

# Kascade: Redstor Terms and Conditions

1	<b>INTERPRETATION</b>	
	The following definitions and rules of interpretation apply in these Conditions.	
1.1	<b>Definitions:</b>	
	<b>Affiliates</b>	means any person controlling, controlled by, or under common control with another person.
	<b>Backup Services</b>	means any backup services provided by Redstor, as further detailed in the Quotation.
	<b>Business Day</b>	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
	<b>Claims</b>	all claims, Losses (excluding punitive and exemplary damages), causes of action, costs, judgements and awards whether arising under contract, tort or other law.
	<b>Commencement Date</b>	the date specified in the Quotation.
	<b>Conditions</b>	these terms and conditions as amended from time to time in accordance with clause 16.5.
	<b>Contract</b>	the contract between the Supplier and the Customer for the supply of Redstor Services in accordance with these Conditions.
	<b>Control</b>	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression <b>change of control</b> shall be construed accordingly.
	<b>CPI</b>	the Consumer Prices Index published by the Office for National Statistics.
	<b>Customer</b>	the person or firm who purchases Redstor Services from the Supplier.
	<b>Designated Representative</b>	has the meaning set out in clause 15.
	<b>Dispute</b>	has the meaning set out in clause 15.
	<b>Dispute Notice</b>	the fees payable by the Customer for the Redstor Services, as described in the Quotation and as may be adjusted from time to time in accordance with the terms of this Contract.
	<b>Fees</b>	shall be the initial term set out in the Quotation.
	<b>Initial Term</b>	patents, 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.
	<b>Intellectual Property Rights</b>	the licence granted to the Customer by Redstor to use Software in accordance with the Redstor Terms, as further detailed in the Quotation.
	<b>Licence</b>	losses, liabilities, damages, costs, charges, awards, compensation, fines, losses, orders, penalties, disbursements, payments and expenses.
	<b>Losses</b>	the combination of a password, encryption key and user name which will give the Customer access to their backups on the platform operated by Redstor.
	<b>Pass Phrase</b>	the Quotation to which these Conditions are attached.
	<b>Quotation</b>	Redstor Limited, registered in England and Wales with company number 3556110 and whose registered office is at Fourth Floor, Abbots House, Reading, Berks, RG1 3BD.
	<b>Redstor</b>	The Redstor products and/or services purchased by the Customer, as further detailed in the Quotation.
	<b>Redstor Services</b>	any licence agreement, data processing agreement and/or other agreement, terms or policies that apply to the use of the Software and/or Redstor Services including (but not limited to) any such terms set out or referred to in the Quotation, as may be amended by Redstor from time to time.
	<b>Redstor Terms</b>	all hardware and software operated by Redstor to provide the Redstor Services.
	<b>Service Platform</b>	the software used and provided by Redstor to enable use of the Redstor
	<b>Software</b>	

		Services, as updated by Redstor from time to time.
	<b>Supplier</b>	KASCADE. Kascade is a trading name of ComputerWorld (Systems) Limited, registered in England and Wales with company number 04625112 and whose registered office is at Apex House, Turner Drive, Westerleigh Business Park, Yate, Bristol, England, BS37 5YX. Throughout this Agreement, references to Kascade shall also include Computerworld (Systems) Limited. Computerworld (Systems) Limited and Kascade are used interchangeably to represent our business and services.
	<b>User Manual</b>	all documentation provided or made available to the Customer in relation to the use of the Redstor Services by Redstor, from time to time.
1.2	<b>Interpretation:</b>	
	1.2.1	A reference to legislation or a legislative provision:
	1.2.1.1	is a reference to it as amended, extended or re-enacted from time to time; and
	1.2.1.2	shall include all subordinate legislation made from time to time under that legislation or legislative provision.
	1.2.2	Any words following the terms <b>including, include, in particular, for example</b> 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.
	1.2.3	A reference to <b>writing</b> or <b>written</b> includes email.
	<b>2 BASIS OF CONTRACT</b>	
	2.1	The Quotation constitutes an irrevocable offer by the Customer to purchase the Redstor Services from the Supplier in accordance with this Contract.
	2.2	The Quotation shall only be deemed to be accepted when the Supplier issues written acceptance of the Quotation at which point and on which date the Contract shall come into existence.
	2.3	Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Redstor Services described in them. They shall not form part of the Contract or have any contractual force.
	2.4	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.
	2.5	Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 15 Business Days from its date of issue.
	<b>3 TERM</b>	
	3.1	This Contract shall commence on the Commencement Date and shall continue unless terminated earlier in accordance with its terms, for the Initial Term. Thereafter, it shall renew automatically for successive terms equal to the duration of the Initial Term (each a <b>Successive Term</b> ) commencing on the day after the expiry of the Initial Term or relevant Successive Term (as the case may be) unless:
	3.1.1	the Customer gives to the Supplier 60 days' advance notice to terminate the Contract; or
	3.1.2	the Supplier gives to the Customer 15 days' advance notice to terminate the Contract, such that the Contract shall terminate on the final day of the then current Initial Term or Successive Term (as the case may be).
	<b>4 REDSTOR SERVICES</b>	
	4.1	Subject to payment by the Customer of all Fees and the Customer's compliance with the terms of the Contract and the Redstor Terms, the Supplier shall procure the provision of the Redstor Services to the Customer.
	4.2	The Supplier shall use all reasonable endeavours to:
	4.2.1	assist the Customer in their use of the Redstor Services using reasonable skill and care in doing so; and
	4.2.2	provide first line support to the Customer and where the Supplier is unable to resolve the issue, the Supplier shall escalate the matter to Redstor for resolution.
	4.3	The Redstor Services shall be supplied to the Customer under the Redstor Terms and the Customer agrees to be bound directly to Redstor by the Redstor Terms and agrees to comply at all times with the Redstor Terms when using the Redstor Services.
	4.4	Subject to clause 12.4, the Supplier shall have no liability whatsoever to the Customer for any Claims arising from or in connection with the Redstor Services and/or the Redstor Terms.
	4.5	The Supplier gives no warranty in relation to the Redstor Services and any warranty which may otherwise be implied to have been given by the Supplier by law, trade custom, practice or course of dealing is hereby expressly excluded.
	4.6	Redstor shall be solely responsible for the provision of the Redstor Services.
	4.7	The Redstor Terms include all warranties to be provided by Redstor in relation to the Redstor Services.
	4.8	The Customer acknowledges and agrees that:
	4.8.1	Redstor may temporarily suspend the Redstor Services because of an emergency or for operational reasons, maintenance or improvements. The Redstor Services will be restored as soon as possible. During such suspension of the Redstor Services, neither the Supplier nor Redstor shall be liable for any failure to provide the Redstor Services. The Supplier shall use its reasonable endeavours to provide the Customer with as much prior written notice as is reasonably possible;

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- 4.8.2 Redstor may modify the Redstor Terms for any reason including, without limitation, as a result of changes made to the Software by Redstor's licensors; and
- 4.8.3 Redstor may limit bandwidth, storage or other resources affecting the Redstor Services if Redstor deems it necessary to maintain quality of the Redstor Services for the benefit of all Redstor customers.
- 4.9 The Customer shall indemnify, defend and hold harmless the Supplier, the Supplier's Affiliates and their respective directors, officers, employees, shareholders and agents against any and all Losses that the Supplier may incur (including (without limitation) any Losses incurred by the Supplier as a result of any Claim issued against it by Redstor in connection with any breach or non-compliance with the Redstor Terms by the Customer, the Customer's Affiliates and/or their Representatives.
- ### 5 CUSTOMER'S OBLIGATIONS
- 5.1 The Customer shall:
- 5.1.1 ensure that the terms of the Quotation are complete and accurate;
- 5.1.2 co-operate with the Supplier in all matters relating to the Redstor Services;
- 5.1.3 provide the Supplier, Redstor and/or their Representatives, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data information and other facilities as reasonably required by the Supplier and/or Redstor;
- 5.1.4 provide the Supplier, in a timely manner, with such information and materials as the Supplier may reasonably require in connection with the Redstor Services, and ensure that such information is complete and accurate in all material respects;
- 5.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Redstor Services before the date on which the Redstor Services are to start;
- 5.1.6 notify the Supplier promptly of any problems regarding technical and operational issues of the Redstor Services;
- 5.1.7 Notify the Supplier promptly if the Customer becomes aware of any unauthorised use of the whole or part of the Redstor Services by any person in any way whatsoever;
- 5.1.8 ensure that there is appropriate connectivity between each device in relation to which the Redstor Services are to be provided and the Service Platform and that any devices or equipment connected to or used with the Redstor Services is connected and used in accordance with any applicable instructions, safety and security procedures;
- 5.1.9 not use the Redstor Services in any way that does not comply with the terms of any legislation, regulations or any licence applicable to the use of the Redstor Services and/or Software or that is in any way unlawful. The Customer shall notify the Supplier immediately if it becomes aware that it is or may be in breach of any such legislation and/or regulation; and
- 5.1.10 the Customer agrees to store the Software and the Pass Phrase in a secure environment preventing any unauthorised use or access to them.
- 5.2 The Supplier, Redstor and/or their Representatives shall have the right to audit the books and records of the Customer at the Supplier's reasonable expense in order to review the Customer's compliance with its obligations under this Contract, such audit shall be at reasonable intervals and upon at least twenty-four (24) hours' prior notice, either by means of a site visit by the Supplier, Redstor and/or their Representatives or by means of requests for supporting documents. The Customer shall cooperate fully with the Supplier and/or Redstor's exercise of the audit rights set forth in this clause.
- ### 6 EXCESSIVE USE
- 6.1 The terms of this clause shall apply only if the Customer has purchased Backup Services.
- 6.2 In the event that use of the Redstor Services by the Customer, in any 3 month period, is more than double the average across all of Redstor's customers for Backup Services as reasonably and properly determined and evidenced by Redstor (the "Excess Threshold"), this will be deemed to be "Excessive Use".
- 6.3 Should Redstor reasonably determine that there is Excessive Use in accordance with clause 6.2 above, the Supplier and/or Redstor may contact the Customer to require them to mitigate their Excessive Use.
- 6.4 If within 30 days of notification steps have not been taken to reduce the Excessive Use, then the Supplier will be entitled to charge the Customer for such additional Fees in accordance with clause 8.
- ### 7 WARRANTIES
- 7.1 The Customer warrants and undertakes that:
- 7.1.1 it has the full capacity and authority to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Customer;
- 7.1.2 it has the authority to grant any rights to be granted to the Supplier under this Contract;
- 7.1.3 it shall comply with and use the Redstor Services (including the Software) in accordance with the terms of this Contract, the Redstor Terms and all applicable laws, and shall not do any act that shall infringe the rights of any third party; and
- 7.1.4 it owns or has obtained valid licences, consents, permissions and rights to use any materials reasonably necessary for the fulfilment of all its obligations under this Contract.
- 7.2 The Supplier warrants and undertakes that:
- 7.2.1 it has the full capacity and authority to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Supplier;
- 7.2.2 it owns, or has obtained valid licences, consents, permissions and rights to enable the Supplier to comply with this Contract and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Contract including for the Customer's use and receipt of the Redstor Services, and the Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached; and
- 7.2.3 it shall comply with all applicable laws and regulations in performing its obligations under this Contract.
- ### 8 FEES AND PAYMENT
- 8.1 The Customer shall pay the Fees in accordance with the terms set out in the Quotation.
- 8.2 The Fees shall be calculated based on the Customer's estimated usage of the Redstor Services and unless otherwise specified in the Quotation, the Fees shall be payable by the Customer to the Supplier monthly in advance.
- 8.3 In the event that:
- 8.3.1 the Customer exceeds its estimated usage of the Redstor Services, the Customer shall pay the additional Fees payable in respect of such excess usage at the rates specified in the Quotation or as otherwise notified by the Supplier to the Customer from time to time. Such additional Fees shall be payable in accordance with this clause 8; and
- 8.3.2 the Customer's usage of the Redstor Services is less than the estimated usage, no refund of the Fees shall be payable by the Supplier to the Customer in respect of any unused quantity of Redstor Services.
- 8.4 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Redstor Services including for the cost of services provided by third parties and required by the Supplier for the supply of the Redstor Services, and for the cost of any materials.
- 8.5 The Supplier reserves the right to increase the Fees:
- 8.5.1 on an annual basis with effect from each anniversary of the Commencement Date (**Review Date**) by the higher of 3% and the percentage increase in the CPI over the twelve months prior to the relevant Review Date; and/or
- 8.5.2 at any time during the Term to reflect any increase in the fees, costs or charges payable by the Supplier to Redstor in respect of the Redstor Services.
- 8.6 Unless otherwise set out in the Quotation, the Customer shall pay each invoice submitted by the Supplier:
- 8.6.1 within 14 days of the date of the invoice; and
- 8.6.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 8.7 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier 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.
- 8.8 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 13, the Customer shall pay:
- 8.8.1 interest on the overdue sum in accordance with the Late Payment of Commercial Debts (Interest) Act 1998; and
- 8.8.2 the Supplier for its reasonable and necessary costs of collection, incurred, including, without limitation, reasonable legal fees and the Supplier's costs of disconnecting and reconnecting Customers for non-payment.
- 8.9 All amounts due 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).
- ### 9 INTELLECTUAL PROPERTY RIGHTS
- 9.1 All Intellectual Property Rights in or arising out of or in connection with the Redstor Services, the Software and the User Manual (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by the Supplier, Redstor or Redstor's licensors (as the case may be).
- 9.2 The Supplier 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 to use the Software for the purpose of receiving and using the Redstor Services.
- 9.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted in clause 9.2.
- 9.4 The Customer grants the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify any materials provided by the Customer to the Supplier for the term of the Contract for the purpose of providing the Redstor Services to the Customer.
- 9.5 If any third party makes a claim or notifies the Customer of an intention to make a claim on the basis that the use or possession of the Software and/or Redstor Services infringes the third party's Intellectual Property Rights, the Customer shall:
- 9.5.1 immediately notify the Supplier;
- 9.5.2 not make any admission or settlement without the Supplier's and/or Redstor's prior written consent;
- 9.5.3 permit the Supplier, Redstor and/or Redstor's licensors to have the sole conduct of the defence of any such claim and of all negotiations for its settlement or compromise; and
- 9.5.4 provide such reasonable assistance and information as may be required by the Supplier and/or Redstor.
- ### 10 CHANGE CONTROL
- 10.1 Subject to clause 10.5.1 below, if either party wishes to change the scope of the Redstor Services (including Customer requests for additional services or quantities), it shall submit details of the requested change to the other in writing.
- 10.2 If either party requests a change to the scope or execution of the Redstor Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- 10.2.1 the likely time required to implement the change;
- 10.2.2 any variations to the Fees arising from the change;
- 10.2.3 the likely effect of the change on the Redstor Services; and

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- 10.2.4 any other impact of the change on this Contract.
- 10.3 If either party wishes the other party to proceed with the relevant change referred to in this clause **10Error! Reference source not found.**, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to the Fees, the Redstor Services and any other relevant terms of this Contract to take account of the change.
- 10.4 Once changes have been agreed by the parties, the parties shall sign a written agreement confirming their agreement to any changes agreed pursuant to this clause.
- 10.5 Notwithstanding the foregoing provisions of this clause 10:
- 10.5.1 the Supplier shall be entitled to change the Redstor Services from time to time provided that such changes do not have a material adverse effect on the Redstor Services (as those Redstor Services were provided immediately prior to the change);
- 10.5.2 any request by the Customer to change the Redstor Services will be subject to the Supplier's consent in writing and where such consent has been given, the parties having entered into a written agreement (in the form determined by the Supplier) setting out the terms and conditions which apply to such change;
- 10.5.3 in the event that the Supplier and the Customer agree any changes to the Redstor Services during the Term, unless otherwise agreed by the Supplier the Redstor Services as amended by such change:
- 10.5.3.1 shall continue until the expiry of the Term; or
- 10.5.3.2 if agreed, by the Supplier the then current Initial Term or Successive Term.
- 10.6 For the avoidance of doubt, the Supplier shall be under no obligation to accept or agree to any changes to the scope or execution of the Redstor Services requested by the Customer pursuant to this clause 10 and any such decision shall be entirely at the Supplier's discretion.
- 11 DATA PROTECTION**
- 11.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 11 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 11.2 The parties have determined that, for the purposes of the Data Protection Legislation, the Supplier shall act as controller of any personal data of the Customer which the Supplier processes in connection with this Contract.
- 11.3 By entering into this Contract, the Customer consents to all actions taken by the Supplier in connection with the processing of any personal data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at <https://www.kascade.co.uk/terms/privacy-policy>. In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Contract, the Privacy Policy will take precedence.
- 11.4 To the extent that Redstor processes any personal data on behalf of the Customer, the Customer acknowledges and agrees that Redstor shall process such personal data in accordance with the Redstor Terms.
- 12 LIMITATION OF LIABILITY**
- 12.1 Subject to clauses 4.4 and 4.5, this clause 12 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its Representatives) to the Customer in respect of any and all claims which relate to or which may arise in relation to a contract, including without limitation, any claim for:
- 12.1.1 any breach of this Contract;
- 12.1.2 any use made by the Customer of the Redstor Services; and
- 12.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Contract.
- 12.2 Except as expressly provided in this Contract all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from this Contract.
- 12.3 Nothing in this clause 12 shall limit the Customer's payment obligations under the Contract.
- 12.4 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- 12.4.1 death or personal injury caused by negligence;
- 12.4.2 fraud or fraudulent misrepresentation; and
- 12.4.3 any other liability which cannot lawfully be excluded or limited.
- 12.5 Subject to clause 4.4 and clause 12.4:
- 12.5.1 the Supplier shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill, loss of use or loss of data, interruption of business, loss of revenue or similar losses, or for any indirect or consequential loss, costs, damages, charges or expenses however arising; and
- 12.5.2 the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the Contract shall be limited to the lower of:
- 12.5.2.1 the amounts paid by the Customer to the Supplier under this Contract;
- 12.5.2.2 the Fees paid by the Customer to the Supplier in the 12-month period immediately preceding the date on which the event leading to liability occurred; and
- 12.5.2.3 the Fees payable by the Customer to the Supplier in the first year of the Term.
- 12.6 This clause 12 shall survive termination of the Contract.
- 13 TERMINATION**
- 13.1 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:
- 13.1.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- 13.1.2 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), applying to court for or obtaining 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;
- 13.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 13.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 13.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract:
- 13.2.1 with immediate effect by giving written notice if the Customer fails to pay any amount due under the Contract on the due date for payment;
- 13.2.2 with immediate effect by giving written notice if there is a change of control of the Customer;
- 13.2.3 with immediate effect by giving written notice if the agreement between the Supplier and Redstor granting the Supplier the right to resell the Redstor Services to the Customer expires or is terminated for any reason; or
- 13.2.4 on giving 30 days' prior notice to the Customer.
- 13.3 Without affecting any other right or remedy available to it, the Supplier may suspend all (or any part of) the supply of the Redstor Services under the Contract or any other contract between the Customer and the Supplier if:
- 13.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment;
- 13.3.2 the Customer commits a material breach of any term of the Contract;
- 13.3.3 the Customer becomes subject to any of the events listed in clause 13.1.3 or clause 13.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them; and
- 13.3.4 the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 13.1.2.
- 14 CONSEQUENCES OF TERMINATION**
- 14.1 On termination or expiry of the Contract:
- 14.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of the Redstor Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 14.1.2 all licences granted under the Contract shall immediately cease and the Customer shall immediately discontinue all use of the Redstor Services (including use of the Software or User Manual);
- 14.1.3 the Customer shall at Redstor's option, immediately return or destroy the Software, any manual and any Confidential Information together with all copies in any form, including copies on any hard and backup disks; and
- 14.1.4 the Customer shall, prior to the effective date of termination, back up any data held within the Redstor Services that the Customer wishes to retain. Any data held within the Redstor Services after the effective date of termination may not be recoverable.
- 14.2 Unless otherwise agreed, on termination of the Contract by the Customer otherwise than as a result of the Supplier's breach of this Contract and/or the expiry of the Term, (if and to the extent not already paid) the Customer shall pay to the Supplier an amount equal to Fees that would have been payable over the period commencing on the date that the Contract is terminated and ending on the date that the Term would have expired if it were not for such termination.
- 14.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or 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.
- 14.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 15 DISPUTE RESOLUTION**
- 15.1 If a dispute arises under or in connection with this Contract (**Dispute**), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice (**Dispute Notice**) of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this clause 15.
- 15.2 If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, each party shall promptly (and in any event within five Business Days):
- 15.2.1 appoint a representative who has authority to settle the Dispute and is at a higher management level than the person with direct responsibility for the administration of this Contract (**Designated Representative**); and

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- 15.2.2 notify the other party of the name and contact information of its Designated Representative.
- 15.3 Acting reasonably and in good faith the Designated Representatives shall discuss and negotiate to resolve the Dispute, including agreeing the format and frequency for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party shall be complied with as soon as reasonably practicable).
- 15.4 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, either party may proceed with any other available remedy.
- 15.5 Notwithstanding any other provision of this Contract a party may seek interim or other equitable relief necessary (including an injunction) where damages would be an inadequate remedy.
- 16 GENERAL**
- 16.1 **Force majeure.** 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.
- 16.2 **Assignment and other dealings.**
- 16.2.1 The Supplier 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.
- 16.2.2 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.
- 16.3 **Confidentiality.**
- 16.3.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 16.3.2.
- 16.3.2 Each party may disclose the other party's confidential information:
- 16.3.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 16.3 (Representatives); and
- 16.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3.3 The provisions of this clause shall not apply to any Confidential Information that:
- 16.3.3.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- 16.3.3.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- 16.3.3.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- 16.3.3.4 the parties agree in writing is not confidential or may be disclosed; or
- 16.3.3.5 is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 16.3.4 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 16.4 Entire agreement.**
- 16.4.1 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.
- 16.4.2 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 misstatement based on any statement in the Contract.
- 16.4.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 16.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16.6 **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.
- 16.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Contract deleted
- under this clause 16.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 16.8 Notices.**
- 16.8.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be 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 sent by email to the address specified in the Quotation.
- 16.8.2 Any notice shall be deemed to have been received:
- 16.8.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 16.8.2.2 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
- 16.8.2.3 if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 16.8.2.3, 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.
- 16.8.3 This clause 16.8 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 16.9 No Partnership or Agency.** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, or constitute any party the agent of another party nor authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms that it is acting on its own behalf and not for the benefit of any other person.
- 16.10 Third party rights.** Unless it expressly states otherwise, 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.
- 16.11 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.
- 16.12 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.