcat to the Customer summarising the specific details of the Products, Services and/or Software to be supplied together with their price(s).
<b>“Services”</b>	The services to be supplied by Softcat to the Customer pursuant to an Order, which may include without limitation delivery, installation, implementation, Maintenance and Consultancy Services.
<b>“Services Proposal”</b>	The written statement provided by Softcat to the Customer summarising any specific terms of, or scope and price of Services to be provided.
<b>“Softcat”</b>	Softcat Limited, (Company No. 02174990) of Thames Valley Industrial Park, Marlow, Buckinghamshire SL7 1LW.
<b>“Software”</b>	The pre-packaged software or electronic licence supplied to the Customer by Softcat pursuant to an Order.

<b>"Third Party"</b>	Any person, company or other body not being Softcat or the Customer.
<b>"Working Day"</b>	Monday to Friday excluding public holidays in England and Wales.
<b>"Working Hours"</b>	The hours of 9.00 a.m. to 5.00 p.m. during a Working Day.

## **2 Ordering Products and Services**

- 2.1 These Terms shall apply to but shall not become a binding contract until if and when the Order is accepted by Softcat.
- 2.2 Until an Order has been accepted by an authorised representative of Softcat, all prices are subject to change without prior notice.
- 2.3 No Order which has been accepted by Softcat may be cancelled by the Customer unless written agreement is obtained from an authorised representative of Softcat, however the Customer shall remain liable for and shall indemnify Softcat in full for any costs, damages, losses, charges and expenses incurred by Softcat as a result of any cancellation of an Order.
- 2.4 Softcat may make any changes to the specifications of Products to conform with any applicable health and safety or legal requirement, or which do not materially affect their quality or performance.
- 2.5 Softcat's policy is to supply Products and Services only to business customers (i.e. those who are not private consumers). In accepting these Terms, the Customer warrants that it is not purchasing the Products or Services as a private consumer.
- 2.6 All descriptions, specifications, photographs, weights, dimensions, capacities, prices, performance ratings and other information quoted (whether online or in hard copy format) in Softcat portfolio or included in any sales literature, quotation, price list, acknowledgement of order, invoice or other document are to be deemed approximate only (except where stated in writing to be exact) and shall not form part of the contract or Order or Services Proposal other than as approximations).
- 2.7 Any typographical, clerical or other error or omission in any sales literature, portfolio, quotation, price list, acknowledgement of order, invoice or other document (whether hard or electronic copy) or information issued by Softcat shall be subject to correction by Softcat without liability.

## **3 Delivery**

- 3.1 Softcat shall use its reasonable endeavours to deliver the Products to the premises stated in the Order and to supply the Services by any delivery date estimated by Softcat and for the avoidance of doubt the Customer acknowledges that such delivery date is not guaranteed or of the essence of the Contract and Softcat shall in no circumstances be liable to the Customer for any losses, damages or charges (including but not limited to Consequential Losses) incurred by the Customer due to the late delivery of the Products or Services.
- 3.2 The Customer agrees that it will inspect the Products immediately upon the earlier of delivery or collection and in all cases shall inform Softcat in writing within 24 hours of delivery of any damage, shortages, defects or non-delivery of the Products and any failure to do so shall be deemed to constitute acceptance by the Customer of the Products.
- 3.3 If the Customer fails to take delivery of the Products or fails to give Softcat adequate delivery instructions at the time stated for delivery (save for circumstances beyond the Customer's reasonable control or by reason of Softcat's fault) then without prejudice to any other rights or remedies available to it Softcat may at its sole discretion:-
- 3.3.1 store the Products until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
- 3.3.2 sell the Products at the best price readily available and charge the Customer any shortfall below the price obtained under the Order.

## **4 Risk and Title**

- 4.1 Risk of damage to, or loss of, Products shall pass to the Customer at the earlier of:-
- 4.1.1 the time when the Customer collects the Products from Softcat's premises; or
- 4.1.2 the time at which Products are delivered to the Customer; or
- 4.1.3 the time when Softcat has attempted to deliver the Products to the Customer and any inability to complete such delivery is due to an inaction or action of the Customer.
- 4.2 Notwithstanding delivery of the Products, title in the Products shall not pass to the Customer until Softcat has received cleared and full payment for the price of the Products and all other Products and Services (if applicable) supplied to the Customer for which payment is then due.
- 4.3 Until such time as title in the Products pass to the Customer the Customer shall keep the Products separate from the Customer's other goods and those of any other third parties and properly stored, protected and insured and identified as the Company's property.
- 4.4 Until such time as title in the Products passes to the Customer, Softcat shall be entitled at any time to require the Customer to deliver up the Products to Softcat and if the Customer fails to do so immediately the Customer shall allow (or procure permission for) Softcat or its agents or representatives to enter upon the Customer's premises or any premises of any Third Party where the Products are stored and repossess the goods.

## **5 Services**

- 5.1 The following conditions shall apply to all Services provided by Softcat to Customers.
- 5.2 Softcat warrants and undertakes to the Customer that:
- 5.2.1 Softcat's employees, agents and sub-contractors will have the necessary skill and expertise to provide the Services described in the Services Proposal in accordance with good industry practice;
- 5.2.2 Softcat will provide independent and unbiased advice and will exercise reasonable skill and care in the provision of the Services.
- 5.2.3 The Services will be provided in a timely and professional manner.

- 5.3 Should the Customer become dissatisfied with the performance of any personnel assigned by Softcat to perform the Services, the Customer shall notify Softcat in writing with details of the unsatisfactory performance, and provided that Softcat is satisfied that the Customer's dissatisfaction is reasonable, Softcat shall re-assign personnel as soon as reasonably practicable.
- 5.4 Where Softcat agrees to provide Services, any estimate or indication by Softcat as to the number of man days or man hours required by Softcat to undertake a specific task shall be construed as being an estimate only.
- 5.5 Softcat shall in no circumstances be liable for a delay or for any other loss, damage or other cost of whatsoever nature (including without limitation Consequential Loss) suffered or incurred by the Customer where such estimate or indication is incorrect.
- 5.6 The charges agreed for the Services do not include travel, accommodation and subsistence expenses, nor the cost of time spent travelling incurred in the provision of the Services for which Softcat shall charge its then current rates.
- 5.7 Softcat will normally carry out the Services during Working Hours but may, on reasonable notice, require the Customer to provide access to the Customer's premises at other times.
- 5.8 At the Customer's request Softcat may agree to work outside Working Hours however this shall be subject to any reasonable additional charge that may be made by Softcat for complying with such request. Such charges shall be agreed in writing prior to commencement of any out of hours work.
- 5.9 All personnel required for the Services will be provided by Softcat and will be facilitated wherever possible by use of the Customer's own staff, however Softcat reserves the right to sub-contract the whole or any part of the Order to any person or company.

## **6 Support and Maintenance Services**

- 6.1 Where Softcat agrees to provide support and/or maintenance services in respect of Products supplied to the Customer, this will generally comprise reasonable assistance in the resolution of queries via a telephone call originated by the Customer during Working Hours for the agreed period (limited to first line support only). Except as provided under clause 8.3, if the query is unable to be resolved during a telephone call the Customer may be required to contact the distributor or Manufacturer of the Software or Hardware directly.
- 6.2 Where Softcat agrees to provide Maintenance in respect of the Software this shall be provided in accordance with Softcat's applicable Customer Schedule as provided to the Customer by Softcat.
- 6.3 Any additional Maintenance which Softcat agrees to supply to the Customer in relation to the Software or Hardware shall be provided on a time and materials basis at Softcat's then current rates for same unless otherwise agreed.

## **7 Installation & Delivery services**

- 7.1 Where Softcat agrees to assist a Customer with the installation of Hardware and/or Software or delivery of it, the Customer shall at its own expense and prior to the delivery of the Hardware or Software (as applicable) comply with Softcat's reasonable requests in order to allow Softcat to provide the installation and/or delivery services.
- 7.2 Personnel provided by Softcat will remain under the management and conditions of employment of Softcat or its nominated sub-contractor.
- 7.3 The Customer must provide reasonable access and assistance to Softcat's staff for the purpose of enabling Softcat's staff or officers or agents or subcontractors to fulfil their duties.

## **8 Consultancy Services & deliverables**

- 8.1 The terms of reference for the Consultancy Services to be performed by Softcat shall be as specified in the Services Proposal. The Customer may from time to time wish to vary the terms of reference. Under these circumstances, Softcat will use all reasonable endeavours to accommodate that variation. Any changes in the charges and/or timescales as a result of that variation shall be negotiated between the Customer and Softcat.
- 8.2 In respect of Software Asset Management, consultancy work is performed on a best endeavours basis and Softcat cannot guarantee the accuracy of any effective license position, solution and/or compliancy report.
- 8.3 Where progress reports are to be provided in accordance with the Services Proposal, Softcat shall render such reports at the time and in the manner specified or as otherwise agreed between Softcat and the Customer.

## **9 Pricing and Payment**

- 9.1 The price payable by the Customer for the supply of Product(s) or Services shall be that which is set out and agreed between the Customer and Softcat each time Softcat accepts an Order placed by the Customer and as specified in the Customer Schedule, Quotation or Services Proposal (unless varied by the Order and Softcat's acceptance).
- 9.2 Any increase in price for the Services shall be applied no more often than once per year after the first anniversary of the Effective Date and shall not exceed the increase in the UK RPI or CPI (whichever is lower) calculated over the preceding 12 months. Softcat shall notify the Customer in writing at least 90 days in advance of any increase in the price for the Services.
- 9.3 Unless otherwise agreed between the parties, invoices will be raised and dated by Softcat on the date of delivery of the Products or on commencement of the Services. Where both Products and Services are supplied against the same Order, a separate invoice will be raised for each of those two elements.
- 9.4 The Customer shall pay each invoice in full (subject to a bona fide dispute), together with any VAT at the appropriate rate and other expenses, to Softcat within 30 (thirty) days of the date of a valid invoice ("due date"). The time of payment shall be of essence.
- 9.5 If the Customer fails to pay any sums due by the due date or does not comply with an obligation imposed upon the Customer then, without prejudice to any other right or remedy available to Softcat, Softcat shall be entitled to withhold the supply of any Products or Services to be provided to the Customer by or on behalf of Softcat until such payment is made.

- 9.6 Softcat reserves the right to charge interest to the Customer on any sums, fees or other charges which are not paid on the due date and that interest may be charged from the date such payment falls due at the statutory rate of 8(eight) per cent per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis.
- 9.7 Softcat or its agent shall deliver the Products to any premises (whether in the United Kingdom or in any country) notified to Softcat by the Customer and for the avoidance of doubt the Customer shall be liable for any costs incurred by Softcat in relation to carriage, postage and packing and any other applicable taxes and duties.
- 9.8 The Customer shall not be entitled to make a set-off or counter-claim or claim a lien in respect of any amounts owed by Softcat and shall pay all amounts due without making a deduction of any kind.

## **10 Returns Policy**

- 10.1 Softcat normally allows Customers to return unopened Products, however all returns are at Softcat's sole and absolute discretion.
- 10.2 Under no circumstances will Softcat accept returns of opened Products unless those Products are faulty.
- 10.3 In circumstances where return of Product(s) is permitted by Softcat, it will issue a credit note on a Customer's account so that the invoice for the relevant Product is deemed cancelled. In the event a Customer has paid for goods in full, a refund will be granted.
- 10.4 The refund or replacement of faulty or defective Products is subject strictly to individual manufacturer's "Dead On Arrival" ("DOA") policies.
- 10.5 Individual manufacturer's DOA policies may be obtained by the Customer by contacting Softcat's customer service department.
- 10.6 The Customer must notify Softcat of a defect in the Products within the time limit provided for in the applicable manufacturer's DOA policy.
- 10.7 The Customer may be required to contact the manufacturer's technical department to troubleshoot and/or to obtain DOA authorisation which is to be retained by the Customer and presented to Softcat upon request.
- 10.8 The Customer is also required to make a note of any call/case reference numbers issued by the manufacturer to assist Softcat with return of the DOA product.
- 10.9 In the case where it is established that Products are faulty or defective Softcat's customer service department will arrange with the Customer to have the Products collected. In some instances the manufacturer's warranties require the Customer to contact the repair agent directly. If this is the case, the Customer will be so informed by Softcat's customer service department.
- 10.10 All parts and labour charges will be waived but the Customer is responsible for ensuring that the Products are returned to Softcat in their original packaging together with all disks, manuals and cables so as to ensure safe transit and ease of identification.
- 10.11 The external packaging must not be damaged or defaced so it is recommended the goods are re-boxed for transport.
- 10.12 The Products will be tested on receipt. If no fault is found the Products shall be returned to the Customer at the Customer's cost.
- 10.13 If a fault is found and an applicable manufacturer's DOA period is exceeded, then the Products will be repaired and/or replaced under the terms of the manufacturer's warranty.

## **11 Customer's Obligations**

- 11.1 The Customer shall:-
- 11.1.1 comply with and use the Services in accordance with these Terms and all applicable laws and shall not breach any obligations regarding acceptable use of the Services;
- 11.1.2 take all reasonable precautions to protect the health and safety of Softcat's personnel whilst at any location of the Customer;
- 11.1.3 allow Softcat to exercise a right of entry over all premises in the possession of or under the control of the Customer in order for Softcat to fulfil its obligations under these Terms;
- 11.1.4 be responsible for ensuring that its premises are ready to receive the items concerned;
- 11.1.5 promptly furnish Softcat with any information required by Softcat in order to provide the Products or the Services and ensure its employees or agents co-operate with Softcat;
- 11.1.6 in the event that the Customer fails for any reason to complete any purchase of any Products or Services within the period notified to the Customer at any time by Softcat, the Customer shall indemnify Softcat against any loss, damage or other cost of whatsoever nature suffered or incurred by Softcat reasonably relating to that failure on the part of the Customer;
- 11.1.7 if a Service is delayed other than through Softcat's fault, pay any sums required by Softcat in respect of idle-time incurred for the delay, including delay as a result of the Customer's agents or sub-contractors. Any agreed time schedules shall be deferred to a reasonable period of time or no less than the period of the delay;
- 11.1.8 the Customer shall promptly provide Softcat, on request, with all information and assistance that Softcat may reasonably require.
- 11.2 The Customer acknowledges that it is relying solely upon its own skill and judgement and not that of Softcat in determining the suitability of any Products and their fitness for any general or specific purpose. (This clause does not apply however in circumstances where Softcat has provided Services to a Customer and Softcat has been recommended a specific Product to the Customer in writing.)
- 11.3 The Customer warrants that any of its representatives, who enter into these Terms and any order with Softcat, have the Customer's authority to do so and that the Customer will take responsibility for any employee, ex-employee or other person who holds themselves out to be the authorised representative of the Customer.

## **12 Intellectual Property Rights and Software Licences**

- 12.1 The title to and the Intellectual Property Rights in the Software and in the media containing such Software does not pass to the Customer. The Customer is licensed to use such Software in accordance with these Terms and in accordance with the applicable software licence agreement's terms, and by entering into the Terms and Conditions the Customer agrees to comply with such terms.
- 12.2 The parties agree that all Intellectual Property Rights which existed prior to the date of the Order in relation to any items used in the performance of any Services shall remain the property of the existing owner of those Intellectual Property Rights.

12.3 Softcat shall own and be fully entitled to use in any way it deems fit any Intellectual Property or Intellectual Property skills, techniques, materials, concepts or know-how acquired, developed or used in the course of performing any Services and any improvements made or developed during the course of Services. For the avoidance of any doubt, this shall include any improvements or modifications to Software during the duration of the Order. Nothing herein shall be construed or shall give effect to any transfer of right, title or interest in Softcat's Intellectual Property Rights.

### **13 Documentation**

13.1 Save where the Customer's software licence with the manufacturer of the Software it has purchased permits such copying, the Customer shall not copy or reproduce in any way the whole or a part of the user manual or any other documentation relating to any Products or Services which is supplied to the Customer without Softcat's prior written consent.

### **14 Warranties**

14.1 To the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or general law into these Terms or relating to the Products or the Services are excluded. Notwithstanding this, any Products supplied under these Terms will conform substantively to any specifications given in relation to them and any Services provided under these Terms will be provided with reasonable skill and care.

14.2 Softcat warrants it has the right to provide or procure the provision of the Products and Services.

14.3 The only additional warranties which the Customer may receive are those which are given by the manufacturer or licensor (as the case may be) of such Hardware or Software to the Customer and are subject to any relevant limitations and exclusions imposed by such manufacturer or licensor (as the case may be). Softcat shall provide the Customer with details of such warranties upon request.

### **15 General Exclusions and Limitations of Liability**

15.1 Nothing in these Terms shall limit Softcat's liability to the Customer for liabilities which cannot be limited or excluded as a matter of law including:

15.1.1 death or personal injury resulting from the negligence of Softcat, its employees, agents or sub-contractors; and

15.1.2 fraud or fraudulent misrepresentation.

15.2 Softcat shall not in any circumstances be liable for Consequential Losses, even if a party has been advised of the possibility of such losses.

15.3 The total liability which Softcat shall owe to the Customer in respect of all claims under all Orders shall not exceed the purchase price paid by the Customer in respect of the Products to which the claim(s) relates or, in respect of any Services, the sum of £50,000.

15.4 No actions regardless of form arising out of these Terms may be brought by the Customer more than two years after the Customer becomes aware or should reasonably have become aware of the facts constituting the cause of action.

15.5 The Customer shall indemnify and keep Softcat indemnified in respect of any losses, costs, damages, claims and/or expenses incurred by Softcat due to any claims by any Third Party arising out of any use, access to or modification of the Customer's computer systems by Softcat on the Customer's instructions and/or use of any materials supplied to Softcat by the Customer. This indemnity shall survive termination or expiry of an Order to which it relates.

### **16 Force Majeure**

16.1 Neither party shall be liable to the other party in any manner whatsoever for any failure or any delay or for the consequences of any delay in performing its obligations under these Terms (save in respect of any obligation to pay money) due to any cause beyond the reasonable control of the party in question which for the avoidance of doubt and without prejudice to the generality of the foregoing shall include governmental actions, war, riots, civil commotion, fire, flood, epidemic, labour disputes including labour disputes involving the work force or any part thereof of the party in question, restraints or delays affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials, currency restrictions and acts of God.

### **17 Termination**

Softcat shall be entitled to terminate any Order and suspend all or any work on current or future deliveries and instalments of Products or the provision of any Services and on written notice to the Customer shall be entitled to cancel the undelivered or unperformed portion of the Order between Softcat and the Customer and deem that the whole of the price payable under the Order or any other agreement shall be payable immediately in the event of:

17.1.1 any distress, execution or other legal process being levied upon any of the Customer's assets;

17.1.2 the Customer entering into any arrangement or composition with its creditors, committing any act of bankruptcy or (being a corporation) an order being made or an effective resolution being passed for its winding up, except for the purposes of amalgamation or reconstruction as a solvent company, or a receiver, manager receiver, administrative receiver or administrator being appointed in respect of the whole or any part of its undertaking or assets;

17.1.3 the Customer ceasing or threatening to cease to carry on business;

17.1.4 any breach of these Terms by the Customer which it fails to remedy as required by Softcat;

17.1.5 non payment by the Customer of any amount due from it to Softcat, or other material breach of these Terms; or

17.1.6 Softcat reasonably apprehending that any of the events mentioned above is about to occur,

17.2 In the event of such termination Softcat shall, for the avoidance of doubt, be entitled to recover as damages from the Customer all reasonable costs which Softcat may sustain due to such termination.

17.3 In the event of such termination, should the Customer have failed to make payment in full for the Software, then the Customer shall immediately cease use of all Software (and any updates of same) and at its own expense, remove from all computers under its control all copies of the Software (and updates) and return or destroy them (certifying in writing to Softcat that such destruction has taken place).

- 17.4 For a period of six months following termination of the Order, the Customer shall on not less than two days notice permit authorised representatives of Softcat to enter its premises during normal business hours for the purposes of confirming that the Customer has complied with its post termination obligations.
- 17.5 The exercise of the rights conferred by this Clause 18 shall be without prejudice to any other right enjoyed by Softcat pursuant to these Terms or by law.
- 18 Severability**
- 18.1 If a provision in these Terms is held by any competent authority to be invalid or wholly or partly unenforceable such invalidity or unenforceability shall not in any way affect the remainder of these Terms.
- 19 Assignment**
- 19.1 The Customer will not be entitled to assign the benefit or delegate the burden of the Order without the prior written consent of Softcat which it may in its absolute discretion refuse.
- 19.2 Softcat will be entitled to assign the benefit or delegate the burden of the Order.
- 20 Sub-Contracting**
- 20.1 Softcat shall be free to sub-contract any or all of its rights and obligations under these Terms as it sees fit. The Customer will not be entitled to sub-contract all or any part of its obligations under these Terms without the prior written consent of Softcat. Softcat will not withhold such consent unreasonably.
- 21 Confidentiality**
- 21.1 Each party agrees with the other in respect of all information of a confidential nature disclosed in the course of the supply of Products or information as to the operation of the business of Softcat and information relating to the Products and for Softcat, any information about the Customer's business ("Confidential Information"):
- 21.1.1 to keep the Confidential Information in strict confidence and secrecy;
- 21.1.2 not to use the Confidential Information save for complying with its obligations under these Terms;
- 21.1.3 not to disclose the Confidential Information to a Third Party; and
- 21.1.4 to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its employees and others who of necessity need it in the performance of their duties as envisaged by the Order and in those circumstances to ensure that those employees and others are aware of the confidential nature of the Confidential Information; provided however that where a part of the Confidential Information is already or becomes commonly known in the trade (except through a breach of the obligations imposed under these Terms) then the foregoing obligations of confidentiality in respect of such part shall not apply or shall cease to apply (as the case may be).
- 21.2 This obligation of confidentiality shall survive the termination of any Order.
- 22 Non-Solicitation**
- 22.1 The Customer will not solicit, induce to terminate employment, or otherwise entice away whether directly or indirectly through another firm or company, any employee of Softcat professionally or otherwise directly associated with Softcat during the term of the Order or for 12 months thereafter.
- 22.2 For the avoidance of doubt, there is no restriction on the Customer employing any person who is employed or acting for Softcat where that person responds to a bone fide public advertisement for employees.
- 23 Amendment and Waiver**
- 23.1 No amendment of these Terms shall be binding unless executed in writing and signed by an authorised representative of Softcat and by an authorised representative of the Customer.
- 23.2 The failure of Softcat at any time to enforce a provision of these Terms shall not be deemed a waiver of such provision or of any other provision of these Terms or of Softcat's right thereafter to enforce any such provision(s).
- 24 Notices**
- 24.1 Any demand, notice or other communication shall be in writing and may be served by hand, prepaid first class post or facsimile.
- 25 Third Parties**
- 25.1 No Third Party may enforce any provision of these Terms by virtue of the Contracts (Rights of Third Parties) Act 1999.
- 26 Entire Agreement**
- 26.1 These Terms (and any licence proffered by or on behalf of the owner of the Products and/or Software supersedes all previous written or other documents or agreements (written or oral) relating to the subject matter of these Terms.
- 27 Law and Jurisdiction**
- 27.1 The formation, construction, performance, validity and all aspects whatsoever of these Terms shall be governed by English Law and the parties hereby submit to the exclusive jurisdiction of the English courts.