

CUSTOMER TERMS OF SERVICE

These Customer Terms of Service (these “Terms”) including the specific Service Terms listed below contains all the terms and conditions relating to the Services you have chosen to purchase from us and together they form an agreement between Hill Data Systems Limited of 39 Oldfield Road, Salisbury, SP1 3GQ, England (“**Hill Data**” “we,” “us,” or “our”) and you or the business entity you represent (“**Customer**” or “you”).

These Terms take effect when you receive an Order Confirmation or Service Description email from Hill Data, if earlier, when you use any of the Services (the “Effective Date”). You represent to us that you are lawfully able to enter into these Terms. If you are entering into these Terms for a business entity, such as the company you work for, you represent to us that you have legal authority to bind that entity. Please see clause 9 for definitions of certain terms used in these Terms.

1. SUPPLY OF SERVICES

1.1 Hill Data shall supply the Services that the Customer has chosen from the menu of Services on the Website, or any other Services that Hill Data may, from time to time, offer in accordance with these Terms and the specific Service Terms applying to each Service which jointly and severally form part of these Terms, namely:

- A. Consultancy, Support and Maintenance Service Terms
- B. Hardware and Software Supply Service Terms
- C. Development Service Terms

1.2 Hill Data shall use all reasonable endeavours to meet any performance dates specified in the Service Terms but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.

1.3 Hill Data shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Hill Data shall notify the Customer in any such event.

1.4 Hill Data warrants to the Customer that the Services will be provided using reasonable care and skill.

2. CUSTOMER'S OBLIGATIONS

2.1 The Customer shall:

- A. ensure that the terms of any Order are complete and accurate;

- B. co-operate with Hill Data in all matters relating to the Services;
 - C. provide Hill Data, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Hill Data;
 - D. provide Hill Data with such information and materials as Hill Data may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
 - E. obtain and maintain all necessary licences, permissions and consents which may be required before the date on which the Services are to start; and
- 2.2 If Hill Data's performance of any of its obligations under these Terms is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- A. Hill Data shall without limiting its other rights or remedies 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 to the extent the Customer Default prevents or delays Hill Data's performance of any of its obligations;
 - B. Hill Data shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Hill Data's failure or delay to perform any of its obligations as set out in this clause; and
 - C. the Customer shall reimburse Hill Data on written demand for any costs or losses sustained or incurred by Hill Data arising directly or indirectly from the Customer Default.

3. CHARGES AND PAYMENT

- 3.1 The Charges for the Services shall be as set out in Hill Data's then-current Price List or quote as supplied to the Customer. The frequency and method of invoice, pre-payment where applicable, and payment terms, shall be as set out in the Service Terms relating to the specific Service.
- 3.2 All amounts payable by the Customer under these Terms are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under these Terms by Hill Data to the Customer, the Customer shall, on receipt of a valid VAT invoice from Hill Data, pay to Hill Data such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

3.3 Without limiting any other right or remedy of Hill Data, if the Customer fails to make any payment due to Hill Data under these Terms by the due date for payment (**Due Date**), Hill Data shall have the right to charge interest on the overdue amount at the rate of eight per cent per annum above the then current Royal Bank of Scotland's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.

3.4 The Customer shall pay all amounts due under these Terms in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Hill Data in order to justify withholding payment of any such amount in whole or in part. Hill Data may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Hill Data to the Customer.

4. INTELLECTUAL PROPERTY RIGHTS

4.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Hill Data.

4.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights, the Customer's use of any such Intellectual Property Rights is conditional on Hill Data obtaining a written licence from the relevant licensor on such terms as will entitle Hill Data to license such rights to the Customer.

5. CONFIDENTIALITY

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under these Terms, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause shall survive termination of these Terms.

6. LIMITATION OF LIABILITY:

- 6.1 Nothing in these Terms shall limit or exclude Hill Data's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; fraud or fraudulent misrepresentation; or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 6.2 Subject to clause 6.1, Hill Data shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with these Terms; and Hill Data's total liability to the Customer in respect of all other losses arising under or in connection with these Terms, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the amounts paid under these Terms for Services ONLY (specifically excluding the value of any Hardware or Software supplied) in the preceding 12 months.
- 6.3 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from these Terms. This clause shall survive termination of these Terms.

7. TERMINATION

- 7.1 Termination for Convenience. You may terminate these Terms or a set of Service Terms where such termination is possible under this Clause, for any reason by providing us notice in writing. We may terminate these Terms for any reason by providing you 30 days' advance notice.
- 7.2 Termination for Cause.
- A. By Either Party. Either party may terminate these Terms including any specific Service Terms for cause upon 30 days advance notice to the other party if there is any material default or breach of these Terms by the other party, unless the defaulting party has cured the material default or breach within the 30 day notice period.
 - B. By Us. We may also terminate these Terms immediately upon notice to you (i) for cause, if you fail to pay any amount due under these Terms under these Terms on the due date for payment (ii) if our relationship with a third party partner who provides software or other technology we use to provide the Services expires, terminates or requires us to change the way we provide the software or other technology as part of the Services, (iii) if we believe providing the Services could create a substantial economic or technical burden or

material security risk for us, (iv) in order to comply with the law or requests of governmental entities, or (v) if we determine use of the Services by you or our provision of any of the Services to you has become impractical or unfeasible for any legal or regulatory reason.

8. CONSEQUENCES OF TERMINATION

8.1 On termination of any Services under these Terms for any reason:

- A. You remain responsible for all Charges you have incurred through to the date of termination, including Charges for in-process tasks completed after the date of termination;
- B. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, including the right to claim damages in respect of any breach of any Contract which existed at or before the date of termination or expiry; and
- C. Clauses of these Terms which expressly or by implication have effect after termination shall continue in full force and effect.

9. GENERAL

9.1 Force majeure:

Hill Data shall not be liable to the Customer as a result of any delay or failure to perform its obligations under these Terms as a result of any cause beyond our reasonable control, including strikes, lock-outs or other industrial disputes (whether involving the workforce of Hill Data or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

9.2 Assignment and subcontracting: Hill Data may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under these Terms and may subcontract or delegate in any manner any or all of its obligations under these Terms to any third party or agent. The Customer shall not, without the prior written consent of Hill Data, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under these Terms.

9.3 Notices: Any notice or other communication required to be given to a party under or in connection with these Terms shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by email to the other party's confirmed email address. This clause shall not apply to the



service of any proceedings or other documents in any legal action. "Writing" shall include email, however as delivery of email is not guaranteed, any material notice affecting these Terms should be sent in hard copy as well as by email.

- 9.4 **Waiver:** A waiver of any right under these Terms is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under these Terms or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under these Terms are cumulative and do not exclude rights provided by law.
- 9.5 **Entire Agreement:** These Terms and any applicable Service Terms together constitute the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Hill Data which is not set out in these Terms.
- 9.6 **Severance:** If a court or any other competent authority finds that any provision of these Terms (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of these Terms shall not be affected. If any invalid, unenforceable or illegal provision of these Terms would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 9.7 **No partnership:** Nothing in these Terms is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 9.8 **Third parties:** A person who is not a party to these Terms shall not have any rights under or in connection with it.
- 9.9 **Variation:** We may modify these Terms and any Service Terms at any time by posting a revised version on the Website or by otherwise notifying you in accordance with these Terms. The modified Terms will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Services after the effective date of any modifications to

these Terms, you agree to be bound by the modified Terms. It is your responsibility to check the Website regularly for modifications to these Terms.

9.10 Governing law and jurisdiction: These Terms, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

9.11 Definitions. In these Terms, the following definitions apply:

Charges: the charges payable by the Customer for the supply of the Services;

Terms: these Terms as amended from time to time;

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

Order: the Customer's order for Services as evidenced by Hill Data's Order Confirmation email and/or Service Description document provided to the Customer;

Order Confirmation: an email sent by Hill Data to the Customer confirming which Services have been ordered, together with a Service Description if required, and delivering a copy of these Service Terms. On receipt of the Order Confirmation all Orders are final;

Price List: a document comprising Hill Data's current pricing structures for all Services offered, a copy of which will be provided to the Customer prior to the Order Confirmation;

Services: the services, including for the avoidance of doubt the supply of Hardware and Software, supplied by Hill Data to the Customer as set out in the relevant Service Terms;

Service Description: where it deems necessary, including where Development Services form part of an Order, Hill Data may in its discretion generate a Service Specification to detail the deliverables in the Order and any other details needed;

Website: means our site at www.hilldatasystems.co.uk



Any reference to a day or days refers to business days - that is any day which is not a weekend or public or bank holiday in the United Kingdom.

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

A. CONSULTANCY, SUPPORT AND MAINTENANCE SERVICE TERMS

1. General

- 1.1 The following Service Terms apply only to the Consultancy, Support and Maintenance Services specified below. In the event of a conflict between these Service Terms and Hill Data's Customer Terms, the provisions of these Service Terms will apply, but only to the extent of such conflict.
- 1.2 These Service Terms take effect when you receive an Order Confirmation or Service Description email from Hill Data, if earlier, when you use any of the Services (the "Effective Date"). You represent to us that you are lawfully able to enter into these Service Terms. If you are entering into these Service Terms for a business entity, such as the company you work for, you represent to us that you have legal authority to bind that entity.

2. Support Services

- 2.1 Hill Data shall provide the Support Services to the Customer in accordance with the provisions of this Clause 2 and Annex 1 during the hours of 9 am to 5 pm Monday to Friday and at other times by reasonable request.
- 2.2 Hill Data shall use all due and proper care to ensure that the manner in which it provides the Support Services does not have any adverse effects upon the name, reputation, image or business of the Customer.
- 2.2 Hill Data shall use reasonable endeavours to respond to the Customer's service query within one business day.
- 2.4 Hill Data may provide On-site Support where agreed in advance with the Customer.

3. Hill Data's Obligations

- 3.1 Hill Data shall perform its obligations under these Service Terms in a reasonable and timely manner in accordance with the provisions of these Service Terms. Hill Data operates a support request prioritisation policy whereby the most urgent issues (in Hill Data's determination) will be resolved first. This will on rare occasions result in delays to our response, but you will be notified if a delay is likely.
- 3.2 Hill Data shall provide the Customer with such information and advice in connection with the Support Services and their provision as the Customer

may, from time to time, reasonably require both before and during the provision of the Support Services.

- 3.3 Hill Data shall use reasonable endeavours to keep the Customer informed of any special requirements (including, but not limited to, legislative requirements) applicable to the delivery of the Support Services. To the extent necessary and appropriate, Hill Data and the Customer shall promptly take steps to comply with any such requirements. These steps shall not otherwise alter these Service Terms in any way.

4. Customer's Obligations

- 4.1 The Customer shall provide Hill Data with such information in connection with the Support Services and their provision as Hill Data shall reasonably require both before and during the provision of the Support Services.
- 4.2 The Customer shall act in accordance with any and all reasonable instructions issued by Hill Data in relation to the Support Services. Hill Data shall not be liable for any failure to provide any of the Support Services which arises out of the Customer's failure to follow any such instructions.
- 4.3 The Customer shall consult with Hill Data with respect to any new computer hardware, Devices and/or software which it intends to procure where such hardware, Devices and/or software is to be added to the Support Services.
- 4.4 The Customer shall allow Hill Data (where On-site Support is required and where applicable) at all reasonable times access to the Premises for the purpose of providing the Support Services.
- 4.5 Where the Customer wishes to benefit from Third Party Services resold by Hill Data, the Customer must accept the Service Provider's own terms of business. Hill Data will provide a link to the Customer to sign up for the Third Party Services directly.

5. Charges and Payment

- 5.1 The Customer shall pay the Charges to Hill Data in accordance with this Clause 5 and Annex 1 as consideration for the Support Services.
- 5.2 Except where as expressly stated Charges are payable in advance for particular Support Services, all Charges otherwise invoiced shall be paid within 21 days of the date of Hill Data's invoice to the account details

specified on the invoice, without any set-off, withholding or deduction whatsoever.

6 Definitions

In these Service Terms, the following additional definitions apply:

Third Party Services	means certain Services provided by Service Providers where Hill Data is acting merely as a reseller and where the Customer has accepted the Service Provider's own terms and conditions directly;
Device	means the computer hardware, device, network or software which may be maintained and supported by Hill Data under these Service Terms;
Premises	means the Customer's premises at which the Support Services (and in particular On-site Support) are to be provided;
Pre-pay Support	means Support Services purchased in advance in blocks of time as set out in Annex 1;
On-site Support	means the scheduled site visits to the Premises made by Hill Data for the purposes of providing the Support Services;
Service Provider	means a provider of Third Party Services;
Support Services	means the IT support services to be provided by Hill Data to the Customer as set out in Annex 1 which shall include Ad-Hoc, Pre-Pay and Fixed-Price Support;
Fixed-Price Support	means the remote support service package set out in Annex 1.

ANNEX 1 -

CONSULTANCY, SUPPORT AND MAINTENANCE SERVICE TERMS AND CHARGES

1) The Ad-Hoc and Pre-Pay Support packages can be used for:

- Day-to-Day support
- Software Installations
- Admin tasks (user creation etc.)
- Hardware installs and configuration
- Projects
- Development
- Consultancy
- Site Surveys
- Remote & On-Site Support
- Other services as agreed, in writing, in advance by Hill Data Systems

a) Ad-Hoc Support package

- i) Remote Ad-Hoc support is billed by the minute.
- ii) This package may include On-site Support, which if required, carries a minimum Charge of 30 minutes' time within postcodes beginning with SP, 2 hours' time for all other areas.
- iii) The Charges per minute for Ad-Hoc Support are set out in the Price List.

b) Pre-Pay Support package

- i) Pre-Pay Support is payable in advance by the Customer in multiples of 4 hours
- ii) Once purchased, Pre-Pay Support time is non-refundable but must be activated by first use within 12 months of purchase. Any unused minutes may be used at the Customer's convenience but the remainder will expire if a period of more than 12 months elapses since last use.
- iii) This package may include On-site Support, which if required, carries a minimum Charge of 30 minutes' time within postcodes beginning with SP, 2 hours' time for all other areas.
- iv) The Charges per hour for Pre-Pay Support are set out in the Price List.

2) The Fixed-Price Support package can be used for:

- Day-to-Day Remote Support

- Software Installations
- Admin tasks (user creation etc.)
- Other services as agreed, in writing, in advance by Hill Data Systems

The following are explicitly excluded from Fixed-Price Support:

- Software Installations not relating to support issues
- Hardware installs and configuration
- Projects
- Development
- Consultancy
- Site Surveys
- On-Site Support

a) Fixed-Price Support package

- i) Fixed-Price Support is provided remotely for the Customer and the device specified in the Customer's Order.
- ii) This does NOT include project or planned work such as software upgrades or installs.
- iii) This package does NOT include On-site Support which if required should be ordered under Ad-Hoc or Pre-Pay Support above;
- iv) The Charges per Device per month for Fixed-Price Support are set out in the Price List.
- v) This package is available only for a minimum term of 12 months, payable in advance each month or annually.

3) Device Monitoring service

- a) This service provides remote monitoring of a Device (PC, Server, or Network) and the notification of the Customer if a problem arises with the Device.
- b) The Charges per month for Device Monitoring are as set out in the Price List and payable in advance each month.

B. HARDWARE AND SOFTWARE SUPPLY SERVICE TERMS

1. General

- 1.1 The following Service Terms apply only to the Hardware and Software Supply Services specified below. In the event of a conflict between these Service Terms and Hill Data's Customer Terms, the provisions of these Service Terms will apply, but only to the extent of such conflict.
- 1.2 These Service Terms take effect when you receive an Order Confirmation or Service Description email from Hill Data, if earlier, when you use any of the Services (the "Effective Date"). You represent to us that you are lawfully able to enter into these Service Terms. If you are entering into these Service Terms for a business entity, such as the company you work for, you represent to us that you have legal authority to bind that entity.

2. Orders

Orders, if accepted by Hill Data, shall be subject to these Service Terms and to the availability of all relevant Products and Services.

3. Quotations

- 3.1 All quotations are deemed to be subject to these Service Terms and shall be valid for 14 days unless otherwise stated on the quotation. Any standard prices quoted by Hill Data on the Website or electronically to the Customer may be subject to change at any time prior to the entry by Hill Data and the Customer into these Service Terms.
- 3.2 Hill Data reserves the right to withdraw or amend any Order before delivery where:
 - 3.2.1 Products or Services are withdrawn without notice by the Supplier;
 - 3.2.2 the Supplier increases the charges for Products or Services to Hill Data; or
 - 3.2.3 specifications of Products or Services are varied by the Supplier.

4. Product Specifications

- 4.1 Hill Data shall use reasonable endeavours to advise the Customer of variations to Product specifications following formal notification to Hill Data of such variations by the Supplier.

4.2 Where changes to Product specifications significantly alter the price or fitness for purpose of the Products Hill Data and the Customer shall agree upon such changes in writing or arrange for the supply of alternative Products.

4.3 Changes to Product specifications shall not provide grounds for cancellation of Customer Orders unless such cancellation is agreed to in writing by Hill Data and the Customer.

5. Hardware and Software

5.1 The Products as defined in the Customer's Order shall be supplied by Hill Data on the terms and conditions of use for such Products as defined by the Suppliers at the time of delivery.

5.2 Hill Data gives no warranty to the Customer in respect of Product that is purchased by Hill Data from a Supplier for resale to the Customer but shall take reasonable steps to assist Customer in pursuing warranty claims against the relevant Supplier.

5.3 Unless otherwise agreed between the parties, Hill Data shall only deliver non-modifiable and executable run-time versions of Software.

5.4 The Customer must comply with the terms of the Supplier's software licenses which form a contract between the Customer and the Supplier directly. Hill Data is not a party to any such licenses.

6. Delivery and Acceptance

6.1 Unless it is agreed otherwise delivery shall be arranged by Hill Data direct from the Supplier to the Customer's address as specified in the Order.

6.2 Hill Data shall not be liable for any shortfalls in delivery or variation from Product specification on delivery unless a claim in writing is made by the Customer within 7 days of delivery.

6.3 In circumstances where Hill Data's courier has attempted to physically deliver Products to the Customer and the Customer is unable or unwilling to accept such delivery, the Customer will be charged for the cost of the failed delivery in addition to any and all subsequent attempts. If the Customer is unable to accept delivery, a new date shall be set by mutual agreement of the parties. If the Customer is unwilling to accept delivery, the parties shall seek to vary these Service Terms as appropriate by mutual agreement or the Customer shall seek to terminate these Service Terms in accordance with these Service Terms.

- 6.4 On delivery the Customer shall carefully inspect the Products and shall promptly notify Hill Data in writing (and in any event within 48 hours) of any defects or exclusions.
- 6.5 If, as a result of defects or exclusions in a delivery of Products or the provision of Services, the Customer does not notify Hill Data under 6.4 above and subsequently uses the Hardware or Software or the results of Services provided without prior agreement as to any remedial work on the part of Hill Data then the Customer is deemed to have accepted the same.

7. Return of Products

- 7.1 The return of Products shall be at the sole discretion of Hill Data but in any circumstance where Hill Data agrees to accept return of Products for any reason then the Customer shall:
- 7.1.1 advise Hill Data within 3 days from the date of delivery of Products of the reason(s) for the return of Products;
 - 7.1.2 obtain permission from Hill Data prior to any return of Products;
 - 7.1.3 complete and return the Products to Hill Data within 7 days from the date of delivery;
 - 7.1.4 properly pack the Products in the original packing and include a detailed packing list;
 - 7.1.5 return the Products in the condition in which they were received to arrive at Hill Data within 14 days from the date of delivery of Products by Hill Data; and
 - 7.1.6 take no action to effect any warranties that may cover the Products.
- 7.2 In all other circumstances except for where a Product is faulty, Hill Data may be forced to pass on to the Customer any restocking Charge levied by the Supplier in respect of return of Products, which may be up to 50% of the value of the Products, and the Customer shall pay the same to Hill Data within 21 days of invoice.

8. Title and Risk

- 8.1 Risk of loss or damage in respect of any tangible item shall pass to the Customer on delivery or collection of the item by the Customer or his agent.

- 8.2 The legal and beneficial ownership of Products and/or associated material supplied as part of Products and/or Services shall remain with Hill Data until payment in full in respect of all such Products and associated material supplied as part of Products and/or Services has been received by Hill Data in accordance with these Service Terms.
- 8.3 Until such payment is received in full Hill Data may without prejudice to any of its rights recover or resell any of the Products and/or associated material and may enter upon the Customer's premises by its servants or agents for that purpose.
- 8.4 Where a licence shall be granted by a Supplier and/or Hill Data to the Customer then the Customer shall not have the benefit of the licence until payment in full has been received by Hill Data.

9. Charges

- 9.1 Charges specified in these Service Terms do not include Value Added Tax which, if applicable, shall be added at the rate in force at the time of supply.
- 9.2 Unless otherwise specified in these Service Terms all Products shall be invoiced on the date of despatch to the Customer or collection of Products by the Customer or his agent; and
- 9.3 Without prejudice to any other rights Hill Data may have in respect of any failure by the Customer to pay the charges or other monies payable pursuant to these Service Terms, Hill Data may charge interest at the rate 8% above the base rate of the Bank of England from time to time in force, after as well as before judgement on any amount due from the Customer to Hill Data from the date due for payment until payment is received.

10. Payment

- 10.1 The time stipulated for payment shall be of the essence of these Service Terms and failure to pay within the period specified shall, in the absence of a written explanation from the Customer that has been duly accepted by Hill Data, render the Customer in material breach of these Service Terms.
- 10.2 Invoices shall be payable in Pounds Sterling within any other period stated for a particular charge or invoice but in any event no later than 21 days of the invoice date.

10.3 If payment of any invoice is otherwise due it shall become automatically due immediately on the commencement of any act or proceeding in which the Customer's solvency is involved.

11. Customer's Obligations

11.1 During the continuance of these Service Terms the Customer shall:

11.1.1 furnish Hill Data promptly upon receipt of a request such information as Hill Data may reasonably require for the supply of the Products or the provision of the Services;

11.1.2 nominate prior to the provision of any of the Services under these Service Terms an authorised representative to be its prime point of contact with Hill Data during the continuance of these Service Terms;

11.1.3 ensure the accuracy and validity of all data and technical information provided to Hill Data;

11.2 Hill Data and the Customer shall indemnify each other and keep each other fully and effectively indemnified against any loss of or damage to any property or injury to or death of any persons caused by negligent act or omission, wilful misconduct or breach of contract by the other, its employees or agents.

12. Performance

12.1 Hill Data shall use its reasonable endeavours to procure that the Supplier in each case complies with any day or dates for despatch or delivery of Products and for the supply of Services as stated in these Service Terms. Unless these Service Terms contains express provisions to the contrary, such dates shall constitute only statements of expectation and shall not be binding and any failure to meet specific dates shall not constitute a breach of these Service Terms.

13. Proprietary Rights

13.1 Unless otherwise specified in these Service Terms, copyright and all other proprietary rights in the Products and associated documentation and any documentation supplied in respect of the Services shall remain vested in Hill Data or, for third party Products, in the Supplier.

13.2 In respect of software where the proprietary rights are vested in Hill Data only a non-exclusive, non-transferable licence for the purpose for which the software has been made available to the Customer is deemed to be granted by Hill Data and only then on condition that the Customer fulfils all of their relevant obligations arising out of these Service Terms.

14. Cancellation of Order

The Customer shall not be entitled to cancel any Order for Product(s) and/or Service(s) or any part of an Order or Service except upon terms which reimburse Hill Data for loss of Profit and all costs, charges and expenses incurred by Hill Data in respect of the Product(s) and/or Service(s) up to the date of receipt by Hill Data of written notification of cancellation from the Customer.

15 Definitions

In these Service Terms, the following additional definitions apply:

- “Supplier” means any supplier of Products to Hill Data that may be supplied to the Customer under these Service Terms;
- “Products” means the computer hardware or software or other goods that may be supplied to the Customer by Hill Data under these Service Terms.

C. DEVELOPMENT SERVICE TERMS

1. General

- 1.1 The following Service Terms apply only to the Development Services specified below. In the event of a conflict between these Service Terms and Hill Data's Customer Terms, the provisions of these Service Terms will apply, but only to the extent of such conflict.
- 1.2 These Service Terms take effect when you receive an Order Confirmation or Service Description email from Hill Data, if earlier, when you use any of the Services (the "Effective Date"). You represent to us that you are lawfully able to enter into these Service Terms. If you are entering into these Service Terms for a business entity, such as the company you work for, you represent to us that you have legal authority to bind that entity.

2. Development Services

- 2.1 With effect from the Commencement Date, Hill Data shall provide the Development Services set out in the Service Description to the Customer with reasonable skill and care,
- 2.2 Hill Data shall act in accordance with all reasonable instructions given to it by the Customer provided such instructions are in accordance with the Service Description which will form part of these Service Terms.
- 2.3 Hill Data shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Development Services.
- 2.4 Hill Data shall use reasonable endeavours to accommodate any reasonable changes to the Development Services that may be requested by the Customer, subject to the Customer's acceptance of any related reasonable changes to the Charges that may be due as a result of such changes.

3. Intellectual Property Rights

- 3.1 Hill Data shall retain the ownership of any and all Intellectual Property Rights that may subsist in anything it develops in the course of providing the Development Services. Throughout these Service Terms, Hill Data shall be deemed to automatically grant a royalty-free, non-exclusive licence of any and all such rights to the Customer to use the same in accordance with these Service Terms.
- 3.2 In complying with the provisions of sub-Clause 3.1, Hill Data undertakes to execute any such agreements and perform any such actions that may be necessary to put such licences into effect and

shall exclusively bear any costs associated with it.

4. **Customer's Obligations**

- 4.1 The Customer shall use all reasonable endeavours to provide all relevant information to Hill Data that is necessary for the provision of the Development Services.
- 4.2 The Customer may, from time to time, issue reasonable instructions to Hill Data in relation to Hill Data's provision of the Development Services. Any such instructions should be compatible with the Service Description accepted by the Customer which forms part of these Service Terms.
- 4.3 In the event that Hill Data requires the decision, approval, consent or any other communication from the Customer in order to continue with the provision of the Development Services at any time, the Customer shall provide the same in a reasonable and timely manner.
- 4.4 If the nature of the Development Services requires that Hill Data has access to the Customer's premises or any other location, access to which is lawfully controlled by the Customer, the Customer shall ensure that Hill Data has access to the same at the times to be agreed between Hill Data and the Customer as required.
- 4.5 Any delay in the provision of the Development Services resulting from the Customer's failure or delay in complying with any of the provisions of this Clause shall not be the responsibility or fault of Hill Data.

5. **Warranty**

- 5.1 Hill Data warrants that the product of the Development Services will be in accordance with the Customer's specification for 6 months following completion of the Development Services.
- 5.2 If any bugs or defects in the product of the Development Services appear during the Warranty period set out above Hill Data shall rectify such bugs or defects at no cost to the Customer.

6. **Confidentiality**

- 6.1 Each Party undertakes that, except as expressly provided here in these Service Terms, or as authorised in writing by the other Party, it shall, at all times during these Service Terms and for 5 years after their termination:
 - 6.1.1 keep confidential all Confidential Information;
 - 6.1.2 not disclose any Confidential Information to any other party;

- 6.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to these Service Terms;
 - 6.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 6.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of this Clause.
- 6.2 Either Party may:
- 6.2.1 disclose any Confidential Information to any sub-contractor or supplier, any governmental authority or regulatory body or any employee on a "need to know" basis and to such extent only as is necessary for the purposes contemplated by these Service Terms or as required by law; and
 - 6.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of these Service Terms, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.
- 6.3 The provisions of this Clause shall survive termination of these Service Terms for any reason.

7. **Sub-Contracting**

- 7.1 Hill Data shall be entitled to perform any Development Services through suitably qualified and skilled sub-contractors.

8. **Time**

- 8.1 The Parties agree that the times and dates referred to in these Service Terms or in the Customer's specification are for guidance only and are not of the essence of these Service Terms.