

1 DEFINITION AND INTERPRETATION

- 1.1 In this Contract:
- "**Authorised User**" means an individual whom the Client has authorised to have access to the Systems and to whom a password has been issued for such purpose
- "**Charges**" means the charges for the Services as set out in the Quotation or Order Acceptance including without limitation fees, expenses and other costs
- "**Client**" means the party who purchases or agrees to purchase the Services identified in the Order Acceptance from Santia
- "**Commencement Date**" means as set out below.
- "**Conditions**" means these standard terms and conditions as amended by Santia from time to time.
- "**Confidential Information**" means in the case of either party all information (in any media) of a confidential nature disclosed by that party its employees, agents, consultants or subcontractors to the other including but not limited to all technical or commercial know-how, specifications, inventions, processes or initiatives.
- "**Contract**" means the contract between Santia and the Client for the provision of the Services comprising these Conditions, the Quotation, the Order Acceptance, any Special Conditions.
- "**Documents**" means any and all drawings, specifications, technical know-how, plans, reports, models, presentation materials, brochures, guides, course notes, training materials promotional materials etc. prepared by or on behalf of Santia
- "**DPA**" means the Data Protection Act 1998
- "**Equipment**" means any equipment, appliance or system provided by Santia as part of the Services to be maintained and/or repaired by Santia in accordance with the Contract
- "**IP**" means any patents, patent applications, trade marks or trading names (in each case, whether or not registered), trade mark applications, know-how, design rights registered or unregistered (including registered design applications), confidential information, copyright, database rights and all other intellectual property rights including any rights analogous to the same subsisting anywhere in the world at any time
- "**Order Acceptance**" means Santia's acceptance of the Client's Purchase Order until Santia has provided an Order Acceptance to the Client a Contract will not be deemed to have been formed.
- "**Personal Data**" means personal data as defined in section 1 of the DPA
- "**Premises**" means the Client's premises at which the Services may be provided (if any)
- "**Purchase Order**" means the order placed by the Client setting out its request for Services.
- "**Quotation**" means the quotation for the Services provided by Santia to the Client.
- "**Services**" means the services as set out in the Quotation or Order Acceptance including the provision of any Equipment and/or Systems as applicable.
- "**Special Conditions**" means any special conditions provided by Santia to the Client from time to time
- "**Systems**" means such on-line systems or portals as may be provided by Santia as part of the Services in accordance with the Contract
- "**Term**" means the term of the Contract beginning on the Commencement Date and ending on completion of the Services by Santia or the date stated in the Quotation
- "**Working Day**" means Monday to Friday (inclusive) excluding Bank Holidays and other days when clearing banks are not open for business
- 1.2 Wherever in the Contract provision is made for a communication to be "written" or "in writing" this includes facsimile transmission but not email.
- 1.3 References to any statutes or statutory regulations shall be deemed to include any subsequent revisions or re-enactments thereof.
- 1.4 The Purchase Order constitutes an offer by the Client to purchase Services from Santia in accordance with these Conditions.
- 1.5 The Purchase Order shall only be deemed accepted when Santia issues the Order Acceptance or commences provision of the Services at which date the Contract shall come into existence ("Commencement Date").
- 1.6 Any Quotation given by Santia shall not constitute an offer and is only valid for a period of 3 Working Days from its date of issue (unless otherwise agreed by Santia and/or stated on the Quotation) and Santia shall be entitled to vary or withdraw a Quotation at its discretion after that time.
- 1.7 These Conditions shall apply to and be incorporated in any Contract and shall be in substitution for any ongoing arrangement made between Santia and the Client and shall prevail over any terms or conditions contained in or referred to in the Purchase Order or other Client correspondence or elsewhere or implied by trade custom or practice or course of dealing. No addition to or variation of or exclusion or attempted exclusion of these Conditions shall be binding upon Santia unless specifically agreed to in writing and signed by a duly authorised representative of Santia.
- 1.8 All the provisions of the Contract between Santia and the Client are contained in or referred to in the Quotation, Order Acceptance, these Conditions and (where applicable) the Special Conditions. In no circumstances will any conditions of purchase submitted at any time by the Client be applied to the Contract and any failure by Santia to challenge any such terms and conditions does not imply acceptance of those terms and conditions.
- 1.9 In the event of any conflict between any terms contained in the Quotation, Special Conditions, Order Acceptance and these Conditions the following order of precedence shall apply to the extent of any inconsistency only:-
- 1.9.1 the Special Conditions;
 - 1.9.2 Order Acceptance;
 - 1.9.3 Quotation
 - 1.9.4 these Conditions.

2 SERVICES

- 2.1 During the Term, Santia shall supply the Services to the Client using all reasonable skill, care and diligence to the standards of a reasonably qualified and competent provider of the Services.
- 2.2 Santia 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 Santia shall notify the Customer of the relevant changes and any consequent amendment to the Charges in any such event.
- ## 3 CHARGES AND PAYMENT
- 3.1 The Charges for the Services shall be those agreed and set out in the Quotation. The Client shall pay the Charges specified in any invoice within 30 days of the date of such invoice (unless otherwise stated in the Quotation and/or Order Acceptance) in pounds sterling by direct debit or BACS transfer into Santia's account as notified in writing by Santia from time to time. All Charges are net of Value Added Tax (VAT) which the Client shall pay to Santia (at the prevailing rate) upon receipt of a valid VAT invoice.
- 3.2 Santia reserves the right to carry out an annual review of the Charges and will notify the Client of any resulting changes to the Charges at least 30 days prior to implementation.
- 3.3 Notwithstanding any other terms of this Contract Santia may withhold or suspend the provision of the Services (in addition to any other remedy available to Santia) without terminating the Contract if the Client has failed to pay Santia's invoices in accordance with the Contract.
- 3.4 If the Client requires Santia to carry out any additional services not specified in the Quotation or Order Acknowledgement Santia shall be entitled to make additional charges for such services.
- 3.5 All payments to be made by the Client under the Contract will be made in full without any set-off, restriction or condition and without any deduction for or on account of any counterclaim.

4 THE CLIENT'S OBLIGATIONS

- 4.1 The Client will:
- 4.1.1 ensure prompt provision of resources, including decisions, information, documentation and access (to personnel, records and Premises) required to enable Santia and its agents and employees to provide the Services in accordance with the Contract;
 - 4.1.2 ensure a safe working environment at the Premises for Santia, its agents and employees; and ensure in the interests of health and safety that Santia's personnel,

- 4.1.3 while on the Premises for the purpose of carrying out the Services have access at all times to a member of the Client's staff familiar with the Premises and safety procedures; be responsible for the accuracy and legality of all information from time to time provided to Santia, ensure that none of it infringes the IP of or defames any person and indemnify and keep Santia indemnified accordingly;
- 4.1.4 be solely responsible for maintaining back-up and disaster recovery procedures and all other information the Client supplies to Santia from time to time;
- 4.1.5 wherever possible, provide a suitable vehicle parking facility for use by Santia's personnel which is free from any legal restrictions and immediately close to the location at which the Equipment is installed and/or Services provided; and
- 4.1.6 perform its obligations in the Contract in a competent, prompt and diligent manner.

4.2 The Client hereby acknowledges that the provision by Santia of the Services in accordance with this Contract will not absolve the Client from any obligation, including any statutory obligation, to which it may from time to time be subject.

4.3 The Client agrees that Santia shall not be liable under any circumstances for any delay, error or problem caused by any act or omission on the part of the Client, its agents or employees. Santia may levy additional charges (at its then current standard rates) resulting from any additional work or additional costs incurred or undertaken as a consequence of any such act or omission.

4.4 The Client accepts that Santia shall be entitled to announce (either verbally or in writing) for marketing purposes only that it has undertaken the Services for the Client.

4.5 In the event that the Client fails to notify Santia of any problem or concern within 72 hours of Santia carrying out the Services then the Client will be deemed to have accepted the same.

4.6 If Santia is providing Equipment in accordance with the Contract, the Client will:

 - 4.6.1 ensure that proper environmental conditions are maintained for the Equipment and maintain the accommodation for the Equipment in good order;
 - 4.6.2 not make any modification to the Equipment without the prior written consent of Santia;
 - 4.6.3 keep and operate the Equipment in a proper and prudent manner and in accordance with Santia's and/or the manufacturer's operating instructions and carry out any minor maintenance as recommended by Santia and/or the manufacturer and/or installer from time to time;
 - 4.6.4 except as otherwise provided in the Contract, not attempt to maintain, repair or adjust the Equipment and not engage any third party (other than Santia to do so);
 - 4.6.5 not use in conjunction with the Equipment any accessory, attachment or additional equipment other than that which has been supplied or approved in writing by Santia;
 - 4.6.6 promptly notify Santia if the Equipment is not operating correctly or needs maintenance; and
 - 4.6.7 make available to Santia such reasonable facilities as may be requested from time to time by Santia for the storage and safekeeping of test equipment and parts.

4.7 If Santia is providing Systems in accordance with the Contract, the Client shall and shall procure that any Authorised Users:

 - 4.7.1 operate any relevant System only in accordance with Santia's and/or any relevant licensor of the Systems instructions and shall ensure that no modifications are made to any such System; and
 - 4.7.2 supply to Santia a list of its Authorised Users; maintain an up to date version of the list of Authorised Users and supply a copy to Santia promptly upon request; and issue to each of its Authorised Users the password from time to time provided by Santia.

4.8 In respect of the Client's use and any Authorised User's use of any relevant System, the Client shall comply with generally accepted principles of Internet usage and ensure that:

 - 4.8.1 such relevant System is not used by any of the Client's Authorised Users fraudulently, in connection with any criminal offence, or otherwise unlawfully or to send or receive any information or material which is offensive, abusive, indecent, defamatory, obscene or menacing, or in breach of confidence, copyright, privacy or any other rights, or to send or provide unsolicited advertising or promotional material; and
 - 4.8.2 no viruses are introduced into any such System and that, if a virus is found, promptly upon its discovery eliminate it and/or ameliorate its effect.

4.9 The Client acknowledges and accepts that Santia may be required by law to monitor website content and traffic and, if necessary, give evidence of the same together with use of log-on identification to support or defend any dispute or actionable cause.

5 RESERVATION OF TITLE

- 5.1 Title to and property in the Equipment and/or Systems shall remain vested in Santia at all times.
- 5.2 The Client shall hold the Equipment as Santia's fiduciary agent and bailee and shall at all times keep the Equipment separate such equipment and property of the Client and/or any third parties and properly stored, protected in accordance with Clause 4.6 and, unless agreed otherwise, insured against all risks;
- 5.3 Santia shall be entitled to repossess any Equipment and/or remove access to any Systems for which it retains title at any time (including but not limited upon termination of any Contract) and for such purpose Santia and/or its agents and/or representatives shall be entitled at any time and without notice to enter upon any Premises and/or premises at which the Equipment is stored or kept or reasonably believed so to be;
- 5.4 Unless otherwise agreed by Santia, the Client will insure the Equipment for its full replacement value naming Santia as either co-insured or the 'Loss Payee'.
- 5.5 The Client shall not be entitled to sell or charge any of the Equipment by way of security for any indebtedness of the Client or otherwise.

6 DATA PROTECTION

- 6.1 The Client warrants that any and all personal data supplied to Santia by or on behalf of it has been obtained and supplied with the prior written consent of any such data subject (as defined in the DPA), such data subject having been given such information as may be required by the DPA or otherwise reasonably required by the data subject in order to give such consent freely and shall warrant that any such data subject consents to Santia holding and processing personal data relating to him/her for legal, personnel, administrative and management purposes as may reasonably be expected in connection with the Contract.
- 6.2 The Client consents (and shall procure that the data subject consents) to Santia making such information available to any company in the same group of companies as Santia, for the purpose of marketing other goods and services offered by Santia.

7 INTELLECTUAL PROPERTY

- 7.1 Santia shall retain all IP relating to the Services and in any and all Documents, Equipment, Systems, any other systems, methods, material and items created by or on behalf of Santia whether specifically for the purposes of this Contract or otherwise.
- 7.2 If a third party owns any Systems or part thereof such third party shall (if applicable) retain all IP relating to the Systems.
- 7.3 The Client hereby acknowledges that Santia shall have no liability for any misuse by or on behalf of the Client or any other person of any of the Documents (which shall be determined by reference to the purposes for which the Documents were originally prepared) or any other deliverables generated during the provision of the Services.
- 7.4 The Client hereby grants Santia a royalty-free, non-exclusive and irrevocable licence to copy and use any material provided to the Client for all reasonable purposes related to the Services. The Client shall not use the System, Documents, Equipment or any deliverables resulting from the Services for any purpose whatsoever other than as necessary to receive the Services.

8 LIMITATION OF LIABILITY AND REMEDIES

- 8.1 Subject to clause 8.3 and notwithstanding Clause 8.2, Santia's maximum total liability under or arising out of or in connection with the Contract will not exceed the sum which is the lesser of £1,000,000 (one million pounds) or twice the total value of the Charges paid by the Client in the year during which the claim arose or such pro-rated amount should the claim arise in the first year of trading.
- 8.2 Subject to Clause 8.3, Santia will not in any circumstances have any liability (whether direct or indirect) for (i) loss of business or business opportunity, (ii) loss of revenue, (iii) loss of profits, (iv) loss of anticipated savings, (v) loss of or damage to data, (vi) loss of goodwill or injury to reputation (vii) any third party claims (viii) loss which could have

been avoided by the Client through reasonable conduct or by the Client taking reasonable precautions or (viii) any consequential or indirect loss. The Client is strongly advised to insure against all such potential loss, damage, expense or liability.

- 8.3 Nothing in this Contract seeks to exclude or limit any liability of Santia for death or personal injury caused by its negligence or for its fraudulent misrepresentation.
- 8.4 The Client hereby acknowledges and agrees that the limitations of liability referred to in clause 8.1 and 8.2 are fair and reasonable, reflected in the level of the Charges and the insurance cover carried by Santia and are just and equitable having full regards to the extent of Santia's responsibility for any loss or damage suffered.
- 8.5 Save as required by law and save as may otherwise be set out in the Contract, Santia disclaims and the Client waives all other warranties, express or implied, with respect to the Services, arising by law or otherwise, including, without limitation, any implied warranty of satisfactory quality, fitness for a particular purpose and any obligation, liability, right, remedy or claim in tort.
- 8.6 Save as required by law, the Client's exclusive remedy for any default or defect in the performance of the Services or any other breach of the Contract by Santia shall be to correct and/or re-perform any such defective Services by Santia. If it is not economical or technically feasible for Santia to correct and/or re-perform the defect then the Client's exclusive remedy shall be a full or partial credit of sums paid for the defective Service(s) (subject always to the other provisions of this clause 8).
- 9 **CONFIDENTIAL INFORMATION**
- 9.1 Each party shall keep in strict confidence and treat the other parties Confidential Information as confidential and to use it only for the purposes of the Contract except in so far as may be necessary for the performance of any obligations of the Contract or to the extent that such information is generally available to the public or to the extent that disclosure of information is required to be made by law.
- 9.2 Each party agrees that this obligation shall continue in force without limitation in point of time notwithstanding the termination or expiry of any Contract for any reason but shall cease to apply to information from the point at which it enters into the public domain and shall also cease to apply to information which is received independently from another source without the imposition of any duty of confidence.
- 10 **FORCE MAJEURE**
- Santia shall have no liability to the Client if it is prevented from, or delayed in performing, its obligations under the Contract or from carrying on its business by any event(s) or combination of events where such event(s) arises from, or is attributable to acts, events, omissions or accidents beyond the reasonable control of the relevant party including, but not limited to, acts of God, terrorism, war or flood.
- 11 **SUMMARY TERMINATION**
- 11.1 Santia may terminate any Contract (or part thereof) by providing the Client with 30 days written notice.
- 11.2 The Client shall not be entitled to terminate any Contract (or part thereof) without cause. Santia reserves the right to charge the Client a cancellation fee if the Client terminates the Contract without cause.
- 11.3 Santia may terminate the Contract forthwith by notice to the Client without liability to the Client if:
- 11.3.1 the Client is in material breach of the Contract which breach is not capable of remedy or, if capable of remedy, is not remedied within 14 days of Santia specifying the breach and requiring its remedy; or
- 11.3.2 the Client has had a trustee, receiver, administrative receiver or similar official appointed over a material part of its business or assets; or an order has been made or a resolution passed for the Client's winding up (otherwise than for the purpose of a bona fide scheme of arrangement or solvent amalgamation or reconstruction) or an administration order has been made; or a proposal has been made in respect of the Client for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or for any other composition scheme of arrangement with (or assignment for the benefit of) its creditors; or the Client ceases to trade or is unable to pay its debts as and when they fall due; or any other analogous event occurs in any other jurisdiction;
- 11.3.3 the Client ceases or threatens to cease trading; or
- 11.3.4 the Client fails to make any payment in accordance with the terms of the Contract.
- 11.4 Upon termination of any Contract howsoever occurring:-
- 11.4.1 Santia shall be entitled to repossess any of the Equipment and Santia and/or its agents and/or representatives shall be entitled at any time and without notice to enter upon any premises in which the Equipment is stored or kept or reasonably believed so to be;
- 11.4.2 the Client's right to access and/or use the System shall cease immediately;
- 11.4.3 the Client shall return or dispose any of Santia's Confidential Information and all copies thereof in accordance with Santia's instructions; and
- 11.4.4 the Client shall remain liable to pay Santia any Charges outstanding and for any Services already performed prior to the date of termination.
- 11.5 Termination of this Contract for any reason shall be without prejudice to any rights of either party which may have accrued up to the date of termination.
- 11.6 Clauses 5, 6.2, 7, 8, 9, 11.2 and 12 shall survive termination.
- 12 **MISCELLANEOUS**
- 12.1 This Contract contains the entire understanding between the parties in connection with the matters herein contained and supersedes any previous agreements or undertakings (whether written, oral or implied) relating to the subject matter of this Contract. The parties acknowledge that in entering into any Contract neither has relied on any oral or written representation or undertaking by the other except as expressly incorporated in any Contract.
- 12.2 A waiver by Santia of any right under this Contract or of any failure to perform or breach hereof by the Client shall not constitute or be deemed to be a waiver of any other or future right hereunder or of any other failure to perform or breach hereof by the Client, whether of a similar or dissimilar nature.
- 12.3 No variation of the Contract shall be valid unless it is in writing and signed by or on behalf of a duly authorised representative of each of the parties.
- 12.4 For the purposes of this Contract, Santia shall be an independent contractor, and neither Santia nor its sub-contractors nor its directors or employees nor any one of them, shall be deemed to be an employee or agent of or a partner with the Client.
- 12.5 The Client shall not assign the Contract in whole or in part without the prior approval of Santia (such approval not to be unreasonably withheld or delayed).
- 12.6 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 12.7 The Client shall comply, and shall ensure that each of its subcontractors, agents and personnel comply with any relevant and applicable anti-bribery and corruption laws, regulations and/or directives related to the provision and receipt of the Services.
- 12.8 The Client warrants and represents to Santia that it has not and shall not, in connection with the Services contemplated by any Contract or in connection with any other business transactions involving Santia, make, promise or offer to make any payment or transfer of anything of value, directly or indirectly: (i) to any government official (as defined below) or to an intermediary for payment to any government official, or (ii) to any political party for the purpose of influencing any act or decision of such official or securing an improper advantage to assist Santia in obtaining or retaining business. It is the intent of the parties that no payments or transfers of value shall be made which have the purpose or effect of public or commercial bribery, acceptance of or acquiescence in extortion, kickbacks or other unlawful or improper means of obtaining business. "Government official" is defined as any employee or officer of a government of a country, including any regional or local department, company or business owned or controlled by such government, any official of a political party, any official or employee of a public international organisation, any person acting in an official capacity for, or on behalf of, such entities, and any candidate for political office. Failure by the Client to comply with this Clause shall constitute a material breach of the Contract.
- 12.9 The Client agrees that it will not at any time during the Term or for 6 months thereafter, without the prior written consent of Santia, directly or indirectly solicit, induce or entice away from Santia or employ, engage or appoint in any way cause to be employed, engaged or appointed any employee, agent or sub-contractor of Santia to perform services substantially similar to the Services.
- 12.10 Any notice under the Contract must be given in writing to the addresses set out in the Quotation and if no address is given, the registered office of such party. Any such notices shall be effective if delivered by hand, at the time of delivery, if sent by fax, on the first Working Day after sending and if sent by post, 2 days after the date of posting.
- 12.11 Each provision of this Contract is severable and distinct from the others and if any provision is or at any time becomes to any extent or in any circumstances invalid, illegal or unenforceable for any reason, it shall to that extent or in those circumstances be deemed not to form part of this Contract, but the validity, legality and enforceability of all other provision of this Contract shall not otherwise be affected or impaired, it being the parties intention that every provision of this Contract shall be and remain valid and enforceable to the fullest extent permitted by law.
- 12.12 This Contract shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English and Welsh courts.